EUI WORKING PAPERS IN POLITICAL AND SOCIAL SCIENCES

EUI Working Paper SPS No. 92/28

Social Dumping or Innovative Regulation?

Processes and Outcomes of European Decision-Making in the Sector of Health and Safety at Work Harmonization

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Printed in Italy in January 1993
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Abstract

When the completion of the Single European Internal Market was announced in 1985, many observers from the technologically advanced countries feared a lowering of existing national levels of protection by *social dumping*. These expectations were based on political integration theories, which analysed European policy-making primarily as intergovernmental bargaining that could only lead to agreements on the level of the least common denominator. European health and safety at work regulation, however, turned out to provide a surprisingly high level of safety and health and, furthermore, even to develop innovative approaches to occupational health and safety regulation. When the complete European regulation process according to the New Approach in Technical Harmonization and Standardization is analyzed in detail, it turns out that European health and safety at work regulation in both phases - in legislation and in standardization - has to be viewed as the outcome of the interactions within complex configurations of actors. These configurations include more actors than just national governments (as analyzed by intergovernmental bargaining theories), namely national partisans and European actors, particularly the EC Commission as a key actor. The institutional self-interest of the latter is an important factor in the explanation of the observed tendency of innovative social regulation. However, to add legitimation to European decision-making, it is necessary for organized interests to become increasingly responsive to the chances of participation within the complex networks of European decision-making.

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[1] This paper is an extended version of a lecture at the European University Institute in Florence. I am indebted to Professor Christian Joerges and Professor Giandomenico Majone, who invited me to the EUI and encouraged me to write this paper, to Erwin Scherfer, Andreas Bücker and Johannes Bauerdick, who provided me with materials and conducted some of the interviews, and to Rolf Heinze and Helmut Voelzkow, who discussed various aspects of the paper with me.

1. Expectations of Social Dumping and Actual European Regulation

1.1 Expectations of Political Integration Theory Regarding Inter-governmental Bargaining

In many member countries, the completion of the Single European Internal Market is regarded with mixed emotions. Although the economic benefits - though numerically moderate, as estimated by the Cecchini-study - are widely accepted, the neglect of Europe's social dimension is frequently criticized. The European Community, which is rooted in the Economic Communities and which seems to remain, according to Streeck and Schmitter (1991, p. 138), "a customs union committed to liberalism and free trade", is even called the "entrepreneurs' Europe" (Struwe 1991; see for similar judgements the contributions in Steinkühler [ed.] 1989 and Kenis 1991).

When the EC started on its way to the completion of the internal market in 1985, particularly in the economically and technologically most advanced member countries the fear arose that the achieved social and ecological standards would be jeopardized. It was widely expected that national protective regulations, which functioned as trade barriers, would be removed by the White Paper deregulatory measures, leaving a regulatory vacuum which would lead to community-wide competition for the reduction of cost-intensive safety and health standards.

This *social dumping* was regarded as a consequence of Europe's inability to achieve effective political integration. According to the currently dominating (neo-) realist integration theory, European political action is mainly considered as the outcome of *inter-governmental bargaining*, under the premise that each national government has an institutional self-interest in minimizing changes required by European integration and in defending national structures and regulations. Every European regulatory act which is different from national regulation (with the exception of the rare cases in which a national government plans a reform exactly in this direction) causes economic, social and political adaptation costs.

* Economic adaptation costs arise, if European regulation changes the cost-relations and thus affects the relative import and export chances.

* Social adaptation costs arise, if European regulation negatively affects the working conditions.

* Political adaptation costs arise, if interest groups exert pressure or voters withdraw their support, when they make their national government responsible for negative European regulation.

If we, for simplification purposes, differ between the EC Member States with high levels of health and safety at work regulation and those with low levels, we get the following configuration of interests (for similar reasoning on a different field of regulation see Rehbinder/Stewart 1985, p. 9-12):

* As stringent health and safety at work measures increase manufacturing costs of all products, these measures cause economic disadvantages for the high level countries in competition with the low level countries on many product markets. Therefore, the high level countries have an interest in a harmonization of *process regulation* to get equal

competitive chances on the European internal market. Furthermore, looking at the markets of manufacturing machinery and equipment, which are directly affected by *product regulation* of health and safety at work, the producers from the high level countries face difficulties selling their products on the markets in the low-level countries, because they are more expensive, since they include devices which are not needed in these countries, whereas, since the European Court of Justice's *Cassis de Dijon* decision and a restrictive interpretation of Art. 100a (4) of the EEC Treaty, they have limited opportunities to prevent the producers from low-level countries from offering their cheaper machinery and equipment on their markets.

* On the contrary, the low-level countries are not interested in a harmonization of *process regulation* at all, not even on a low level, because then their relative cost-advantages would diminish. On the markets for machinery and equipment, a harmonization of *product regulation* on a high level could even be disastrous, because their industries may not be technologically able to produce machinery and equipment with sophisticated safety devices. The low-level countries are interested in a harmonization of product regulation on a low level of protection which would open up the advanced Member States' markets for their cheaper products.

In sum, all Member States are interested in keeping their level of health and safety at work regulation. The high-level countries, however, have a strong interest in a harmonization on a high level, while the low-level countries profit from non-harmonized regulation as long as the *Cassis de Dijon*-policy opens the markets. In this configuration of interests, the position of the high-level countries seems worse, because they want harmonization and may trade their high safety level for harmonization at any level, because the markets which are affected by process regulation are larger than the markets for machinery and equipment. As a result, a process of slow harmonization is predicted, ending in a harmonization on the level of the least common denominator, because the low-level countries are able to veto (prior to the Single European Act) or to form blocking minorities against high-level regulatory acts.

In a generalized analysis, Scharpf (1985) even characterized the EC as "incapable of action", because its decision-making system suffers from a "self-blockade", which results from the fact that decisions on the (higher) European level depend on the consent of the governments on the (lower) national level and that this consent must be unanimous or, since the Single Act of 1986, almost unanimous. Since the national governments and their bureaucracies have an institutional self-interest in keeping and enlarging their resources and authority rather than renouncing sovereignty rights, they use their veto-power to block any decision with negative consequences for them ("*Politikverflechtungsfalle*" or "joint-decision trap"; see also Scharpf 1985a). Hoffmann (1982, p. 30) sees a "power of inertia" coming from the national bureaucracies' institutional self-interests in avoiding change. With "package deals", "log rolling" or "compensatory payments" only *ad-hoc*-solutions with limited ranges can be achieved, because there are situations in which adequate compensations for each State cannot be achieved, especially if decisions must be made under negative-sum game conditions. Hence, the European Community is caught in an "institutional trap" between national sovereignty and integration, with no way out, neither forwards (because of the national governments' interests in keeping their sovereignty) nor backwards (because of the economic interests in keeping the *status quo* of the integration). Since the Member States have institutional self-interests in preserving their veto-power, the institutional system of the European Community is unable to overcome the mutual blockade and to transform itself into an effective Europeanization of the decision-making process.

From such analyses the proposal was derived to limit harmonization in order to reduce the level of interest conflicts between the Member States. Schmitter, for example, explains the Community's ability to overcome the blockades from the mid-1960s to the 1970s with a shift away from harmonization, regulation and unanimity to mutual recognition, deregulation and qualified majority voting (1992, p. 8). He also points to the Maastricht Accord's reference to "the latest buzz-word in Euro-speak: subsidiarity" as an indicator that in the European Union still "most decisions will presumably be taken (and not just implemented) by other than central government authorities" (ibid., p. 39; see also Scharpf 1990, p. 36).

Similarly, Weiler (1982) argued against a regulatory harmonization which would threaten the Member States' sovereignty, because he saw a functional requirement for the persistence of the European Community in managing an equilibrium between national interests and supranational legal supremacy by what he called "combined federalism", i.e. the "interaction of low decisional and high normative supranationalism" (p. 220, 525):

".. a certain balance by a cyclical interaction of the judicial-normative process with the political-decisional one. Here then is one dimension of the Community formula for attaining an equilibrium between whole and part, centripetal and centrifugal, Community and Member States. It is an equilibrium which explains a seemingly irreconcilable equation: a large, surprisingly large, and effective measure of transnational integration coupled at the same time with the preservation of strong - unthreatened - national Member States." (Weiler 1982, p. 200f.)

Whereas the Member States were anxious to keep their political sovereignty, the drive towards integration came primarily from the development and application of Community law by the European Court of Justice, which acted as a "substitute legislator" (Bettati 1989). Weiler, however, was not too optimistic about Europe's future, although he did not exclude the option of eventually overcoming the principle of unanimity. But as a result of the extension to 12 Member States, he expected that "the common denomination for Community action will be lowered even further" (Weiler, 1982, p. 538).

In the view of the realist integration theory, the Community's (partial) repeal of the principle of unanimity (introduced in 1966) by the Single Act in 1986 did not help much. Scharpf considers the European decision-making system still as an "extremely cumbersome bargaining system, in which now a couple of decisions can be made with qualified majorities (what, however, in fact happens rarely), but which can be paralysed by the contradiction of a few Member States" (Scharpf 1992, p. 25, my translation). Since a consensus of the national governments is still difficult to achieve because of the heterogenity within the European Community, Scharpf expects no basic change from the shift to qualified majority voting:

"Under the qualified majority rule, Brussels' harmonization decisions are still blocked by grave interest conflicts (e.g. between the advanced and the underdeveloped industrial countries) and by at least equally grave direction conflicts (e.g. between the British and the German environmental policies). Hence, the high level of health protection, of safety at work, of environment protection and of consumer protection, which is required by the Single Act (Art. 100a (3)), can not be enforced jointly, but it comes either to harmonization decisions on the lowest common level or to a mutual recognition of the respective national regulations." (Scharpf 1990, p. 36, my translation)

The advancing economic integration combined with a "blocked political integration" leads to an internal market with free access, where the unlimited competition involves competition between

national regulatory systems. The market competition, according to Scharpf (p. 37), "can only lead to a systematic suppression of the more expensive standard by the less costly standard". Deregulation would "degenerate to a competition of mutual dumping" (ibid., p. 38). In this competition between regulatory strategies, the national regulatory "packages" will be untied so that each single regulation will be compared with the least expensive regulation in any other EC country.

The self-interest of national governments in avoiding any changes which may be connected with costs of adjustment or a loss of powers or resources is reinforced by the politics of non-governmental actors (Streeck/Schmitter 1991, p. 142): The requirement of unanimity (or qualified majority voting) in decision-making puts pressure groups which are interested in preventing a harmonized European social policy - mainly the employers' associations - in a strong position, because they need just one (or three) national government(s) for a veto (or blocking minority) in the Council - "with the consequence of *integration and deregulation becoming one and the same*" (ibid.). Furthermore, "a class like business, whose interest was and is essentially not in *shaping* but rather in *preventing* a centralized European social policy, could always hope to find allies in national governments concerned about their sovereignty." (ibid.) Streeck and Schmitter indeed write that "in the 1992 compromise, the project of European integration became finally and formally bound up with a deregulation project" as a concession that the governments had to make in return for business giving up previous claims for protection of the domestic markets (ibid., p. 149).

Many scholars agree that, even if the high-level countries would succeed in preserving their achieved levels of protection, there would be no chance for improving these levels. Thus, if not a roll-back, at least a long-term standstill of innovation and improvement in the area of social regulation was expected.

1.2 The Real Developments in European Regulation of Health and Safety at Work

The danger of social and ecological dumping was seen clearly when the Treaty was amended by the Single Act (Lindl 1991, p. 46). Therefore, in the interests of the Member States with high safety standards, to Art. 100a the proviso of subsection 3 was added. The proviso that the Commission proposals "will take as a base a *high* level of protection" (italics mine), however, is weak and legally not binding. First, the word "high" is vague. "High" may mean higher than the minimum common denominator but definitely does not mean "the highest" (otherwise subsection 4 would be senseless), thus, from the perspective of high level countries, not excluding social and ecological dumping. Secondly, the proviso is not binding, because it relates only to the Commission proposals and not to the final Council decisions. Hence, with Art. 100a (4) a kind of "emergency exit" for the high-level countries was installed, allowing national regulation ("opting out"), if a State claims that important requirements of the safety of the working environment or of environment protection demand tighter national regulation *and if* - and this condition is essential - this national regulation does not serve as a discrimination or a trade barrier. The Single Act seems to reflect (while recognizing) the problems of intergovernmental bargaining.

Against this background, what really happened in European health and safety at work regulation after 1985 was surprising. The European Community recognized the danger of competition between the Member States which could lead to a weakening of safety and health protection (see directive 89/391/EEC, preamble), and therefore started a comprehensive regulatory programme with the "essential aim" of *preserving or improving* the level of safety attained by the Member States (directive 89/392/EEC, preamble).

The EC's regulatory programme in the area of occupational health started in 1989 with the Safety and Health at Work Directive (89/391/EEC), in which the European concept of health and safety at work is laid down and which serves as a framework directive, announcing (Art. 16) a bunch of more specific directives on the safety of machinery, personal protection equipment, carrying and lifting of burdens, pressure equipment, working at visual display terminals etc., which have been passed since 1989 or which are currently in the legislative process.

Instead of *social dumping*, with the framework directive and the more specific directives, which have already been passed, the Council has decided to introduce a very broad and innovative concept of safety and health at work, which not only clearly goes beyond the least common denominator, but also beyond the traditional approach to occupational safety, which is still in effect in most Member States' regulation. Compared to existing legislation, even in the highly industrialized Member States, the European approach to the regulation of occupational safety and health is characterized by the following features:

* While traditional regulatory concepts refer only to machinery, equipment and workplaces, the European regulation is extended to the regulation of the whole working environment (including the organization of work, the working time, the social relations etc.).

* While traditional approaches are restricted to the prevention of industrial accidents and recognized occupational diseases, which are considered as exceptional occurences, the European regulation requires the adaptation of the working conditions to the human nature.

* While traditional regulation aims at avoiding physical injuries, the European concept of occupational health protection is extended to cover the protection of both physical and mental health and even the reduction of physical and psychological stress.

With these innovations, the European Community definitely adopted the *highest* health and safety at work level which is to be found among the 12 Member States. Besides the EFTA Member Sweden, in the EC only Denmark and the Netherlands have introduced similar approaches - Denmark in 1975 and the Netherlands in several steps between 1983 and 1990 (for further details, see Vogel 1991 and Aulmann/Römer 1989).

It is of particular significance that the EC regulation is on a level higher than that of the large industrialized Member States, including Germany, which was among the countries who feared *social dumping* by European harmonization most and which was the only State that voted against the most important single safety at work directive, the Safety of Machinery Directive (89/392/EEC), in the Council.

But the Germans' fears of *social dumping* turned out to be no more than "prejudices", as now even unionists concede (Werthebach/Wienemann 1992, p. 1)[2]. Detailed analysises by Falke (1989), Siller (1989), Feldhoff (1992) or Kohte (1992a, b, c), however, point out that the safety level of the EC directives goes clearly beyond the general safety level of German health and safety at work regulation and has to be appreciated as a "remarkable progress" (Lindl 1991, p. 107-108) - in spite of all expectations of *social dumping*. The European directives even go at least partially beyond the level of the most advanced German standards UVV VBG 1 (basics) and 5 (injury prevention provision for energy-driven working devices) and DIN 31 000/VDE 1000 (standard for safe design of technical products) which are, in international comparison, considered as high-level regulations. As, for example, Kohte states in the case of the Display Screen Equipment Directive (90/270/EEC), one of the specific health and safety at work directives announced by Art. 16 of the framework directive:

"[The Display Screen Equipment Directive] implies neither the reduction of social achievements nor a standstill, but, on the contrary, an important impulse for the design of this important social area. Many have not yet noticed this impulse, because the fear that the reduction of social protection comes from Brussels resp. the conception that our level of protection is particularly high anyway had obstructed the view of the opportunities of the Display Screen Equipment Directive anyway." (Kohte 1992c, p. 73, my translation)

Even the unionists Konstanty and Zwingmann, who point to the "risks" of the 100a-directives (without, however, specifying these "risks"), have to concede that national regulations of many Member States are improved by the 118a-directives (1991, pp. 268-269). Such a distinction between directives with regard to Art. 100a and those with regard to Art. 118a is not justified, because *all* health and safety at work directives follow the same integrated concept and provide a coherent and high level of protection (see also TGB 1991, p. 24)[3]. The 100a directives usually concern product regulation (e.g. safety of machinery, personal protection equipment) and provide total harmonization (which is essential for the internal market aim), while the 118a directives provide minimum levels which may be exceeded by national regulations, because they are usually related to process regulation, which does not cause trade barriers (e.g. the *use* of personal protection equipment). In some cases, however, the attachment to Art. 100a or 118a seems to be incidental, because some directives regulate both processes and products and could have been attached either to Art. 100a or 118a (e.g. the Display Screen Equipment Directive).

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[2] According to the analysis of Markovits and Otto (1992, p. 178), the German unions' reactions to European integration are "largely a function of ideology" instead of basing their strategies on careful research: "They reduce the matter's complexity by fitting it into categories which they have learned to trust. Ideology then serves as a convenient method of minimizing uncertainty and reducing complexity. It is an important mechanism for attaining the semblance of control in an otherwise uncontrollable situation. In short, it provides expected answers where only questions exist." However, at the end of 1992, the German unions have become increasingly aware of the high level of European occupational health regulation (in particular, since it has become clear that the there is a delay of transposing the EC directives into national law) and have been shifting to a more offensive strategy towards European social regulation. See e.g. IG Metall 1992, p. 5 or Mahlberg 1992, p. 10.

[3] Also Nielsen/Szyszczak (1991, p. 181) differentiate sharply between 100a and 118a directives and therefore regard the working environment as "as area of potential and actual conflict between a trend towards raising standards of protection for workers [according Art. 118a, V.E.] and a trend towards deregulation [according Art. 100a, V.E.]". However, it is absolutely not to see why Art. 100a should account for deregulation. To the contrary, Art. 100a requires harmonization by regulation. And given the provisions of subsection (3) ("high level of protection") and especially (4) (opting out), it is very wise that the Commission indeed proposes directives on the very highest level of protection to prevent single Member states from trying to keep national regulations by refering to Art. 100a (4).

And because all safety and health at work directives rely on the same innovative concept, even the minimum requirements of the 118a-directives often provide a higher level of protection than present national regulations.[4]

To be sure, looking at single provisions, there are some Member States with somewhat tighter regulations, such as Denmark's regulations regarding carcinogenous substances, the Netherlands' regarding working time at visual display terminals or Germany's regarding radiation. But if levels of health and safety at work can be compared at all[5], the overall assessment is that the Community established a coherent health and safety at work concept with a level of protection which is certainly at the very top of the ranking and which even appears to exceed the protective levels of all 12 Member States.

The European regulation not only goes beyond the traditional mechanistic approaches by adopting the innovative Scandinavian concept, it is furthermore based on at least five innovative principles: the employer's obligation to care for occupational safety and health, a broad concept of health including the humanization of work, the concept of the working environment including organizational aspects, the risk assessment approach, and the concept of absolute safety requirements regardless of technological restrictions.

1.2.1 The Protection of All Employees in All Sectors

The European occupational health directives include all employees, including trainees and apprentices, in all sectors of activity, both public and private (89/391/EEC, Art. 2(1) and 3(1))[6]. This broad scope is far from trivial: even in Member States with sophisticated health and safety at work systems grave exceptions can be found, mostly due to historical reasons (Vogel 1991).

1.2.2 The Employer's Obligation to Provide and to Improve Occupational Health

The most basic obligation of European health and safety at work legislation is the employer's obligation to provide for and to improve the workers' health and safety with regard to all aspects of the working environment:

"The employer shall have a duty to ensure the safety and health of workers in every aspect related to the work." (89/391/EEC, Art. 5(1))

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[4] The main reason for the German unions' reservations to 100a-directives is the *institutional* interest in conserving the bipartite *Berufsgenossenschaften*'s regulating powers, which are replaced by harmonized standards according to 100a-directives, whereas they keep this authority in national regulation according to 118a-directives.

[5] Comparative safety levels can only be estimated, as different protective measures are often not questions of different safety levels but of different safety philosophies. In Germany, for example, electrical safety is primarily reached by safe electrical utensils, in France primarily by safety switches in the switch cabinets. The advantage of the safety switch philosophy is that the outlets are safer (for children), its disadvantage is that it does not work properly if the user is standing on completely insulated ground.

[6] The only exception are domestic servants.

In order to become able to do so, the employer has to acquire information on the *latest* state of the art and to act accordingly (Directive 89/391/EEC preamble and Art. 5 and 6 and similar provisions in the single directives).

In the EC directives, the employer is made directly and inescapably responsible for every aspect of occupational health, whereas, according to many Member States' legislation, the employer is only required to fulfill precisely defined legal and governmental (and sometimes non-governmental but nonetheless obligatory) requirements or to act if authorized labour inspectors or the works council demand action (e.g. for Germany see Kohte 1992a, p. 16). According to traditional approaches, the employer is only obliged to react, whereas European legislation requires him or her to get informed, to analyse, to anticipate and to prevent. When the directives go into effect on 1.1.1993, the employer can be made responsible even if the national labour inspection service does not find fault with the working conditions.

It is remarkable that the Framework Directive is a directive according to Art. 118a and "just" providing *minimum requirements* (89/391/EEC Art. 1(3)). As Baldwin and Daintith write, the general obligation to ensure the safety and health of the workers

"certainly cannot be viewed as a minimum, or graduated, standard. Rather, it apperars to require the imposition on all employers of a duty to achieve a particular result: the health and safety of their workers." (Baldwin/Daintith 1992, p. 12)

This is probably the most prominent example for a phenomenon which is rife among 118a directives: that 118a directives provide minimum requirements which in fact establish a level of protection even higher than the existing levels in most - and sometimes all - Member States (see *infra*).

1.2.3 The Comprehensive Concept of Health in European Regulation Including Psychological Aspects

Traditionally, in most European countries safety at work regulation was restricted to avoiding hazards to physical health like mechanical injury, poisoning or radiation. The European directives adopted the innovative health concepts of the World Health Organization or the International Labour Office including psychological - or "soft" - aspects of health like psychological stress, fatigue and even discomfort. Important examples for this innovative concept of health, which also demonstrate the consistency of European health and safety at work legislation, are the directives:

* Safety and Health at Work (89/391/EEC), Art. 6 (2) d: taking into account the human factor, in particular regarding relief from monotonous work and machine-determined work cycles.

* Machinery (89/392/EEC[7]), Annex I, No. 1.1.2.d: discomfort, fatigue and psychological stress suffered by a machine operator must be reduced as far as possible by taking

[7] Amended by Directive 91/368/EEC (extension of scope to mobile equipment, lifting and moving machinery and machinery for underground work).

ergonomic principles into account; No. 1.2.8: interactive software of a machine must be user-friendly.

* Display Screen Equipment (90/270/EEC), Art. 3: measure against mental stress; Annex, No. 3: principles of software ergonomics must be applied, in particular to human data processing.

Practical consequences of this comprehensive concept of health are that health and safety at work includes ergonomics and the humanization of work. The revolutionary quality of this legislation can be estimated if compared with health and safety at work regulation in Germany, where the humanization of work has been a political goal since the early seventies, but has never been considered as an item for government regulation (only for government support).

1.2.4 The Broad Scope of Regulation by Using the Working Environment Concept

The European regulatory concept goes beyond the mechanistic approach in another respect. Traditionally, health and safety at work regulation was restricted to technical components, to tools, machinery, equipment and workplaces. The European directives include the regulation of work organization[8] and working time, the employers' obligations for risk analyses, information and training, considerable information and participation rights of the workers and their representatives, medical examinations, training of the workers and other aspects of social relations, which have traditionally not been items of legislative regulation but of autonomous arrangements between the social partners on the firm level or the associative level. Examples for the enlarged regulatory scope are the directives

* Safety and Health at Work (89/391/EEC), Art. 6 (1): employer's obligation to improve the existing working conditions; Art. 6 (2) g: consistent combination of technology, work organization, working conditions, social relations and the impact of the environment on the workplace; Art. 6 (3) c and Art. 11: participation of workers resp. their representatives, when new technologies are planned and introduced, and in every case where health and safety is concerned; Art. 12: training of the workers.

* Display Screen Equipment (90/270/EEC): Art. 3: employer's obligation to analyze workstations in order to evaluate the safety and health conditions (this is a legal obligation for a kind of technology assessment); Art. 6: information for and training of workers; Art. 7: organization of work so that the daily work on a display screen is periodically interrupted by breaks or changes of activity, reducing the workload at the display screen; Art. 8: worker consultation and participation; Art. 9: the workers' right to ophtalmological examinations and provision of special corrective appliances with no additional financial cost.

The Display Screen Equipment Directive also stipulates that software must not have quantitative or qualitative checking facilities without the knowledge of the workers (Annex, No. 3, b).

[8] Already in the Commission's Social Action Programme from 1974 (OJ No 74/C 13/1), a reform of work organization was aimed at, in order to provide the worker with improved opportunities for enriched, responsible and skilled tasks.

1.2.5 The Risk Assessment Approach

The risk assessment approach is the core of the Machinery Directive (89/392/EEC). The risk assessment approach is innovative, because it makes the effective *prevention* of hazards obligatory. In most countries, there is obligation for preventive risk assessments for *all* machines, but only in cases of injuries or if public inspection services become active (Pickert 1992, p. 87).

Traditional regulation is also mechanistic in the sense that it provides well-defined safety measures for well-defined, machine- or workplace-related risks. For example, safety distances are provided for moving parts, safety switches for abnormal conditions, limit values for noise, etc. But in industrial reality, the working environment is becoming increasingly complex, because more and more single functions and processes are integrated to highly automated systems. Because of technological innovations - the integration of functions in machining centers, manufacturing cells or manufacturing systems - and of organizational innovations - multi-machine operating, task rotation and task integration, especially within semi-autonomous work groups or manufacturing islands (see for organizational innovations Eichener 1991) - risks may be combined and multiply and work becomes less routinized and more volatile. Single hazards, like a moving tool, a robot or a conveyor, which can easily be controlled under normal circumstances, may become dangerous in a complex system, e.g. a flexible manufacturing system. Empirical research has proven that highly automated production systems pose more serious safety hazards to the human operator than traditional manufacturing systems because of their complexity (Karwowski 1992), so that traditional mechanistic approaches to safety fail to eliminate the new hazards emerging from the integration of single components.

Together with the obligation to take the latest state of the art into account, the preventive character of the risk assessment approach may contribute to a new orientation towards higher levels of safety (Pickert 1992, p. 88).

The European directives, particularly the Machinery Directive, responded to the changing working environment by adopting the "risk assessment" philosophy. In the Machinery Directive's annex I, No. 1.1.2, the risk assessment approach is described. Risks of accident throughout the foreseeable lifetime of the machinery, including the phases of assembly and dismantling, even where risks of accident arise from foreseeable abnormal situations, must be eliminated by three steps, in the order given:

* inherently safe machinery design and construction,
* protection measures regarding risks that cannot be eliminated,
* provision of information, for users, on residual risks, and indication whether any particular training is required and specification of any need to provide personal protection equipment.

The European Pre-Standard prEN 292 "Safety of Machinery and Equipment - Terminology: General Design Guidelines", which was triggered by the Directive, refines the Directive's definition of risk assessment (see also Radandt/Scheuermann 1989, p. 11-15): Here, risk assessment consists of five steps. In the first step, single hazards have to be identified (e.g. in

case of a circular saw: sawblade cutting, noise, toxic dust and vibration). In the second step, the risks of these hazards are assessed by combining the severity and the probability of the hazards (e.g. high severity and high probability of cutting and noise, risks of dust depending on materials and cut). From this risk assessment, the action plan with steps three to five is derived. Step three is the risk reduction by design (e.g. controls, noise reduction, dust suction, vibration reduction). In step four, protective measures are developed for the risks which could not be eliminated by design (e.g. guards and brakes for the sawblade, extraction points for the dust, mountings against vibration). Finally, in step five, the workers have to be informed about the remaining risks and trained to recognize and to avoid them (e.g. machine and part handling to avoid the sawblade, personal protection against noise and dust, information on hazardous substances in dust of different materials).

Similarly, the Display Screen Equipment Directive provides a workplace analysis which has to take into account the *additional and/or combined* effects of the risks (Art. 3(2)).

1.2.6 The Approach of Defining Absolute Safety Requirements Irrespective of the State of the Art

Traditional health and safety at work regulation relates to the state of the art in technology. The safety level which is usually provided by regulation is relative, because it depends on what technology allows (e.g. automatic stopping of moving tools and parts may require a highly developed sensor technology). Whereas technology is dynamic, regulation is basically static and lags behind the technological development, thus frequently remaining below the technologically achievable level of safety (Ossenbühl 1982, p. 156).

According to progressive lawyers, the settlement of this problem requires a "dynamization of law" (Wolf 1987, p. 387). One approach to such a dynamization is to shorten the cycles of law supplementation. The Health and Safety Directive 89/392/EEC has established a committee and a procedure to adapt the Directives' technical annexes to the technological, regulatory and scientific developments. But supplementary law can only reduce, not eliminate the time-lags between law and technology. A second approach is to pass laws which refer to technical standards which are set by private-law standardization organisations. This legal instrument, which has been used heavily in German technical regulation since the beginning of this century, has also been applied to European health and safety legislation since the shift to the New Approach to Technical Harmonization and Standardization in 1985 (for a detailed analysis of the New Approach, see section 2.1). Because private standards are not legally binding, they simply become obsolete when they lag behind the state of the art, whereas laws are valid as long as they are not formally withdrawn or modified. But the range of this approach is also limited, since standards are renewed in certain cycles (usually every five years) and therefore periodically lag behind the technological development too. Also, they often do not reflect the latest state of the art, even at the time when they are released, because they are the product of a consensus of different interest groups. Therefore, a provision is required for the case that existing standards do not (any longer) reflect the latest state of the art. A third approach is to refer directly to the state of the art in legislation so that employers are obliged to follow the state of the art when

standards are obviously behind the technological development[9]. This principle is also applied to the basic Directive (89/391/EEC Art. 6 (2) e, sharper: preamble).

The most progressive approach of the dynamization of law, however, is to provide absolute requirements regardless of the technological possibilities and restrictions, which may go beyond the current state of the art and anticipate future technological progress, meaning that the standards cannot be achieved at the time when the law is passed. A model for this concept is the car emission legislation of the State of California, which provides a 10-year stage plan with decreasing limit values (see Eichener/Voelzkow 1993).

The Machinery Directive provides absolute requirements too:

"The essential health and safety requirements laid down in this Directive are mandatory. However, taking into account the state of the art, it may not be possible to meet the objectives set by them. In this case, the machinery must as far as possible be designed and constructed with the purpose of approaching those objectives." (89/392/EEC, Preliminary Observations, No. 2)

1.2.7 Conclusion

If the Machinery Directive is criticized by well-meaning commentators, then not because its technical requirements are too weak, but because they are too tight, because providing technically unachievable requirements may compromise the European legislation as not realistic (interview, standardization manager).

Particularly the combination of the absolute requirements approach with the risk assessment philosophy leads to an innovation of national occupational health systems in most Member States. The traditional approach takes hazards for granted and provides compensatory protective measures, thus focusing on personal protection. The absolute requirements approach starts from the goal of eliminating the hazards and minimizing them as far as technically possible. The risk assessment philosophy provides an elimination or minimization of hazards as early as possible - at best at the source (by machinery design) and not by personal protective devices. The European directives provide a rank order of *technical* safety in the first, *collective* protection in the second and *personal* protection in the last place.

This innovation in occupational health also already has quite a tradition in European legislation. It was already applied with the Hazardous Materials Directive from 1980. It resulted in an innovation of national health and safety at work systems, the extent of which can be estimated by the fact that Germany, for example, transposed it into national law with a delay of three years.

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[9] A basic function of standards, however, is to define the state of the art (with regard to economic efficiency). Standards may not satisfy this function, (1) if they have been passed a long time ago and not renewed, or (2) if standards have been passed incorrectly, e.g. because the standard-setting committee was dominated by a group who was interested in weak standards for economic reasons. In both cases, the obsolescence of the standard can be stated by a court decision or by the Commission (see *infra*).

Obviously, at least in the field of European health and safety at work legislation, no *social dumping* has taken place, but rather a comprehensive, consistent and innovative regulation process, which has yet to be explained.

Enacting EC directives, however, is only half the story. Although the directives provide important regulations like the scope of the regulation, manufacturers' and employers' liabilities, workers' rights and essential safety requirements, European regulation of health and safety at work follows the New Approach, hence, the technical details are *de facto* regulated by the European standardization bodies. Since the standardization committees define the state of the art, decisions on the level of protection are not only made by the European Council but also in the Technical Committees of the European standardization organisations. Here, questions of participation of different interests, of decision-making processes and of democratic legitimation arise too.

1.3 Structural Similarities: Theoretical Modelling and Empirical Findings on Environmental Protection Policy

Negative expectations from Brussels are not restricted to the sector of social policy. Similarly to *social dumping* an *ecological dumping* was expected too by the high-industrialized countries. In a recent series of articles - which were published as a special issue of Germany's leading political magazine and probably had a considerable influence on the public opinion in Germany - the European Community was accused of regulating environment protection on the level of the least common denominator, thus lowering the level of protection in the more advanced states and preventing them from improving their environmental protection policies (Frühauf/Giesinger 1992). However, in the regulatory area of environment protection, a similar phenomenon as in health and safety at work regulation - European regulation on a considerable protective level despite dissenting public and theoretical expectations - was already observed by Rehbinder and Stewart as early as 1985 - before the Single Act. Rehbinder/Stewart tested an integration theory based on a game-theoretical approach of intergovernmental bargaining which predicted *ecological dumping* by European harmonization.

Rehbinder/Stewart (1985, p. 9) started from the basic assumptions that the only relevant actors are states, that all states want both environmental quality and economic growth and that there is a trade-off between these goals. From these assumptions, they derived the following expectation:

"In a federal system requiring unanimous consent, there will, in the case of product regulation, be support from both polluter and environmental states for harmonization through mutual adoption of uniform standards. To the extent that a *Cassis de Dijon* principle restricts the ability of environmental states for excluding polluter states' products, the support of environmental states for harmonization will be increased and the support of polluter states will be decreased. Since, however, there is a rule of unanimous agreement, the net impact of such a rule will be to significantly reduce the stringency of harmonized measures. In the case of process regulation it is difficult to see why there would be any harmonization at all above the lowest common denominator level, since it would never be in the interests of pollutor or importer states to agree to more stringent controls." (Rehbinder/Stewart 1985, p. 11)

The empirical findings, however, showed a considerable amount of environment protection legislation by the European Community, even in this period, prior to the White Paper and the Single European Act, which could not be explained properly. Rehbinder/Stewart found a "patchy but substantial" amount of process regulation, whereas the theoretical model predicted nothing, and "perhaps more harmonization of product regulation than might be expected" (ibid., p. 315, 12).

Up to now, in the field of environment protection, surprises similar to those in health and safety at work regulation have occurred - although many environmentalists still consider European environment protection policy insufficient. Now that the emission standards for small cars have been tightened up (by 89/458/EEC) and several immission directives have been passed (for sulphur dioxide and suspended dust 80/779/EEC, for lead 82/884/EEC and for nitrogen dioxide 85/203/EEC), at least some European environmental regulatory acts seem to provide a surprisingly high level of protection too (although there are still many examples for a low-level-harmonization). Like in health and safety at work legislation, some regulatory acts are even innovative compared to existing national regulations, e.g. the Environmental Impact Assessment Directive (85/337/EEC) and the recent Commission proposal for an Ozone Directive, which recommends very strict limit values and goes beyond everything that exists in national regulations within the EC (COM(91)220 final; OJ No 91/C 192/05) (see Eichener/Voelzkow 1993).

Even the critical report of the Task Force on the Environment and the Internal Market[10] states that in European policy-making there has been "a growing emphasis on environmental principles". Instead of *ecological dumping*, the objective of harmonization was - similarly to health and safety at work legislation - combined with the objective of "progressive improvement in environmental quality" (Task Force 1990, p. 188). Most directives specify quality standards (e.g. emmission limits) as minimum standards, which leave the opportunity for the Member States to opt for higher standards. Perhaps - from the view of intergovernmental bargaining theories - the most striking fact is that "Community environmental legislation is now well developed" (ibid., p. 187), although prior to the Single European Act the original Treaty did not specify any Community authority for environmental legislation (see also Majone 1989, p. 165, who sees a "continuous growth of Community regulation, even in the absence of explicit legal mandates" in environment protection).

Confronted with empirical findings, Rehbinder/Stewart stated an explanatory "failure" of their game-theoretical model and formulated the need for more accurate explanations of the integration process:

> "It is also submitted that the integration theories developed by political scientists do not provide further insight into the process of regulation in federal systems, in particular in the European Community. .. Accordingly, neofunctionalist theories, at least in their present form, can not adequately explain the history of Community integration in the environmental area." (Rehbinder/Stewart 1985, p. 317)[11]

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[10] The Task Force report met with the Council's and the Commission's disapproval (and was not officially published), because it prognosticated grave negative ecological impacts of the internal market programme.

[11] For a detailed analysis of the much more complex decision-making process in EC environmental regulation and its problems regarding a high-level protection policy see Neumann/Pastowski 1992a, b.

1.4 Intentions of this Paper

The general intention of this paper is to analyze the decision-making processes in both phases of European health and safety at work regulation - in legislation (preparation and passing of directives) and in standardization (setting technical standards by private-law standardization bodies) - in order to identify the chances of different interests to influence the regulatory outcomes and to explain the actual results which so drastically contradict the common expectations. The original approach is *inductive*, starting with an empirical analysis and then trying to find theoretical explanations, rather than deductive, and *bottom-up*, analyzing a circumscribed area of Community policy, namely health and safety at work, rather than top-down, starting from the overall process of European integration. Therefore, this paper's explanatory scope is limited to the area of health and safety at work regulation. The question of whether some conclusions may be generalized and applied to other fields of Community policy, has yet to be tested. As indicated, there may be - evidently to a more limited extent - similar processes in the field of environment protection.

Theoretically, the attempt is made to develop some new hypotheses, in addition to the theory of intergovernmental bargaining, by analyzing the procedural, institutional and social aspects of the regulatory process, including the role of actors other than national governments.

There are primarily two theoretical approaches to explaining processes of European integration: the (neo-) functionalist and the (neo-) realist integration theories[12].

In the 1950s and '60s, the *functionalist and neo-functionalist* integration theories proposed a quite optimistic perspective of international or European integration (Haas 1964, Haas/Schmitter 1964, Mitrany 1966, Deutsch et al. 1968). Deutsch et al. (1968) and Deutsch (1970) emphasized the role of cultural and social rather than economic factors in integration processes, i.e. "informal integration" in W. Wallace's (1990, p. 9) terms, like compatibility of values, mutual responsiveness, links of communication, density of transactions, personal links between elites) and saw better communication as "the most promising general method" for moving towards supranational integration (Deutsch et al. 1968, p. 201). As *l'engrenage* this theoretical concept became Monnet's political strategy for uniting Europe (Monnet 1976, ch. 16).

Within the neo-functionalist approach in the tradition of Haas, a tendency of supranational systems, once established, to further integration was viewed as an almost automatic process, because integration in one area would lead to a "spill-over" into other, functionally dependent areas, because the actors learn from success with international integration in one context to apply the same policy in other contexts, so that "to the extent that the initial functional task contained its own expansive logic ... it possesses an ad hoc norm-generating capacity redounding to the advantage of the organization and diminishing the powers of the member states" (Haas 1964, p 48). Schmitter's (1969, p. 162; 1971, p. 243) interpretation of political spill-over maintains - the other way round - that frustrations and/or dissatisfactions with poor political performance in one area result in the search for alternative means for reaching the same

[12] For a more differentiated overview of the functional, neo-functional, federal and intergovernmental approaches to integration theory see Webb 1983.

goals in other sectors. Through the process of spill-over or task expansion (economic), interdependency leads to increasing (political) integration. For example, an economic community with a range of tasks limited to coal and steel industry might eventually lead to a political union.

The star of (neo-) functionalism, however, sank, when the process of European integration slowed down during the period from the late '60s to the early '80s. W. Wallace even spoke of the "collapse of integration theory" (1982, p. 57). Empirical research proved that spill-over or task expansion was in fact limited (Schmitter 1992), and also the report of Monnet's former associate Marjolin stated that the performance of the original idea of *l'engrenage* was in fact disappointing (Commission 1975). Theoretically, neo-functionlism was attacked as a theory based on the "error of teleology, and the teleology of technology" (Hoffmann 1982, p. 30). It was criticized that functionalists underestimated the "powers of inertia", especially the national bureaucracies' abilities to resist the transfer of powers to supranational organizations (ibid.). Bühl (1978, p. 208-9) pointed out that interdependency does not necessarily lead to integration, but can also cause new conflicts between the actors. Wessels (1992, pp. 50-1) argues that functional spill-over is limited both by the national governments' strategies to keep certain policies autonomous and by the existence of other, functional equivalent and more powerful international relations (e.g. the hegemony of the USA in security policy. Obviously, European reality showed that there was no automatic tendency towards increasing integration.

The optimistic functionalist theory was pushed into the background by a pessimistic paradigm, which called itself the *realist* integration theory and which predicted integration on the level of the least common denominator only, because the national governments and their bureaucracies, which are considered as the only relevant actors, are institutionally interested in keeping their sovereignty. It was expected that international integration is limited to that amount of cooperation that can be achieved by intergovernmental bargaining in order to overcome some limitations of unilateral action (which increase with increasing international interdependency) and to get some benefits of cooperative action. The nation-states are even strengthened by international cooperation (by "pooling" their sovereignties) instead of transfering their sovereignty to supranational institutions (Keohane/Nye 1974, Puchala 1975, Hoffmann 1982, Scharpf 1985, Keohane/Hoffmann 1990, Raczka 1992).

Compared to realist "intergovernmentalism" (Taylor 1975), which tends to game-theoretical models of intergovernmental bargaining (e.g. Rehbinder/Stewart 1985), neo-functionalist integration theories include a wider set of actors and variables and acknowledge the role of supranational actors (which are almost completely ignored by intergovernmentalists). Although the automatism (or *a priori* optimism) of functional integration is not shared here, it is acknowledged that its theoretical merits include the notion that nation-states are not the only relevant actors but that integration processes can be pushed forward by supranational actors, which are created on the supranational level and which may change the logics of intergovernmental bargaining by serving as "institutionalized mediators" (Haas 1964, p. 111) and by developing their own dynamics of action. The promotion of integration may be (under certain conditions) a procedural "side-effect" of the creation of international institutions (Deutsch et al. 1968, p. 189). More recently, the impact of the growing capacities of "the core institutional structure of West European cooperation" is expected to lead to interactions between

governments, economies and societies which will go "well beyond the traditional model of relations among nation-states" (W. Wallace 1990, p. 21).[13]

Furthermore, our perspective is a *sociological* one in the sense that corporate actors - like states or governments - are not homogenous actors but are vertically and horizontally differentiated and composed of individual human beings with specific interests - especially career interests - expectations and capabilities. This leads us to the analysis of more complex *configurations* of corporate actors - of national interest groups and institutions, of different ressorts of national governments, of European institutions - and their institutional self-interests and constraints which can be derived from the cost-benefit structures, the career expectations, the task ranges, the traditions and orientations and the knowledge and capabilities of the *individual* actors within these institutions.

Beyond mere intergovernmental bargaining within the European Council (resp. the Council of Ministers), a complex network of decision-making processes and structures has to be analyzed, including the EC Commission's preparatory functions, the national and European interest groups' attempts for lobbying, the influences of the European Parliament and the Economic and Social Committee and the role of the numerous advisory committees of national representatives from the technical levels of the bureaucracies.

The paper starts with an overview of the formal process of European regulation of health and safety at work according to the "New Approach to Technical Harmonization", which restricts European legislation to the provision of essential requirements only and delegates the technical specification of these requirements to European standardization bodies (section 2). After the description of the formal process, in section 3 the configurations of actors within the first phase of the European regulatory process, the generation of directives, are analyzed before the second phase, standard-setting, is dealt with in section 4. In both chapters, the determinants of the level of occupational health and safety and the participation chances of different private and public interests shall be analyzed. Finally, section 5 contains a brief conclusion.

The reasoning of this paper is based on analyses of documents and qualitative interviews with significant actors from national governments, national and European standardization bodies, national and European interest groups (trade unions, employers, manufacturers), the Commission (DG III, V, XXIII) and other experts. As usual, the interview partners appear anonymously, as the interviews included open-minded side-talks and personal views of processes (rather than official statements). Although the interviews with actors from different points of view added to a quite coherent image of the European regulatory process with a sufficient level of validity and reliability, this paper reflects no more than first insights into the complex process of European decision-making which has yet to be analyzed on the basis of more systematic empirical research in order to develop an appropriate theory of the European integration process.

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[13] The academic debate seems to reflect to changes in reality. Since functionalism has been as clearly as optimistic as realism has been pessimistic, an increasing scientific interest in less enthusiastic versions of neo-functionalism (e.g. Pedersen 1992, Zellentin 1992) corresponds with the recent progress in European integration.

2. The Formal Process of European Regulation of Health and Safety at Work: Framework Legislation with Directives and Technical Specifications with European Standards

The workers certainly have the strongest and most direct interest in technical products which meet safety and health at work requirements. The workers' interests, however, are not directly represented on the market, while suppliers and demanders of machinery and equipment may have some interests in safety, but also competing interests in functionality, low cost etc. Thus, the market does not provide a sufficient level of safety and health. In situations of market failure, the public interest in safety and health at work requires regulation of technology. Governments are obliged to ensure that machinery and equipment are safe and do not harm the workers' health.

Technology, however, is a difficult field for governments to regulate. There are considerable limits of government regulation, and these led to the introduction of the "New Approach" to technical harmonization in 1985, which delegates European regulation of technical specifications to private-law standardization bodies. Hence, European health and safety at work regulation is the result of the complex interdependence of European legislation by directives and European Standardization.

2.1 The "New Approach" to Technical Harmonization: Limits of State Legislation and "Private Government" by Standardization Bodies

Governments, including the government institutions of the European Community, face considerable limits, if they try to regulate technical products in detail.

2.1.1 Government's Limited Resources and Instruments for a Detailed Technical Regulation

First, governments do not have sufficient capacities for detailed technical specifications regarding safety and health at work. Detailed technical regulation requires a tremendous number of highly qualified experts, who can neither be financed by national states nor by the EC[14].

Secondly, governments do not have the technological knowledge, which is unconditionally required for technical regulation which reflects the state of the art, while this knowledge is concentrated in the industry's research and development departments.

[14] In one country, Germany, no less than 40.000 technicians and scientists are working for just one (though the largest) of 150 standardization bodies, the DIN (German Standardization Institute). The expert list of *only one* of approx. 60 technical committees which draw up occupational health and safety standards on the European level contains more than 250 experts (CEN TC 114 "Safety of Machinery") - many more than the Commission could employ for a limited range of technical specifications. If the experts within the national shadow committees are counted, there are probably more people working for health and safety at work standardization than the Commission employs in all of her 23 general directorates.

Thirdly, government regulation often does not meet the industry's acceptance, which can cause serious implementation problems, because the industry often has subtile obstruction powers - industry can either take legal steps, often with quite good chances of success (van den Daele 1989, p. 95), or evade government regulation with technical means. Consequently, if they pass regulatory acts, governments usually depend on the addressees' cooperation for proper implementation (for examples from the field of environment protection see Mayntz et al. 1978, Bohne 1981).

Fourthly, as already mentioned, the legislator's instrument "law" is basically static in character - and is therefore not suited to dynamic technology. When the state of technology advances, legal regulations of technical specifications will become either barriers to technological (and social) progress or just obsolete - with unpredictable consequences (Ossenbühl 1982, Breuer 1976, Nicklisch 1982, 1983). Technical standards, because not strictly binding, are more flexible instruments of technical regulation.

These are arguments that effective government regulation of technology is not *possible*. It can also be argued that government regulation is not *desirable* - from the point of view of theory of democracy. It is well-known from the discussion on technology assessment that parliamentarians have limited capabilities for dealing with the highly specialized topics of technology. Assessment and, even more, regulation of technology is clearly dominated by the executive. The ubiquitous preponderance of the executive was the reason for the various attempts to enhance the parliaments' abilities regarding information acquisition and processing by installing parliamentarian technology assessment (TA) capacities, which were partly successful in the USA (with the installation of the Office of Technology Assessment) but failed in many European countries (e.g. Germany), because it was clear that the parliamentarians would exchange dependency on the executive's information for dependency on the opinions of experts, whose academic and political premises cannot be appraised either (see Majone 1979, 1982; Eichener/Heinze/Voelzkow 1991). The notorious shortage of technological knowledge cannot be overcome simply by integrating experts into legislative processes (e.g. thru TA studies, hearings, advisory comittees or whatever instruments have been developed):

"It is simply not enough to leave the assessment of risks to experts. There must, in the light of the normative element inherent to risk assessment, be some external judgement as to the social acceptability of the risk evaluation provided, and the risk management suggested by experts. Whilst the legal system must integrate scientific judgements on the one hand, it must also pay regard to cooperative arrangements. The structuring of such arrangements is one of the key issues of safety regulation." (Dehousse et al. 1992, pp. 12-13)

What makes technology assessment and technical regulation so difficult is that both competences have to be combined: technological competence and political competence. Therefore "cooperative" (or "corporatist") arrangements of decision-making like technical standardization appear to be most appropriate, especially since the executive lacks technical expertise and democratic legitimation too:

The executive, besides facing the same problem as the legislative (though to a less extent), lacks democratic legitimation, especially if one considers the fact that the differentiation of

governments into the various ministries leads to a disintegration of *the* public interest into particularistic, ressort- and clientele-specific interests which influence the ministries' regulatory activities: it makes a difference whether a ministry of labour and social affairs or a ministry of economic affairs passes a bill or decree[15].

A consequence is to drop the ideas that a homogenous "public interest" can be clearly defined and that any representative of "the state" (i.e. the responsible ministry) has a monopoly on the definition of the public interest, and rather to adopt a pluralist concept of the public interest, which is viewed as the outcome of a process of consensus-building by mutual adjustment of a plurality of organized interests, including governmental divisions, which have the status of equal players among many others (Lindblom 1965).

According to pluralist concepts of democracy, the regulation of matters, which are too specialized for parliamentarian regulation, shall be delegated to arenas of functional representation of the various societal interests (of the workers, the several industrial branches, the consumers, the environmental groups etc.). When a plurality of interests participates in such arenas of functional representation (e.g. standardization bodies), the democratic quality of associative self-regulation can be higher than that of ressort-specific government regulation, which may be captured by clientele interests.

A critical precondition for the democratic legitimation of associative regulation within a "public pluralism" (Kelso 1978) or an "associative democracy" (Cohen/Rogers 1990) is that all affected interests have effective chances to participate in the regulatory process, which generally requires public framework regulation of the self-regulatory processes, organisational support of the societal interests incapable of organizing themselves and active representation of public interests by government actors, who participate in the associative arenas as equal players. We will discuss these problems, as they occurr in European health and safety at work regulation, later in this paper.

It was probably more the above mentioned "technical" problems than considerations of democratic quality, which caused government regulation of technical safety and health to fail in many states. Such a failure of government regulation also happened on the level of the European Community before 1985.

2.1.2 The Failure of Technical Detail Regulation Attempts on the EC Level Before 1985 and the Shift to the "New Approach"

With the General Programme for the Removal of Technical Trade Barriers from 28.5.1969, the European Council began to draw up directives to provide detailed technical specifications for single products and groups of products. This "traditional" approach to technical harmonization failed completely. Since detailed technical regulation requires a lot of technical expertise, extreme amounts of time were required to finish the directives, which often covered just a small scope of technical products. The regulatory activities were practically from the beginning behind

[15] For empirical examples of conflicts between different ressorts on regulatory activities see Eichener/Voelzkow 1991.

schedule. The fact that it took 10 years (from 1975 to 1984) to pass a single directive on gas containers made of unalloyed steel is not an atypical example for the poor performance of this approach. The average time for processing the 15 directives, which were passed as a package in September 1984 (OJ No 84/L 300/1-187), was no less than 9 1/2 years (Sauer 1987, Joerges et al. 1988, pp. 260, 274). Besides long preparation times, regulating detailed technical specifications opened up unintended opportunities for industrial influence, because the industry's expertise was needed, overloaded the Council's political decision making with technical details and caused a permanent necessity for adapting the directives to the technological and scientific development (Joerges et al. 1988, p. 269).

It was obvious that, when the single internal market was aimed at, a much more efficient way of technical regulation had to be found. Pelkmans (1987, p. 252f.) lists no fewer than nine reasons why the old approach failed, including "time-consuming and cumbersome procedures", "wasteful duplication, useless inconsistencies and time lost" due to lacking linkage between regulation and standardization, the "slowness of European harmonization", "implementation problems in Member States" and "a lack of political interest by the Ministers".

Already in 1973, a new method of technical regulation was used. The Low Voltage Directive dispensed with detailed technical specifications and refered to the dynamic "state of the art" instead. The Directive's annex contains 11 general safety goals which have to be specified by harmonized technical standards which should be provided by the European Committee for Electrotechnical Standardization CENELEC, a private organization in Brussels, whose members are the national standardization bodies.

The second important step towards the "New Approach" was the Information Directive for Standards and Technical Specifications from 1983 (83/189/EEC). This linked private standardization and public regulation by several measures. In particular, it obliged the Member States and the national standardization bodies to inform the Commission about standardization processes (Art. 8 and 4), and required a standstill of national standardization, when European standardization or legislation starts (Art. 7 and 9), and the establishment of a Standing Committee for dealing with questions arising with regard to the relationship between legislation and standardization (Art. 5 and 6).

The next steps were the Council Resolution from 16.7.1984, which obliged the member states to develop the European Standardization bodies, and the General Guidelines for Cooperation between the Commission and the European Standardization Bodies CEN and CENELEC, signed on 13.11.1984, which obliged CEN/CENELEC to issue technical standards in accordance with essential requirements provided by directives.

With the Council Resolution from 7.5.1985 and the White Paper on the Completion of the Internal Market (Art. 65 and 68), the "New Approach to Technical Harmonization and Standardization" was formally approved (and recently, by the Council Resolution from 18.6.1992 - OJ No 92/C 173/01 -, confirmed). The "New Approach" means that the Council restricts its legislation to the provision of "essential requirements" only, while these general requirements are specified by European Standards to be issued by the European standardization bodies CEN/CENELEC, which are private-law associations of the EC and EFTA Member

States' national standardization organizations[16]. With this approach, technical regulation is *de facto*[17] delegated to private organizations. For assuming a share of the Government's (Council and Commission) workload, CEN/CENELEC receive considerable financial support from the Commission.

Similar constructions have been practised successfully in many Member States for a long time. Particularly in Germany, since the beginning of this century technical safety has been regulated by standards and other specifications set up by private associations, which specified general legal requirements. The German "Gerätesicherheitsgesetz" (Safety of Machinery and Utensils Act), which refered to "Approved Technical Rules", was the (albeit modified) model for the New Approach and even for the Low Voltage Directive (Braun 1989, p. 9).

The delegation of regulation to private organizations causes the problem of *democratic legitimation*. If regulation authority is delegated to self-regulative associations of private law, then a "regulation of self-regulation" (Joerges 1991, p. 36) is required to safeguard the representation of the public interests[18]. Formally, this problem was settled by three measures.

First, CEN/CENELEC have, by signing the above mentioned general guidelines, agreed that all interested parties (industry, users, consumers, unions, state agencies) shall have the chance to participate in European standard-setting. Furthermore, Machinery Directive (Art. 5(3)) obliges the Member States' governments to guarantee that the social partners have the opportunity to participate in national standardization, which is the normal access to harmonized European standardization. Directive 89/686/EEC on personal protective equipment contains a similar provision (Art. 5(5)).

Secondly, if the conformity of Standards with directive requirements is doubted, this matter can be brought before the Standing Committee introduced by the Information Directive and which is an advisory committee to the Commission, which has the power to reject standards or to demand modifications. This safeguard clause is an "emergency break" so that the final decision lies in the Commission's hands.

Thirdly, the standards are not legally binding. Producers can offer products which do not conform to standards if they otherwise satisfy the essential requirements. The burden of proof, however, is then reversed. If a product conforms to European Standards, it is assumed that the product satisfies the essential requirements, otherwise the producer must have his product tested and certified. It is expected that in cases of conflict the courts will rely on harmonized European standards to evaluate the state of the art or the level of protection (Lommel 1992, p. 108). Though *de jure* not binding, standards are *de facto* highly relevant as regulatory instruments.

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[16] In 1992 the European Telecommunications Standards Institute ETSI became the third official European standardization body.

[17] Standards must retain their non-binding status, of course, but as it is supposed that products fulfill the Directive requirements, if they conform to European standards, standards in fact have a great importance as recognized specifications of European law.

[18] For a general discussion of various possibilities to solve this problem, see Schuppert (1981).

2.1.3 The "New Approach": Provision of Essential Requirements by Directives and Detailed Technical Specifications by European Standards

Since 1985, the New Approach has been practised in many fields of technical regulation, including safety and health at work regulation.

The preamble of the Machinery Safety Directive (89/392/EEC), as an example of a directive according to Article 100a of the Treaty (which foresees complete harmonization), refers to the New Approach explicitly. Thus, the Directive is limited to the definition of essential safety and health requirements which shall be specified by standards as provided in Article 5 (2).

In the preamble to the Machinery Directive, the Council observes that the Member States' provisions are "frequently supplemented by de facto mandatory technical specifications and/or voluntary standards". This principle should not be omitted by technical harmonization according to the New Approach, which is described as follows:

"Whereas .. this Directive defines only the essential health and safety requirements ..., whereas in order to help manufacturers to prove conformity to these essential requirements and in order to allow inspection for conformity to these essential requirements, it is desirable to have standards harmonized at European level for the prevention of risks arising out of the construction of machinery.." (89/392/EEC, preamble)

Here are just some illustrative examples for essential requirements from the Machinery Directive:

* "The materials used to construct machinery or products used and created during its use must not endanger exposed persons' safety or health." Standards are required to specify these materials according to the latest state of scientific knowledge and technology (e.g. when dust of certain woods is identfied as cancer-causing, standards must be drawn up in order to protect woodworking machine operators from being exposed to such dusts).

* "Control devices must be clearly visible and identifiable and appropriately marked where necessary." Standards are required to specify what controls must look like and which colours, words or pictograms must be used so that they are clearly identifiable (e.g. red for emergency stop, pictograms for certain hazards).

* "Interactive software between the operator and the command or control system of a machine must be user-friendly." This single sentence requires a comprehensive series of standards of software-ergonomic criteria and testing methods.

These few examples demonstrate that many essential requirements leave much room for interpretation by standards. Standards are much more than just technical specifications, frequently the level of protection is *de facto* defined by standards.

This delegation of important regulatory tasks to the self-regulation of the industry and the other interested parties was the Commission's clear intention (for a official statement, see Braun 1989, p. 13). The Commission even assigns European Standards a "quasi-legal" character (Commission 1991, p. 7).

If important decisions on the level of health and safety at work are made *de facto* in standardization committees, then technical standardization becomes a *political process*. The regulations of the German standardization institute DIN indeed define technical standardization as a political process. Technical standardization is more than a mere conventional definition of the state of the art. The "state of the art" is nothing that can be stated objectively; there is usually much cognitive uncertainty about the state of the art, because the matter is on a subjective level, assessed differently, both by differents schools of academic thinking and from the viewpoints of different interests (see Majone 1979, 1982). Hence, standardization committees are not just expert committees, but standards are set by the "interested parties" - the manufacturers, users, consumers, workers, certification bodies, ministries, government agencies, health and safety at work agencies, occupational health insurances and other groups, including scientists who may be economically or emotionally affiliated to one of the interested parties. If interests are involved, there are interest conflicts, of course, e.g. between economic efficiency and safety, between workers and employers, but also between industrial users and manufacturers. The outcome of standardization processes depends on which groups participate, and what their chances of influence are.

To make sure that the relevant interest groups have a chance to participate in the process of standard-setting, the European health and safety at work directives demand that employers and employees effectively contribute to the standardization process. Furthermore, the "Member States shall ensure that appropriate measures are taken to enable the social partners to have an influence at national level on the process of preparing and monitoring the harmonized standards" (89/392/EEC, Art. 5 (3)). The Directive also stipulates that if a Member State or the Commission considers that European standards do not entirely satisfy the essential requirements, this matter shall be brought before the Standing Committee set up under the Information Directive (83/189/EEC), which is an advisory committee to the Commission, which has the power to revoke this standard.

But not only 100a directives refer to standards. The Display Screen Equipment Directive (90/270/EEC) is an example of a directive according to Article 118a of the Treaty, which provides minimum requirements only, whereas the Member States have the right to set up higher (but not lower) national safety levels (partial harmonization). Consequently, this directive does not refer to European standards, because no harmonization is required on the European level. But the technical requirements of the Display Screen Equipment Directive are on a very general level too, as the following examples show:

* "The characters on the screen shall be *well-defined* and *clearly* formed, of *adequate* size and with *adequate* spacing between the characters and lines." The words I put in italics have to be exactly specified, either by numerical/graphical specifications (as done by the German standard DIN 66 234 part 1 and 2) or by a perceptibility-testing procedure.

* "All radiation with the exception of the visible part of the electromagnetic spectrum shall be reduced to negligible levels from the point of view of the protection of workers' safety and health." What "negligible levels" are has to be specified by limit values.

* "The principles of software ergonomics must be applied..." This formulation was added to relate to software ergonomic standards which already existed when the Directive was passed (DIN 66 234 part 8).

These requirements need specifications on the national level. The Member States can pass laws to specify the Directive's technical requirements, of course. But this is unlikely, for the already mentioned reasons, i.e. the lacking capacities for detailed technical regulations. It is more likely that the Member States transpose the Directive to national law by passing laws which refer to national standards too. Many requirements defined by the Display Screen Equipment Directive have already been standardized by the German standard series DIN 66 234 and other standards. Furthermore, the standardization activities, which advanced the European legislative activities (DIN 66 234 part 8 and ISO 9241 part 10), influenced the preparation of the Directive[19].

Furthermore, Technical Committee TC 159 of the International Standardization Organisation ISO is currently preparing an international standard for safety and ergonomics of visual display equipment (ISO 9241) on the basis of DIN 66 234, which shall be adopted as a European Standard.

Thus, also this Directive, although not explicitly refering to the New Approach, will probably be specified by standards in most Member States, and it seems as if these standards are going to be harmonized European Standards, which are even identical with International Standards (Riese/Rückert 1992). There are good chances that there will be a *de-facto*-harmonization too, although the Directive as based on Art. 118a does not require total harmonization.

2.2 Overview of the Formal Process of Technical Harmonization, Actors and Institutional Structures

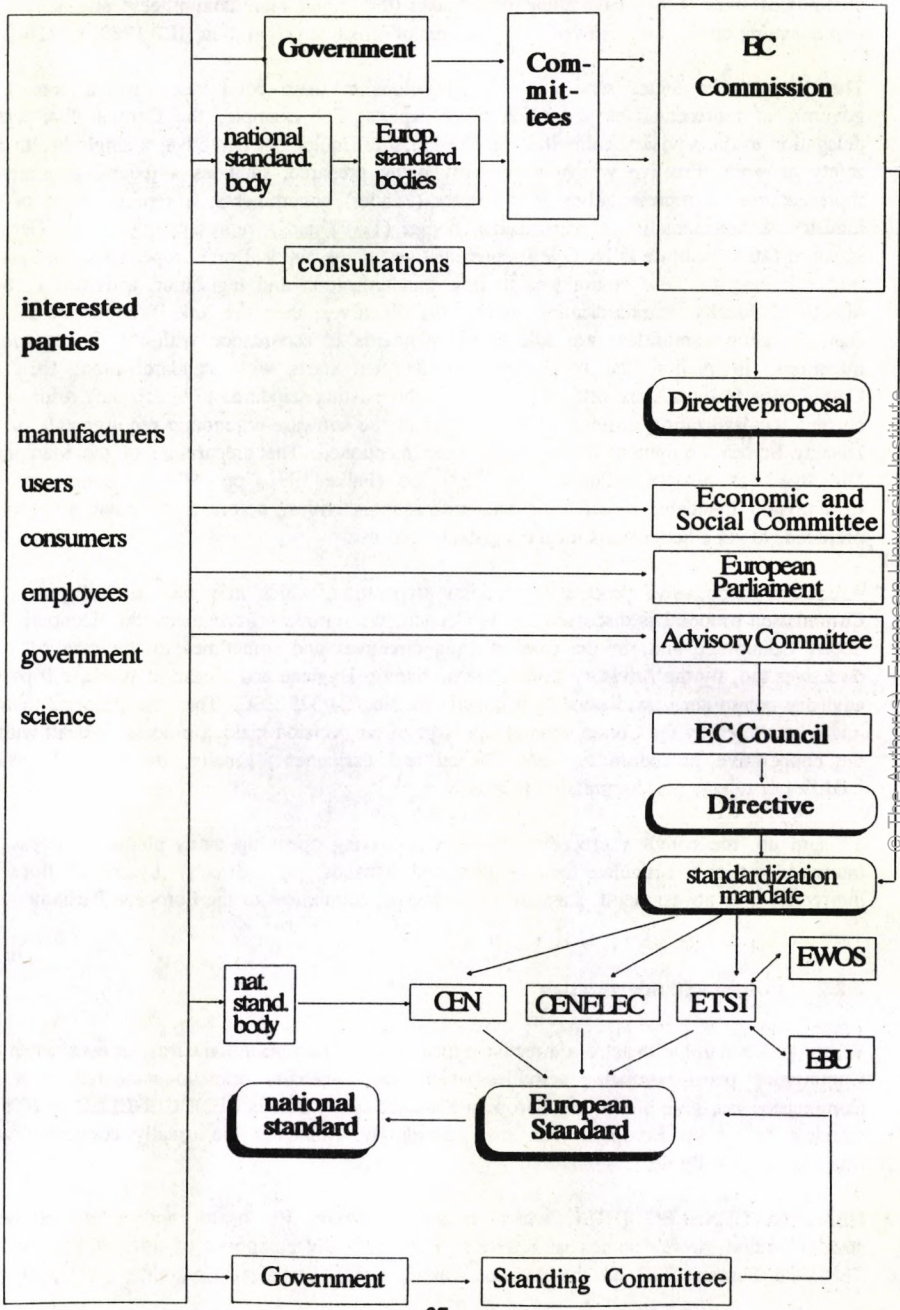
The total process of technical harmonization, starting with the preparation of directives and ending with the eventual checking of standards, is shown in *fig. 1*. The arrows which come from the left side of the scheme indicate the optional channels of influence, which may be used by the interested parties - producers, users, workers, consumers, health insurances, government agencies, science. Before the effective chances for participation are assessed for the different interests, the formal process will be described briefly.

2.2.1 Generation of Directives

The directives regarding safety and health at work (like all European directives) are proposed by the Commission. The Commission usually prepares its proposals in a participative process, which includes (1) direct *consultations* with interested parties (who are actively lobbying at the Commission and have often contact offices in Brussels) or other important actors, experts and consultants (who are invited by the Commission) and (2) discussions in Commission *committees*. Since there are more than 1,000 advisory, administrative and regulatory committees at the Commission, the word *comitologie* was added to the vocabulary of Euro-speak. Many of these

[19] See the comment of the Economic and Social Committee on the Proposal for the Display Screen Equipment Directive (OJ No 88/C 318/32 from 12.12.1988), No. 4.8, and the Decision of the European Parliament (OJ No 90/C 113/75 from 4.4.1990), Alteration No. 34. The Economic and Social Committee even proposed explicit reference to such standards, which was, however, not accepted by the Council.

Fig. 1: Structure of Technical Regulation in the EC



committees, even if they have other formal tasks (the "*comitologie* committees" originally have implementing tasks), are involved in the process of directive preparation (IEP 1989, p. 126).

The 12 Member States send national delegations to these committees, which consist of government representatives and often other experts. For example, the German five-person delegation to the advisory committee for the Pressure Equipment Directive, a single health and safety at work directive which is currently being prepared, includes a federal government representative, a representative of the states (Länder) governments, a representative of the industry, a representative of certification bodies (TÜV) and a representative of the German standardization institute DIN. Often representatives of the national or European standardization bodies belong to these committees to link standardization and legislation activities in both directions. Ideally, standardization follows the directives, then the link is important so that standardization committees are able to set standards in accordance with the Commissions' intentions. In reality, the regulation process often starts with standardization; then the Commission proposals are often influenced by the existing standards to which they refer or by current standardization activities. The example of the software-ergonomic requirements of the Display Screen Equipment Directive has been mentioned. The preparation of the Machinery Directive was heavily influenced by CEN too (Falke 1991, pp. 90-91). Sometimes the Commission mandates research or standardization activities, before a directive proposal is prepared, to get a better basis for the legislative process.

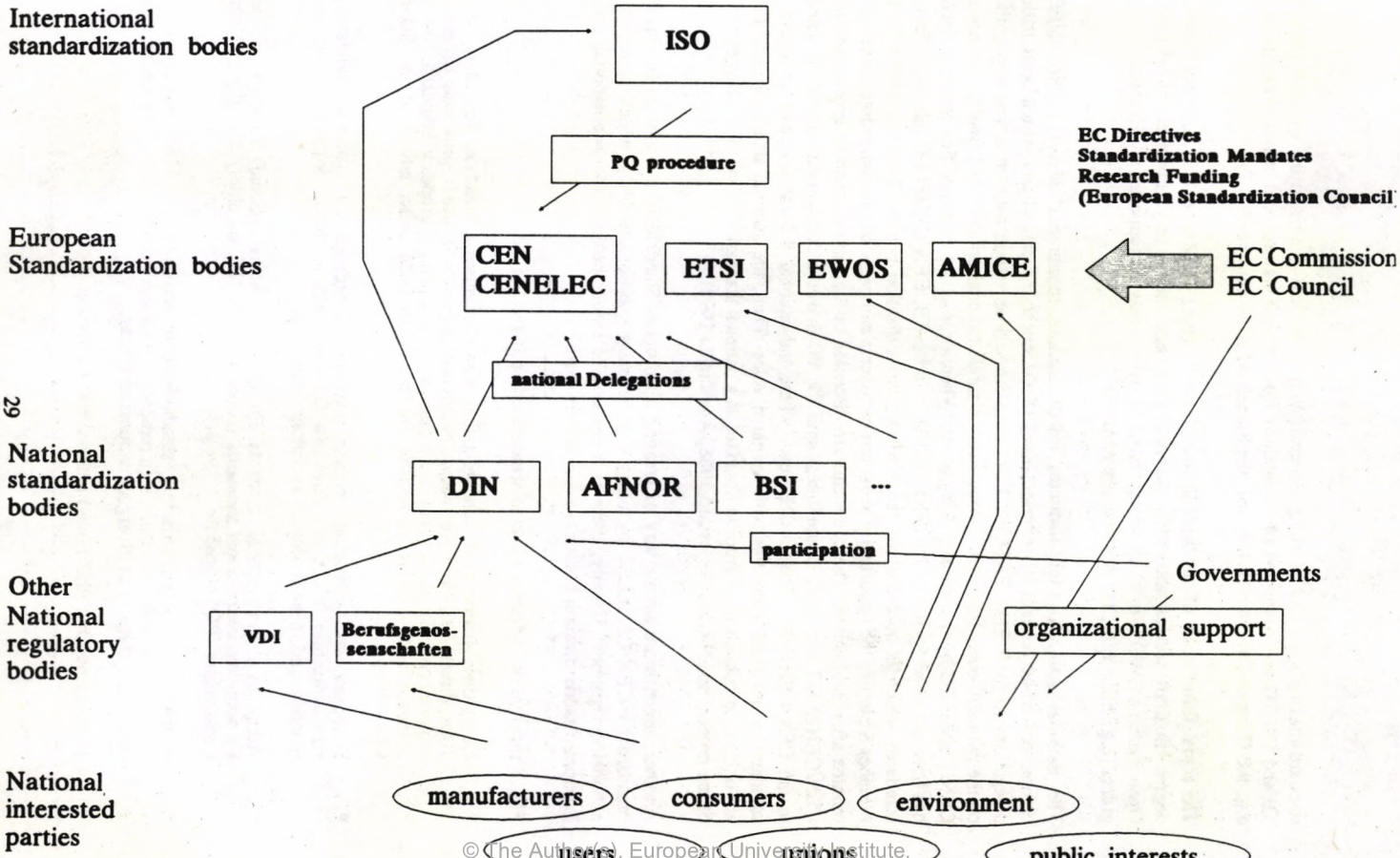
After this participative process of proposal preparation, which may take several years, the Commission proposal is discussed by the Council, the European Parliament, the Economic and Social Committee and, in the case of 118a directives and sometimes in the case of 100a directives too, by the Advisory Committee on Safety, Hygiene and Health at Work, a tripartite advisory committee, established by Council Decision 74/325/EEC. Then the proposal, which might be altered by the Commission at any stage of the decision-making process, is dealt with in the cooperative procedure between Council and Parliament. Finally, the Council passes, modifies or rejects the Commission proposal.

To sum up, the complex procedure of decision-making opens up many points of access for interested parties to articulate their opinions and demands, either directly, by consultations, or indirectly, over governments, standardization bodies, committees or the European Parliament.

2.2.2 European Standardization

When the Council has enacted a directive which refers to European Standards, or even when the Commission plans regulating activities which will eventually refer to standards, then the Commission can give one of the European Standardization Bodies CEN, CENELEC or ETSI a mandate to set up European Standards accordingly. Mandates are usually connected with financial support by the Commission.

CEN and CENELEC (ETSI, which is less important for health and safety at work standardization, works somewhat differently) are basically composed of three levels, with a Technical Bureau (TB) on the decision-making level, Technical Committees (TC) on the



standard-making level and Working Groups (WG) as TC sub-groups on the working level. The TB and the TC are composed of delegations from the official national standardization bodies, e.g. the German DIN, the British BSI, the French AFNOR etc. (see *fig. 2*).

The actual formulation of standards is done in the Working Groups or, to a small but increasing degree, in draft secretariats within manufacturers' associations (e.g. European Workshop for Open Systems EWOS) or at industrial consortia, which may be supported by European research grants (e.g. European CIM Architecture AMICE).

The national standardization institutes install shadow committees to the CEN/CENELEC committees which consist of representatives of the interested parties and which send national delegations to the CEN/CENELEC TCs. Thus the various interests are in a first step gathered on the national level, filtered and condensed to single national opinions and finally transposed to CEN/CENELEC by the national delegations. When a consensus or a qualified majority decision has been achieved by the CEN/CENELEC TC and the TB, CEN/CENELEC releases a draft for standards which is published by the national standardization bodies. Then the public in each Member State has the opportunity to submit comments and proposals for amendment within four months after publication. The comments are discussed in the national shadow groups and in the CEN/CENELEC Technical Committees, until the TC makes a decision and hands the standard to the CEN/CENELEC Technical Bureau, where the national delegations pass (or reject) the standard by qualified majorities with weighted votes. Then, the national standardization bodies are obliged to publish the European Standard as a national standard (for more detailed overviews of the process see Nicolas/Repussard 1988, Anselmann 1991).

Another, much more simple way of creating a European Standard is to adopt an International Standard by CEN/CENELEC by using a preliminary questionaire (PQ), which is sent to all national delegations. Usually, there is a division of labour between the international and the European standardization bodies to avoid double work.

Fig. 3 sums up the different kinds of standardization in the European context:

* Completely harmonized standardization with Commission mandates according to Art. 100a directives. Here the above mentioned sequence is used: provision of essential requirements by a directive, standardization mandate, European Standard, National Standard and, eventually, revision by the Commission under advice of the Standing Committee.

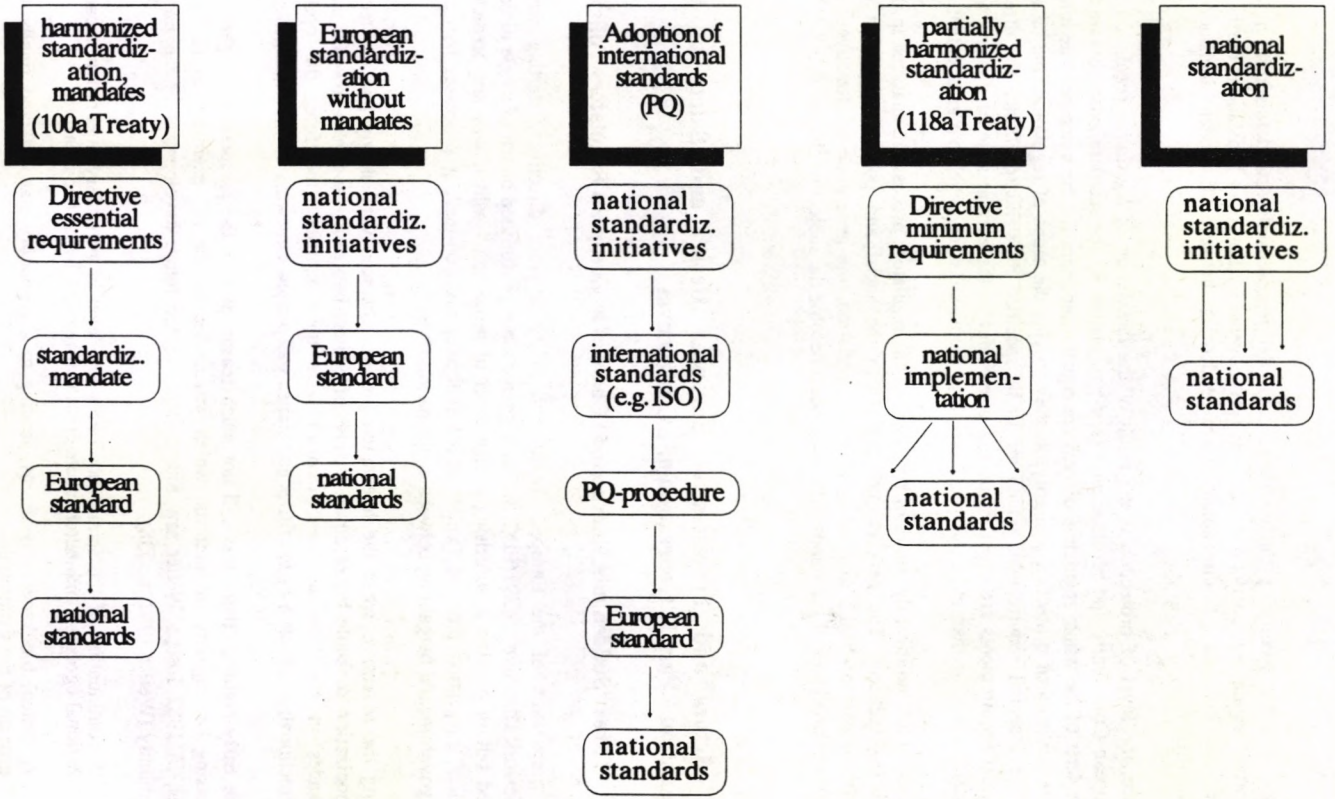
* European standardization without mandate. Triggered by national standards or standardization initiatives, European Standards can be made without a Commission mandate and, hence, adopted as national standards.

* Adoption of international standards. European (and hence national) Standards can be set by adopting international standards (issued by ISO, IEC or other) with the preliminary questionaire (PQ) procedure.

* Partially harmonized national standardization according to 118a directives. 118a directives provide minimum requirements, which can be tightened up by national laws, eventually refering to divergent national standards.

* Non-harmonized (traditional) national standardization.

Fig. 3: Kinds of European Standardization



Hence, besides specifying the directives' essential requirements, standardization may have important regulatory functions in areas not (yet) covered by European legislation. Furthermore, there are complex, bi-directional interdependencies between European legislation and standardization.

Hence, the level of protection is the result of the *interaction* of *legislative* regulation by the European Community and of *associative* (self-) regulation by the standardization organisations. Both parts of the whole regulative process are equally important for the outcome. The directives define the level of protection primarily, as they provide the scope of regulation, the basic aims and the essential requirements which are to be specified by standards. Since the directives' essential requirements are often vague and often refer to the current state of the art, whereas standards are more than mere interpretations, they define the safety level to a great extent.

The social and political dynamics of both parts of the regulatory process are analyzed in the two following sections. The next chapter deals with the social and political processes of the legislative part of health and safety at work regulation, the generation of directives, before actors and processes of the standardization process become the subject of chapter 4.

3. Actors and Processes of European Health and Safety at Work Regulation - Part 1: Generation of EC Directives

3.1 Three "Sudden and Unexpected" Changes in European Regulatory Policy

The preparation of the European health and safety at work directives, starting with the framework Directive 89/391/EEC, which triggered a not yet finished bunch of single directives, turned out to provide a surprisingly high level of protection - which was not predicted by political integration theories, which model European decision-making processes basically as intergovernmental bargaining between egoist nation-states.

During the seventies, when the integration process advanced very slowly and the technical harmonization schedule broke down because of endless bargaining and veto-powered national blockades in the Council, these theories were quite realistic (therefore, the optimistic neofunctionalist approach of the fifties and sixties was pushed somewhat into the background).

In the early eighties, there was still not much reason to alter the perspective. Regarding the increasing heterogenity of interests, which was caused by the EC extension to 12 Member States, in 1982 Joseph Weiler saw four options for the future development of the European Community (Weiler 1982, p. 538):

1. A continuation of the status quo, i.e. a low level of regulatory integration because of national egoisms, and merely acute crisis management by *ad hoc* measures.

2. A mutual blockade of decisions, leading to a regulatory standstill and finally to the erosion of the Community.

3. A management of increasing heterogenity by creating a "two (or three?) speed Europe".

4. More supranational decision-making by overcoming the national veto-powers in unanimous decision-making.

He was, however, not too optimistic about the last and only positive option, and he was not alone in his pessimism (e.g. Taylor 1983). As late as 1985, it was predicted that the Member States would never give up the principle of unanimity in decision-making, because no State would have an interest in giving away its veto-power voluntarily (Scharpf 1985).

But 1985 was exactly the year of the breakthrough in European integration policy. The unlikely option became reality indeed. Prepared by the Commission's White Paper on the Completion of the Internal Market, the Single European Act, signed in February 1986, dispensed with the principle of unanimity and made the Community capable of efficient regulatory action.

The mere shift to majority voting, however, could not alone be responsible for the Community's innovative regulatory drive since 1985 (cf. Scharpf 1990, 1992). The shift to qualified majority voting could only give rise to the expectation that, within the ranking of the 12 Member States, the level of protection would have been slightly lifted from the very lowest national level to the least common denominator of the nine or ten States needed to form a qualified majority. The fact that the Community adopted the *highest* level of protection to be found in the Member States has yet to be explained.

Since 1985, three significant changes have taken place in Community politics, which had not been predicted by the pessimistic intergovernmental bargaining approaches:

1. The replacement of unanimous consent by qualified majority voting. Given each Nation-State's vital interest in sovereignty, why has each Member State given up its veto-power?

2. The extension of European harmonization into many regulatory areas beyond the economic sphere in its strict sense, including European product and process regulation of health and safety at work. Why have the Member States increasingly transfered regulatory authority to the European Community?

3. The high protective level of European health and safety at work legislation. Why have the Member States accepted the economic, social and political costs of standard upgrading, why have the low-level States given up their advantage in the Europe-wide competition for industrial locations?

The shift to qualified majority voting is a judicial fact and the high level of health and safety at work legislation has already been revealed in this paper. But the thesis of increasing regulation is still controversial with regard to the talk of "deregulation", "mutual recognition instead of harmonization" and "subsidiarity" (e.g. Streeck/Schmitter 1991). In the light of current research, however, these phenomena appear to be only temporary tendencies which have been replaced by a new and very strong tendency of European *re-regulation*.

Since it turned out that mutual recognition did not work efficiently (because it leads to the blockades of intergovernmental bargaining), there is a clear tendency towards technical harmonization (Majone 1989, pp. 171-172). Majone (1989, p. 170) characterizes the temporary shift to subsidiarity as "a tactical retreat meant to take advantage of the political appeal of

deregulation, and to rally all available forces around the banner of 1992" (similarly Schneider 1992, pp. 19-20). European integration implies in fact a deregulation at the national level, which is, however, followed by a massive reregulation at the Community level (ibid.). Already in the Single Act, the mutual recognition approach (a "subtle form of deregulation", Streeck/Schmitter 1991, p. 149) was counterbalanced by the New Approach to technical harmonization - the "opposite" of mutual recognition (Schmitt von Sydow 1988, p. 92) - and by the new goal of "economic and social cohesion" (subsection IV, Art. 130a-d). The policy of cohesion, which the Commission presently seems to be stressing (interview, Commission official), implies that the less advanced countries shall be lifted up to the economic and *social* level of the highly developed countries - which includes, of course, an upgrading of the level of occupational health and safety to the level of the northern countries.

Schmitter himself (1992, pp. 36a-c) analyses the level of authority - from "all policy decisions at national level" over three intermediary steps to "all policy decisions at EC level" - for 28 issue arenas and for a time-span from 1950 over 1970 (as assessed by Lindberg/Scheingold 1970, pp. 67-71) and 1992 to 2001 (estimated outcomes of the Single European Act and the Maastricht Accord). The result is that "there is not an issue arena that was the exclusive domain of national policy in 1950 and that has not somehow and to some degree been incorporated within the authoritative purview of the EC/EU" (ibid., p. 37). The highest levels of regulatory integration are in the economic issue arenas, but in work conditions, labour-management relations, education and research there will also be considerable harmonization (which even appears to be underestimated by Schmitter). This analysis confirms the fact that the greatest leap towards integration was, in long-term perspective, the Single Act, with an additional expected impulse of the Maastricht Accord.

In the academic discussion, there are, however, different opinions on the Single Act's significance. Realists tend to undervalue the changes brought about by the Single Act, because the basic logics of intergovernmental bargaining were not altered (Hrbek/Läufer 1986, p. 18), Scharpf 1990, p. 36). Other authors judge the Single Act's effects with "reasonable optimism" (Dehousse 1988, p. 333) or even call it "path-breaking" (Pelkmans 1988, p. 367). Schmitter also estimates that the Single Act's provisions had an overwhelming effect on European integration, the full implications of which "the national governments which signed the SEA seemed not to have been fully cognizant" (1992, p. 30) - a phenomenon which seems to be not untypical for European policy-making (see *infra*).

My impression is that there has indeed been a new drive towards European integration since the mid-80s. The Single Act, however, was not a sudden "big bang", but just one, albeit important, step in a long-term programme towards European integration that was prepared by the Commission carefully over a period of several years. According to Schmitt von Sydow (1988, pp. 84-85), it began on 17.6.1981, when "the Commission raised the alarm" with a communication on the state of the internal market (COM(81)313). In December 1982 the Council - on the Commission's proposal - emphasized the necessity to realize the European internal market, and installed the "Internal Market Council" with the assignment to work on this objective. The shift to the New Approach to Technical Harmonization was a process of several years too - from the Commission's first ideas to resume the strategy of the Low Voltage Directive from 1973 over the Information Directive from 1983 and the Council Resolution on the Standardization Bodies from 1984 to the final introduction in 1985. Last but not least, the

great agenda for a new era of European integration was the Commission's White Paper on the Completion of the Internal Market (also based on a "forerunner": Commissioner Narjes' paper "Consolidating the Internal Market"; COM(84)305 of 13.6.1984), which also preceded the Single Act, whose function was to provide the legal framework for the previously prepared integration programme.

For both realist and neofunctionalist integration theories, the "sudden and unexpected success" of the Single Act was, according to Keohane and Hoffmann (1990, p. 283), a "puzzle": "Since none of us anticipated such a dramatic and coherent revival of Community policy-making, any attempts to explain it should be viewed with scepticism. What was unpredicted by analysts working with established theories cannot, in general, be adequately explained, post hoc, through the use of such theories." (Keohane/Hoffmann 1990, p. 284; see also Wessels 1992, pp. 36-37).

3.2 First Hypotheses to Explain High-level Regulation

Rehbinder and Stewart already concluded in their in 1985 published study, on the basis of indications for the last two of these three tendencies, that more adequate theories of European policy-making are needed. Rehbinder/Stewart (1985, pp. 12-13) themselves offered first hypotheses to explain these unpredicted developments:

1. A regulation on a higher level within "package-deals", which offer compensatory benefits for the low-level countries.
2. A regulation on a high level because of the greater bargaining power of the high-level countries.
3. A regulation on a high level because of the influence of multinational firms.
4. A community-wide sentiment for environment protection.
5. In contrast to national governments, the ministers within the Council of Ministers who are responsible for the environment face no opposition from the other ressorts (esp. for economics).
6. The polluter states favour the EC as an institution and therefore European regulation.

Rehbinder and Stewart, however, were themselves not entirely satisfied by these explanations. In the following sections, we will discuss these explanations and add some more hypotheses.

3.2.1 Reciprocal Concessions with Package Deals

The first explanation - *package deals* and *log rolling*- remains completely within the logic of intergovernmental bargaining. According to this hypothesis, an upgrading to a regulatory level higher than the minimum common denominator can be achieved by reciprocal concessions over time. As package deals are never completely satisfying, they produce permanent requirements for reform and subsequent decisions, thus increasing self-dynamic integration and overcoming mutual blockades (Wessels 1992, p. 47).

Package-deals or log-rolling are indeed frequently used decision-making techniques: the highly-industrialized countries may achieve a high level of environment protection or occupational health, while the less developed countries may get subsidies for mackerel fishing or protection of colonial bananas. Combining single topics to packages certainly accelerates the decision-making process within the Council, because the single items are no longer discussed in detail once the package is tied. Furthermore, the threshold for vetoing rises, since no government wants to kill the whole package because of comparatively insignificant details, which would have provoked resistance if discussed separately. Given the enormous heterogenity of interests among the Member States, however, it is very difficult and takes much bargaining to tie packages with perfectly balanced gains and losses for all 12 governments. Hence, by log-rolling, the Community can advance on the path towards integration, but very slowly, as could be seen during the years before 1985, when this technique was already being practised.

3.2.2 Higher Bargaining Power of the High-Level Countries

The second hypothesis of a higher bargaining power of the technologically advanced high-level states is also insufficient. If Keohane and Hoffmann (1990) are right that Germany is the most powerful Member State - and certainly the dyade Germany-France is most powerful -, then it is surprising that neither the German nor the French concept of occupational health was adopted but the Scandinavian. In the case of health and safety at work regulation, the Community legislation is closest to the national approaches of Denmark and the Netherlands - certainly not the most powerful Member States - and thus inspired by the legislation in Sweden, which is not a Member State at all (but astonishingly influential, e.g. in European standardization). Insofar as the innovative Scandinavian health concept and the risk assessment approach - which came from reformist members of the British Labour Inspection Service - have been combined, the health and safety at work directives even go beyond the protective levels of all Member States, so that no single Member State can be identified as a partisan which successfully realized its interests.

The next two hypotheses extend the intergovernmental bargaining approach, insofar as external actors, industry and population are included:

3.2.3 Influence of Multinational Firms

The influence of mighty multinational firms, which are pushing the governments toward harmonization to create an internal market, may play a role in some fields of environmental protection policy. In occupational health regulation, however, apart from a limited number of fields of technology (e.g. information technology), no such firms can be identified. The most important market which is affected by European product regulation of safety at work is the market for machinery, which is an extremely heterogenous market with a huge number of small and medium-sized manufacturers, which have few capacities to participate in European lobbying for producing a common good. With regard to process regulation, which affects the users of machinery and protection equipment, the common good problem (Olson 1968) is even more critical: if a multitude of firms (including one's own competitors) is affected by the common

good "regulation", why should any single one of them invest scarce resources in costly attempts to exert influence on the regulatory process?

3.2.4 A Community-wide Sentiment for High-level Regulation

A community-wide sentiment for environmental regulation may have contributed to the improvement of environmental protection policy, but a similar community-wide sentiment for a high-level health and safety at work regulation is nowhere in sight. Even the trade unions disagree, since the trade unions of the low-standard countries are primarily interested in defending the few competitive advantages of their home countries in order to secure jobs.

Rehbinder and Stewart's fifth hypothesis is a theoretically interesting variation of the intergovernmental bargaining approach, because the supposition of the homogenity of the national governments is dropped:

3.2.5 No Opposition from Competing Ressorts within the Council of Ministers

Within the national governments and parliaments, there are interest conflicts between ecological and social interests on the one hand and economic interests on the other hand. National regulation is the result of the relation of power between these conflicting interests and, from the ecological and social point of view, at best a compromise. Within the European Council of Ministers, however, the ministers who are responsible for the environment and the ministers who are responsible for labour face no opposition from the other ressorts and can better realize their interests in improving their *national* level of protection:

"Environmental ministers and officials play a substantial role in representing member states in Community decision-making, and are likely to emphasize environmental goals even if they conflict with strictly economic calculations. Unless the matter becomes one of 'high politics', their influence may be substantial." (Rehbinder/Stewart 1985, p. 13)

The same argumentation can be applied to the Council of labour ministers (whose ministries are often closely related to the trade unions). Whereas the heads of the Member States' governments want to keep their sovereignty in order to pursue a homogenous "State's interest", the ministers may even be interested in European harmonization, because they can use it as a vehicle to realize their political goals better than in the national political context. In other words: if they don't succeed in their home country, they go to Brussels and try it there.

Labour ministers of low-standard countries frequently find themselves in a dilemma: they are politically blamed for high numbers of occupational injuries, but can do nothing to improve safety at work, because in competition with the economic ressorts they do not get the resources they need and have no opportunity to increase the financial burden on the employers for safety.

As all labour ministers share the same ressort-specific interest, the least common denominator of intentions within the Council of Ministers turns out to be much higher than the least common denominator of actual national regulations.

This hypothesis, though fruitful, needs to be refined, since there are some remaining problems:

First, as Rehbinder/Stewart stated, this mechanism of standard-raising only works as long as the matter does not become "high-politics", but it is likely that the heads of governments and the labour ministers' opponents within the national governments will eventually notice that the labour ministers are playing tricks on them. Related to this objection is the fact that this argument cannot explain why the governments introduced majority voting, which makes it easier for the ressort ministers to play a game of their own within the Council of Ministers. Finally, there are conservative governments with a dedicated deregulatory goal within the EC, and these governments have labour ministers with the same goal.

The Machinery Directive certainly *was* "high politics". Since President Jacques Delors considered the proposal for this Directive as very important - the Machinery Directive was given a pilot- and driving-function for health and safety at work regulation -, the proposal was specially discussed within the Commission on two meetings on 17.11. and 25.11.1987 and not handled in the usual procedure in writing (Zachmann 1988, p. 538).

In Germany, too, where the Machinery industry with almost 1 million employees is the largest industrial branch, the genesis of the Machinery Directive was carefully watched not only by the labour ministry but also by the ministry for economic affairs, the occupational injury insurances, industrial associations, testing and certification bodies and other actors (VdTÜV 1988, DIN 1989). Germany was the only State which voted against the Directive proposal. The reasons, however, for the negative vote sound strange. The proposal was not rejected because the level of protection was considered too high or too low, but rather because there were no sufficient provisions for the one to two years of the transitional time between the time the Directive goes into effect and the time when the European standards are released (Wlotzke 1989, pp. 7-8; Partikel 1989, pp. 159-160). This "exaggerated" (Lindl 1991, p. 126) argumentation arouses the suspicion that the German government took its own rejection none too seriously[20] (and did not invite other governments to join it), but was politically forced to vote against the Directive, because both industry and trade unions had a strong negative attitude towards European health and safety at work legislation, from which they (falsely) expected nothing but *social dumping* (see Jansen 1988, Waldeck 1989 or even Waldeck 1991)[21].

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[20] For example, an official of the Federal Ministry of Economic Affairs heavily contradicted Jansen (1988) by pointing out that since the 1960ies there had been many cases of European regulation forcing the German government to upgrade the level of protection. Without the European Community, many improvements would not have been possible (Winkel 1988, p. 50). The Machinery Directive was assessed as an improvement even by the Federal Labour Ministry because of its broad scope (Streffer 1988, p. 9).

[21] It is remarkable that the German government did not fear the removal of trade barriers and did not vote negatively as a result a protectionist motivation: on the contrary, Germany voted against the Directive's transitional provision that national standards are valid as long as European standards have not yet been released (Wlotzke 1989, p. 8). This makes sense, since Europe's by far largest machinery-producing country gains much more from the removal of trade barriers than it loses (if the level of protection is not lowered).

Especially the German unions *had* to oppose to the EC directives, because this necessarily implied that the mighty *Berufsgenossenschaften*, the bipartite occupational injury insurances, would lose comprehensive regulatory powers (Jansen 1988, p. 35). The regard to these politically powerful institutional interests was probably the German government's main motivation for voting against the Directive (see for a detailed analysis Bauerdick 1992). Obviously, the Directive's opponents - besides the Berufsgenossenschaften the Technische Überwachungsvereine (TÜV, testing and certification bodies, who lose a monopolist position by the European certification procedures, see Gareis 1988) - were primarily driven by institutional self-interests. The institutions who fear the loss of authority and resources seemed to pretend they were afraid of a reduction in the level of protection which was, however, merely expected but not proved.

It seems to promising to analyze the decision-making processes on the EC level more closely and to differentiate not only between national government heads and ressort ministers but further between ministers, the administration, government agencies and even non-governmental actors. This leads us to Rehbinder/Stewart's sixth hypothesis.

3.2.6 A Positive Attitude of Low-level States towards Commission Proposals

This hypothesis says that the low-level states may agree with high-level European regulation, because they favour the EC as an institution and, accordingly, the Commission's proposals. This argument has two important implications:

First, the argument implies that the Commission is an actor in European legislation which has some influence on the decision-making process.

Secondly, it implies that the Commission is interested in a harmonization on a high level of protection.

These two implications overcome the restrictions of the intergovernmental bargaining approaches, because they introduce a new actor besides the Member States: the Commission. The Commission's role requires further analysis.

3.3 The Commission's Role in European Legislation

The Commission of the European Communities is the "forgotten actor" in the process of European integration. While the European Court of Justice has received much attention as a promotor of integration (especially by Weiler 1982 and the following discussions), the intergovernmental bargaining theories have neglected the Commission's role (Schneider/Werle 1989, pp. 418-420). It is not untypical that, in an article analyzing the integration process, not

more than a few sentences are dedicated to the Commission's role[22]. This is astonishing, since the Commission was established as the Community's "driving force" (Hallstein) and has got the prerogative of directive proposal - which is certainly more than *a quantité neglegible* (see *infra*).

The Commission's role is pointed out by Schmitter's analysis of the long-term developments (1950-1992) in 29 issue arenas. In regard to the relative influence of various agents on European integration, Schmitter came to an interesting result, when he actually intended to test the neo-functionalist spill-over hypothesis. From his evaluation of different agents' positive or negative influence on European integration in 29 policy arenas, the following ranking of agents can be derived (source: Schmitter 1992, pp. 21a-b):

1. Commission promotion in 26 of 29 issue arenas
2. functional dependency in 20 arenas
3. national government resistance in 19 arenas
4. Council promotion in 15 arenas
5. functional expansion in 13 arenas
6. trend in international environment in 11 arenas
7. promotion by European interest groups in 10 arenas
8. enlargement of EC membership in 10 arenas
9. national interest group resistance in 9 arenas
10. European Parliament promotion in 9 arenas
11. responses to international shocks in 7 arenas
12. European Court of Justice promotion in 6 arenas
13. change in national ideology in 5 arenas
14. shift in mass public opinion in 4 arenas
15. popular resistance in 4 arenas
16. supra-national resistance in 1 arena
16. European Parliament resistance in 1 arena

This evaluation reveals several phenomena of utmost importance:

* The Commission turns out to be clearly the dominant agent of European integration.

* Functional dependency is the second most important agent, the integration process possesses, to a degree, its own dynamics, while the effect of functional expansion (*spill-over, l'engrenage*) appears to be somewhat overestimated, though still quite important.

* Exogenous trends and events also play a secondary role.

* The Parliament and the Court are promotors, but of moderate influence.

* The public opinion has almost no influence.

* The influence of interest groups is moderate, with a balance between promotion by European groups and resistance on the part of national groups.

* The influence both of the Council and of the national governments is strong, but clearly less than the Commission's influence. Perhaps the most startling phenomenon is that the Council promotes while the national governments (according to realist integration theory) resist integration. Numerically, both effects are almost balanced. It seems as if there is a

[22] E.g. Hoffmann (1982, p. 32): "The EEC's institutions are weak, because they lack autonomy (from the member states) and because their capacity to act is small." Scharpf (1985, p. 323) also sees the Commission in "absolute dependency upon the national governments" in the Council.

certain mechanism that turns national governments' resistance within the Council into promotion.

On the basis of these data, it can already doubtlessly be concluded that the Commission is a key actor of European integration. This of course does not mean that the national governments play a secondary role, but it does mean that the relationship between the Commission and the national governments appears to be the key for the explanation of European decision-making (although there are *actors* - e.g. the Trade Unions Technical Bureau in Brussels [TGB 1991, p. 87] - who regard the Commission's DGs as the "most important actors" in the Community's legislative process).

Keohane and Hoffmann, however, still insist: "Any attempt to understand the institutional changes of the Single European Act must begin with a recognition that *governments* took the final crucial steps leading to its negotiation and ratification." (1990, p. 284) We will follow this advice.

3.3.1 Overcoming the Mutual Blockade with the Delegation of the Process Control to the Commission

The political blockade situation, from which the three innovative tendencies - the shift to qualified majority voting, the extension of the Community's regulatory authority and regulation on a high level of protection - emerged, was diagnosed quite correctly by the intergovernmental bargaining theories.

Although it was rational for each government to use its veto-power to avoid economic, social and political adaptation costs of harmonization, the results of this mutual blockade were suboptimal for each State, since the profits of a single internal market could not be internalized. Before the Single Act, the intergovernmental situation was characterized by a fundamental discrepancy between the Member States' *individual interests* in avoiding any adaptation to harmonization and the *common interest* in the economic effects of European integration. Assuming that every State government tried to optimize its action, it is safe to assume that each Member State wanted to profit as much as possible from the Community and, at the same time, to minimize the economic, social and political costs of adapting to the Community (cf. Olson/Zeckhauser 1967). There was a collective interest in a single internal market and in the degree of harmonization required to achieve this objective, but there were individual interests in keeping national regulation and in imposing each State's own national interest on the Community.

Within the logics of intergovernmental bargaining, there was no escape from this strategic dilemma, since log-rolling turned out to be a difficult business, which only allowed a slow advance towards integration. Obviously, the European Community was unable to control its own course towards integration.

One solution - to submit to the leadership of a strong partner (which often occurs when security communities are formed, see Deutsch et al. 1968) - had no chance in Europe, where none of the (at least of the large) Member States would accept a dominant role of any other.[23]

The only solution to this dilemma was for all Member States to give up some of their decision-making powers without transferring them to any other State, so that the balance of powers between the Member States remained unchanged. This could be achieved by (partially) submitting to the regime of a set of supranational institutions which could serve as moderators of the integration process.

By submission to regimes - "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner 1982, p. 186) - the dilemma, i.e. that individually rational action leads to collectively unwanted consequences, can be overcome, since, under regimes, the cost and benefit structures of the individual actors can be modified and individual action can be regulated according to commonly arranged rules (Schneider/Werle 1989, p. 413). A second, more effective step towards overcoming the mutual blockade strategies is to create a corporate actor to which the (legal) authority and the (financial) resources to act in the Member States' common interest are transferred. The opportunities both for individual action and for exit must be restricted in order to stabilize the corporate actor's ability to act in the common interest (Commons 1961, Coleman 1974, see also Haas 1964, p. 111).

Among the European institutions serving as "corporate actors" and pushing the integration process forwards are (1) the Court of Justice, which was such an integrative institution to a certain extent already before 1985 ("For many years, the European Court of Justice has been the most active and creative Community organ" Dehousse/Weiler 1990, p. 247, and earlier Weiler 1982), (2) to a limited but growing extent the European Parliament, (3) in a limited way, the "second chamber", the Social and Economic Committee (only with advisory functions), and primarily, (4) the Commission, whose role was clearly enhanced by the Single European Act (Bieber et al. 1988, pp. 24 and 30, Pelkmans 1988, p. 373, H. Wallace 1990, pp. 217-221, "The Commission clearly won 'the battle of the Single Act'" - Dehousse et al. 1992, p. 8).

The submission of the Member States to the political leadership of supranational institutions, mainly the Commission, was bound to important conditions:

First, each Member State had to feel sure that its net share of the total positive effect of the European integration would exceed the costs of adjustment. Since this conviction was a crucial prerequisite for giving up the veto-power, it is understandable that the Cecchini-report (which predicts, soberly analyzed, only quantitatively moderate economic effects of the internal

[23] Keohane and Hoffmann (1990, p. 295) ask, with good reason, whether the European States would accept being dominated by Germany - according to these scholars the strongest Member State. Also the Franco-German relationship is characterized as a "sporadic duo" (H. Wallace 1990, p. 225), since besides a common interest in European integration there are many differences in detail questions including occupational health, where the French and German philosophies are totally incompatible, already raising a conflict (the European Court of Justice decision in the case of wood working machines, see Feldhoff 1992, pp. 83-84).

market[24]) was (and is) quoted almost ritually. As the Cecchini-report has a motivating function, it presents "political data" (van Suntum 1992, p. 18), which are regarded as rather optimistic by several economists (e.g. Data Resources Inc. 1988, Prognos 1988, Herrmann/Ochel/Wegner 1990, Heine/Kisker/Schikora 1991). The image of the "global triad" and the conclusion that only a united Europe can withstand the economic challenges from East Asia and North America has the same function. Both the "global triad"-picture and the Cecchini-report formed Delors' "clever marketing strategy" to convince the Member States to support the Commission's main goal: a revitalization of political integration in the backpack of market integration (Schneider 1992, pp. 19-20).

The relationship between the procedural reforms of the White Paper/Single Act and the objective of the completion of the Internal Market can hardly be overemphasized. To "alter the institutional balance" - in favour of the Commission - and to "improve decision-making" on the one hand and to create a Community without frontiers on the other hand were the two closely interconnected central aims of the Internal Market strategy (Pelkmans 1988, pp. 361-362). When the Commission had to pick a motto for the White Paper from quite a choice of options, it strategically selected the Internal Market aim (and not e.g. institutional reform and progress), because no opposition to this undoubtedly positive goal was expected from the national governments (Schmitt von Sydow 1988, pp. 85-86).

Secondly, all Member States' governments must trust the stability and predictability of European decision-making. In particular, they must expect, in the long run, positive results for their own country to be realized, and, in the long run, an approximate reciprocity of gains and losses between all Member States. A high level of stability and predictability of decision-making is required, since it has become evident that it is extremely difficult to manage single decision packages with reciprocal gains and losses for all 12 Member States at one time. Governments are willing to accept poor bargains for their own country only when they can be quite sure that they will get compensatory benefits in the future.

"Over a period cooperative modes can be established and habits of transacting business entrenched. Pay-offs and reciprocal understandings are spread over a long period and apparently credibly so. As a working goal, 1992 rests on precisely this assumption - as regards both the pain of adjustment and the promise of growth. .. Mrs. Thatcher accepted the Delors package not because she was enamoured of its immediate returns, but because over the long haul she believed that the overall outcome lay well within its settlement area." (H. Wallace 1990, p. 225)

Thirdly, the supranational process moderators, primarily the Commission, have to be strictly neutral. As soon as some Member States started to suspect that the Commission's policy systematically favoured another State or a group of other States, they would return to securing their interests by intergovernmental bargaining and forming permanent coalitions for blocking minorities. The logics of intergovernmental bargaining must not be transferred to the supranational institutions, otherwise the mutual blockade dilemma would just move to another level. Within the Commission, there exists indeed a long tradition (since the Hallstein era) of

[24] The report estimates an overall economic growth effect between 6.5 and 7.5 % (Cecchini 1988, p. 132). When one considers the fact that the market integration effects are spread over a time of at best five years (realistic would be ten to twelve years), the dimension of the economic growth effects of 0.5 thru 1.5 per cent per year is much smaller than the normal cyclical movement, and certainly much smaller than the effects of the German unification and the opening of the East European markets.

"European thinking" and of the *acquis communautaire*. Thinking in categories of national interests is taboo among Commission officials (von Senger und Etterlin 1992, p. 21). On the contrary, the national governments are the main opponents of all European institutions - the Commission, the Court and even the Parliament -, because their reluctance is the main barrier to the enlargement of these institutions' powers. Most of the Commission officials, the Members of European Parliament, and the Court judges share a common interest in integration, because their career opportunities are within the European institutions and not in the national governments. This rational self-interest of the individuals who work for the European institutions is reinforced by a "corporate culture" or an *esprit de corps* among the "Europeans", who work in Brussels, Luxembourg and Strassbourg.

Fourthly, the supranational process moderators must have a vital self-interest in the integration process in order to be pushy enough. This is the reason why institution-building can be very useful in overcoming mutual blockade configurations, because institutions have an institutional self-interest (and their officials a personal self-interest) in growing and maximizing their resources, authority and powers.

"The Commission officials appear to follow just one working principle: How can I secure more authority for myself and hence for the Commission?" (von Senger und Etterlin 1992, p. 19, my translation)

The self-interest in institutional growth and the fact that the Commission officials personally profit from further integration (each step to further integration offers new career chances) appear to be the main reasons for the observed expansion of the European institution's tasks and, hence, of the range of the Community's regulatory activities.

Fifthly, the partial self-disempowering of the Member States governments by signing the Single Act is not irrational in another respect. Power is not a primary objective of politicians, but rather success. Power is very often a means to achieve success. But power - here: the veto-power - is of no use if it is blocked by counter-powers. Power is always relative. Especially in situations in which power does not lead to success, relinquishing power can even be useful for politicians, because they are discharged from responsibility.

When the Council was bound to unanimous decision acceptance, the Member States governments could easily be made responsible for every detail of European policy (by the Parliaments, the interest groups and the voters), with the argument that they could have used their veto-power to avoid the decision. Since majority decisions have become the rule within the Council, a government who was outvoted cannot be made responsible for the decision at all. Furthermore, even when a government agrees, it can argue that it was forced to agree to a compromise, because otherwise it would have been outvoted anyway. Hence, national politicians like to talk on Community affairs according to the verse (Hänsch 1990, p. 245):

"Wenn die liebe Sonne lacht, hat's das eigne Land gemacht,
gibt's aber Regen, Eis und Schnee, war's bestimmt die EWG."

(When the sun is shining, the own country made it,
but if there is rain, ice and snow, certainly the EEC is responsible.)

The more *de facto*-authority is transferred to the Commission, the better the Commission can serve as a scapegoat for national politicians. The ugly word "Eurocrats" is a good example for the notorious habit of blaming the Commission for every kind of political failure which might occur in any Member State.

Sixthly, the integration process conducted under the Commission's leadership could be accelerated by creating time-pressure. The tight schedule for integration, which was set up with the White Paper and justified with the Cecchini-report, had the function of speeding up the decision-making process. Facing the huge and profitable task of creating the single internal market, all the Member States' objections against single provisions of regulatory acts became neglectable and no longer justified the blocking of the decision-making process. The Council set itself under time-pressure and empowered the Commission to set it under an even tighter time-schedule by giving it the right of proposal and by affirming the Commission's legislative programmes. Also, because the industries have begun to prepare for the internal market and hence created irrevocable facts, the governments have no choice but to achieve the self-set goal of integration (Scharpf 1992, p. 24).

Given these conditions, dispensing with the principle of unanimity does not seem as irrational for the national governments as it once did. The strategy is approved by its success: "Although the quantity and quality of outputs have been uneven, the substantive rewards, in terms of the interests of the participants, have been sufficient for them to be willing periodically to reinforce the process." (H. Wallace 1990, p. 218) With the Single European Act (and related means), the Member States governments transformed their configuration of inevitable mutual blockade into a configuration which tends to further integration. Within this configuration, the supranational institutions, particularly the Commission, with their self-interest in integration, play crucial roles as driving forces of the integration process.

Such a configuration may even be, to a certain extent, self-reinforcing, as will be shown by applying a model which was used by Elias (1969) to develop his theory of the genesis of the modern nation-state. Comparing European integration with the development of the nation-state is not as odd as it may seem at first glance, since many theorists have called the international system "neo-medieval" (Schmitter 1992, fn. 1 with reference to Bull 1977, p. 264).

The medieval society in Europe was characterized by a configuration of small principalities in permanent conflict with each other. Every time one of the competitors was on the verge of creating a larger empire by successful warfare, this empire would soon break apart, because the king would have to establish aristocrats and churchmen to administer the regions, but would not be able to prevent them from making themselves independent from the central sovereign and eventually becoming independent principalities or dioceses (Elias 1969, see also Toynbee 1976). The first stable nation-states in Europe, which overcame the era of an oscillation of centripetal and centrifugal tendencies, were the absolutist monarchies. They emerged when three conditions were fulfilled: First, when the monarchs succeeded in securing internal peace by creating a territorial monopoly of physical power. Secondly, when the monarchs were able to create a stable system of acquiring permanent financial resources, i.e. a tax system (*etat* is still the French word for state). The means to finance a standing army and police in turn stabilized permanent peace, just as peace was a prerequisite for stable state finances. Thirdly, the empires could be stabilized when the monarch was able to use these resources to control the centrifugal

forces by managing a certain configuration of actors which was called the "King's mechanism" by Elias:

"The time for a strong central power within a highly differentiated society comes, when the ambivalence of the interests among the most important functional groups becomes so great und the balances are so evenly distributed among them that it comes neither to a decisive compromise nor to a decisive fight and victory among them." (Elias 1969, vol. 2, p. 236, my translation)

The absolutist king's centralized power depended on his ability to keep the regional sovereigns (aristocrats and bishops) in a state of permanent mutual competition so that they had to use their powers to defend themselves against each other and could not threaten his own position - the Ceasarean strategy of *divide et impera*. The king prevented any one of his competitors from becoming too strong by distributing his resources selectively, so that each time one of the regional sovereigns showed signs of becoming dangerous for the king, the others received more resources and thus the power to fight him down and thus stabilize the king's position. Since the regional sovereigns were unable to overcome their conflicts and to form a consensus, they had to submit to the decisions of the central sovereign, who maintained the coordinating and regulating functions for the whole territory. The main arena of the competition among the regional sovereigns was the king's court, where the aristocrats had to spend their money to survive their peers' intrigues.

Although one would hesitate to compare the Commission of the European Communities with an absolutist monarch[25], there *are* structural similarities between the configuration of regional sovereigns at the dawn of the modern nation-state and the present configuration of national governments within the European Community: There *are* severe interest conflicts among the national governments, and all governments *are* interested in preventing any other Member State from becoming dominant within the EC. In any configuration with an inherent tendency to keep an equilibrium by changing coalition-building (all others against the strongest, until another one becomes the strongest), a "third" actor with very few resources can exert considerable power by acting as a process and conflict manager. "The key players are frequently the intermediate balancers, of which the Commission is generally a leading representative." (H. Wallace 1990, p. 226) Especially the Single European Act enhanced the Commission's opportunities for playing off the national governments against one another, because qualified majority voting provides the Commission "with more opportunities to forge coalitions, differing from case to case" (Pelkmans 1988, p. 373). The Commission's main resources, besides spending some distributive money and besides its (limited) executive powers, are its function as a mediator and process manager and its right of directive proposal to the Council.

Once established by the Council as the EC's driving force, the Commission turns out to be a quite independent actor - which is not untypical for corporate actors which are created to overcome the dilemma of an incongruency of individual and collective interests. Besides the

[25] In an interview, however, the Commission officials were called "Europe's last princes" by a national delegate to an advisory committee to the Commission. This assessment came from the experience that the Commission officials as committee chairmen are able to play off the national delegations against one another and, hence, are rather free to prepare directive proposals. Also the national delegates' behaviour towards the Commission officials was characterized as "courtier-like", since the delegates are all ears to interpret the officials' utterances regarding the direction in which the proposal drafting might go (Interview, advisory committee member/standardization manager).

members' common interest, corporate actors tend to develop an institutional interest of their own in securing their existence and in maximizing resources and powers. The institutional self-interest of supranational corporate actors countervails the institutional self-interests of the national bureaucracies, which have been emphasized so heavily by intergovernmentalism. There is a tendency for corporate actors to become independent *vis-a-vis* their members and founders (see Schneider/Werle 1989, p. 415).

When regimes are created, they are usually not intended to renounce national rights of sovereignty and to submit to federal systems. On the contrary, with the construction of supranational regimes, governments intend to strengthen the nation-state by getting the benefits of cooperative action in exchange for a limited and revocable restriction on national action opportunities:

"Such regimes, in exchange for curtailing the states' capacity for unilateral action, serve to preserve the nation-state as the basic unit in world affairs and actually help governments perform their domestic tasks. Although the traditional model of sovereignty is clearly obsolete, the nation-state today survives even though some of its powers have to be pooled with others, and even though many apparently sovereign decisions are seriously constrained, or made ineffective by, the decisions of others as well as by economic trends uncontrolled by anyone. International regions help the state survive, by providing a modicum of predictability and a variety of rewards." (Hoffmann 1982, p. 35)

Of course, as Deutsch et al. (1968, p. 201) recognized at an earlier date, "most people in the past have tended to regard integration as a means to achieving some object of domestic politics". However, an *unintended consequence* of regime-building - at least if it includes the creation of supranational institutions - is that the national governments may get trapped in the regime they created because of the supranational actors' institutional self-interests in extending their powers and in driving the regimes further towards integration.

As a corporate actor, the EC Commission has become more than a "passive receiver of orders", but it plays an increasingly active role in defining the Community interests. "The Commission is no neutral arbiter, but a player with vested interests of its own to promote and the record of Community legislation to defend." (H. Wallace 1990, p. 217) It is institutionally interested in extending its authority, powers, resources and the legitimation as a political actor (Schneider/Werle 1989, p. 417; Schneider 1992, p. 8).

The main power that was transferred from the Member States to the Commission, in order to overcome the mutual blockade situation in Community decision-making, is the prerogative of directive proposal. Although the final decision still lies in the hands of the Council, the Council cannot make any politics without or against the Commission (Engel 1991a, b). And the Commission is rather free to develop its own ideas of regulation and to draw up proposals for directives properly:

"Any practioner of negotiation well recognizes the crucial power of the drafter of texts, which remains the Commission's prerogative. The Commission can also bring the Council to a halt by providing no text at all." (H. Wallace 1990, p. 217)

This right of proposal is also crucial because it changes the logics of decision-making within the Council fundamentally. If, instead of the Commission, single States had the right of proposal, and a State presented a proposal for a directive to the Council, there would be no initial support

for this proposal and the State would have to do a great deal of negotiating to achieve a 77 % majority, particularly if other States presented other proposals on the same topic at the same time. The Commission, however, was given the *prerogative* of proposal. If the Commission presents a proposal for a directive, the logics of decision-making are reversed: the Commission's proposals are supposed to be accepted by all States, because this is the only way to come to decisions. A single State which disagrees has to find other States to form a blocking minority. Integration theorists argue that the States' dissension is the barrier against integration. Once the Commission's right of initiative has been introduced, it is this very dissension that prevents the States from stopping the Commission's path to integration.

3.3.2 Safeguarding of the Member States' Interests by Committees to the Commission?

Intergovernmental bargaining theorists have acknowledged that "members of the Commission are independent figures rather than instructed agents" (Keohane/Hoffmann 1990, p. 281), but argue that "yet national governments continue to play a dominant role in the decision-making process", because "there are innumerable committees of national experts and bureaucrats, preparing the Commission's proposals and the Council's decisions" (ibid.). Furthermore, "the execution of the Council's directives by the Commission is closely supervised by committees of national bureaucrats, some of which can overrule the Commission's moves" (ibid.).[26] According to this argument, the Commission seems to be just an intermediary institution. Is it that, with the committees, a perfect cycle of control by the Member States - from directive drafting to application - is closed?

There are indeed over 1,000[27] committees of Member States' delegations to the Commission, which are classified, according to their power in relation to the Commission's autonomy, as "advisory" or "consultative", as "administrative" or "management" and as "regulatory" committees. The powers of these "*comitologie*-committees" are related to the Commission's executive functions only. Regulatory committees and partly management committees (procedure II.b) have the power to pass decisions against Commission decisions to the Council, which can overrule the Commission's decisions. The Council Decision 87/373/EEC from 13.7.1987 on the *comitologie* is considered as the Council's attempt to limit the Commission's room for discretion in the execution of Council directives and thus keep the institutional equilibrium between Council and Commission (Meng 1988, Harnier 1991).

After a closer analysis of the role of the committees, however, the Council's decision on the *comitologie* appears to be a minor victory in a running fight. Particularly within DG III, many of the most powerful regulatory committees (as "little Councils of Ministers") are installed to adapt the Council directives to the technological and scientific development, because the Council

[26] One commentator draws from the mere fact that many Commission activities are accompanied by committees the conclusion that the Commission has lost control over its policies and has been captured by organized interests (Grote 1990). Grote's assessment, however, is only based on "political" reports from 1983/84 (PE 85.216 final/EP Document 1-446/83 and PE 89.377 final/EP Document 1-40/84) which used the European Parliament in the debate on the regulation of the *comitologie* in order to support the positions of the Community institutions against the Member States (for further details on this debate see Meng 1988).
[27] For 1988, exactly 1,336 consultative bodies have been counted (Grote 1989).

is not able to do this highly technical work. Also, the adaptation of the health and safety at work directives is within the responsibility of a committee, which is set up by Art. 17 of the Health and Safety at Work Directive. If the Council delegates *legislative* tasks to committees, which are chaired by a Commission representative, the Commission does not lose, but rather even gains influence. And the committees which deal with the Commission's genuine tasks, i.e. the problems of the implementation and application of directives, are often just advisory committees, e.g., the committee set up by the Machinery Directive, Art. 6 (2). Even the important task of checking the directive-conformity of standards is in the discretion of the Commision, which just takes notice of the opinion submitted by the Standing Committee set up by the Information Directive.

Furthermore, the Council's *comitologie*-decision seems to turn out to be Pyrrhic victory over the Commission (who had presented a proposal for the regulation of the *comitologie* on 3.3.1986 (OJ No C 70/6), providing more authority for the Commission). The empirical study of the *Institut für Europäische Politik (IEP)* on the *comitologie* found out that "the responding Commission officials generally do not think that their committee considerably reduced the Commission's freedom and even less so that it has been set up to assure the member states's control" (IEP 1989, p. 9). This subjective assessment of the Commission's officials is verified by hard facts. The Commission reported that it had received a positive opinion from regulatory committees for 98 % of all proposals submitted since July 1987 and that the *contre filet* variant (procedure III.b: the Council can with a simple majority decide that the Commission may not act, if the Council rejects the Commission's proposal but does not make a positive decision of its own), which was the main point in dispute and was finally introduced by the Council against the Commission's vote (Meng 1988, pp. 218-219), was never used (SEC(89) 1591 final).

The IEP study reveals that the Commission's influence within all three types of committees is still strong. In only 3 % of the cases, the Commission reacted to committee reservations by withdrawing its original proposal, while it insisted in spite of the committee's negative vote in 18 % of the cases (IEP 1989, p. 113). The dominant picture is that the Commission's proposals are modified, usually without substantial changes.

The overall assessment of the committee's performance is that the *comitologie* does not lead to a blockage of Community action (as possible with the *contre filet* procedure), since

"the Council only acts rarely and then in most instances it comes to a decision - and this decision (according to the study) mostly corresponds to the Commission's original ideas (which may indeed mean that the Council cannot - by a qualified majority - find a different solution and therefore decides that the Commission can enact its decision)". (IEP 1989, p. 123)

The Commission even profits from committees, because they "add weight to the decision", which is basically delegated to the Commission by the Member States, who wanted to reduce the work load of the Council but were "losing the decision-making power themselves" (ibid., p. 117).

3.3.3 Balances of Power in the Preparatory Stage of Directive Drafting

Although the committees do not serve as the Member States' "elongated arms", they do play an important role in the preparatory stage of Community decision-making. According to my own interviews with experts, the Commission has such a high workload in preparing health and safety at work directives on time that it relies heavily on receiving working capacities and technical expertise from the outside. "It seems evident .. that the Commission does not have enough staff to provide for an expert in every sector and for every technical problem." (IEP 1989, p. 83) The Commission gets the required capacities and expertise

1. from informal contacts and consultations and
2. from the technical experts within the committees.

ad 1: The Commission acts within a network of informal contacts and is open to every kind of lobbying[28]. It is estimated that already no fewer than 10,000 lobbyists are expressing their interests to the Commission (Kohler-Koch 1992, p. 106). Representatives of the industry, of employers, of trade unions, of consumers, of the Member States' governments and agencies and independent experts have access to the Commission officials and may express their interests at an early stage of proposal drafting. Since the Commission lacks technical expertise and working capacities, it welcomes uninvited contributions from all sides (TGB 1991, pp. 55-56, Kohler-Koch 1992, p. 101).

Furthermore, the Commission invites lobbying for political reasons, because the associations perform important mediating functions in both directions - towards the Commission by interest aggregation and from the Commission by information distribution. And interest organizations, especially those on the national level, may serve as important supporters of the Commission in its struggles with the Council resp. the national governments. The Commission has been characterized as "a political entrepreneur building its own 'winning coalitions'" (Kohler-Koch 1992, p. 102, my translation).

Within the game of coalition-building, informal consultations seem to be the most important channel of influence for the European Parliament, the Economic and Social Committee and the Advisory Committee on Safety, Hygiene and Health at Work, which all have only limited formal powers, too.

"Neither Council nor Commission are obliged to follow the Parliament's recommendations and proposals for amendment. In fact, however, they do so in many cases." (Hänsch 1990, p. 243, my translation)

Hänsch claims that between 1987 and 1989 the Commission accepted 60 % of the Parliament's proposals for amendment (of the first reading) and the Council again 70 % thereof. The Parliament's influence, however, decreases, the more importance the matter is given by the Council or the Commission (IEP 1989, p. 244). Prominent examples - e.g. the Small Car

[28] For a similar assessment of the limited working capacities and the openness of Commission officials to informal consultations, see Dietz/Glatthaar's vademecum to European lobbying, which is not a scientific study in a strict sense but obviously experience-laden and quite realistic (the book even lists the locations of the restaurants where the Commission officials take their lunch) (Dietz/Glatthaar 1991, esp. pp. 164-178).

Emissions Directive of 1989 - demonstrate that the Parliament's influence can be quite strong, if the Parliament can form a coalition together with the Commission against the Council (see also TGB 1991, p. 44). Therefore, the EP tries to get in preconsultations with the Commission in an early phase. The first opportunity for the expression of priorities and guidelines is the annual drawing up of the legislative calendar by the EP together with the Commission. During the preparatory phase there may be informal contacts between EP Members (resp. their staff) and Commission officials, so that most of the work should be done when the Commission officially submits a proposal to the EP for comment (Interview, EP staff). "[The EP's] most important role is consultation." (TGB 1991, p. 43, my translation)

The IEP report (1989, p. 98) reveals that in 78 % of the cases preconsultations take place. And in the remaining cases, advisory committees are frequently somewhat formalized forms of consultations; e.g. the tripartite Advisory Committee on Safety, Hygiene and Health at Work secures the participation of employers and trade unions, who don't have the resources to be continuously present in the Commission's lobby[29].

In the drafting phase of the Machinery Directive, for example, the Commission invited quite a few different groups to four preparatory sessions between 1985 and 1987: representatives of the governments, of European Machinery and Machine Tool Manufacturers Associations (ORGALIME and CECIMO), of supervising agencies (CEOC), of standardization bodies (CEN/CENELEC), of the Advisory Committee on Safety, Hygiene and Health at Work and the European Trade Union Federation (CES) (Zachmann 1988, p. 538).

ad 2: Although the *comitologie*-committees have been installed for executive functions, 63 % of the surveyed committees are involved in the preparation of legislation (IEP 1989, p. 126), especially the regulatory committees of DG III. This means, they are fora for the expression of the Member States' delegations' wishes and interests, while the Commission is drafting directive proposals for the Council.

All this sounds very participative, but it is not really participative in the pluralist sense of this word - both in terms of participation chances for territorial (Member States) and functional representation (interest groups)[30].

- First, the different interests have different abilities to participate effectively in the committee work. From our own interviews with committee members and observations, a general rule for effective work in committees dealing with technical matters can be stated: The higher the interest and the higher the technological level of a Member State is, the greater its influence in technical discussions is. The debates tend to move quickly to a level of technical details (about what is technologically possible and at which costs) so that technical expertise is a crucial condition for effective participation. Thus, the delegations from the technologically advanced

[29] In its communication on the programme concerning safety, hygiene and health at work (OJ No 88/C 28/02), which was approved by Council resolution from 21.12.1987 (OJ No 88/C 28/01), the Commission considered the Advisory Committee on Safety, Hygiene and Health at Work as an "ideal forum for the consultation of the social partners". The Trade Union Technical Bureau, using the same word, assigns the Committee great importance in articulating the social partners' interests in the early stage of drafting too (TGB 1991, p. 40).

[30] "Pluralism" is meant here in Fraenkel's sense, i.e. that the result of participative processes is the "vector sum" of all included interests (Fraenkel 1964, p. 45).

countries have an advantage, because they usually have a greater potential for expertise than the low-level countries, whose occupational health ministries chronically suffer from a lack of expert staff (see Vogel 1991). The interest in the matter is an important corresponding variable, because the higher the interest is, the more resources will be invested in the committee work. Members report that delegates from low-level countries frequently prefer to listen to discussions to get early information on regulatory acts than to actively contribute.

These impressions are confirmed by the IEP study results, which revealed the following ranking list of Member States according to the number of cases where a particularly strong influence of their delegation was reported (IEP 1989, p. 103):

33 France
31 United Kingdom
25 Germany
15 Italy and Netherlands
13 Denmark
9 Belgium
7 Ireland
6 Luxembourg
5 Greece, Portugal and Spain

The differences between the high- and low-level countries become even greater, when the absolute influence is related to the size of the countries. Then (besides the special cases of the very small countries Luxembourg and Ireland) it turns out that especially the high-standard countries Denmark and the Netherlands have an influence which is clearly above average, whereas the low-standard countries Italy and especially Spain have a rather weak position, compared to the size of their population.

The study's authors comment diplomatically on these findings, remarking that the particularly remarkably low (absolute) score of Spain as a larger Member State "must be seen as a further indication of the fact that committee participants need to get experience in order to know how to exercise influence. ... The dominant picture is that of two or more northern member states mostly together with one or more other delegation - having the strongest position." (IEP 1989, p. 104) "Special interests" (63 %), "personal capacity" (40 %) and "personal continuity" (29 %) were reported as the main reasons for the particularly strong influence of a delegation (ibid., p. 106).

A similar comparison of the States's influence shall be made with regard to the composition of standardization committees (see *infra*, section 4.2).

The differences in the abilities of the Member States' delegations' to participate effectively in the committees' work appear to be one factor contributing to the surprisingly high level of health and safety at work legislation. Another, even more important factor is the Commission's behaviour.

3.3.4 The Commission's Institutional Self-interests and Standing in the Preparatory Process

Obviously, the Commission is interested in regulation on a high level too. Of course, Art. 100a(3) of the Treaty obliges the Commission to draft proposals on a high level of protection. Since this obligation is, as already mentioned, vague and leaves room for the Commission's discretion, the Commission must have an intrinsic interest in regulation on quite a high level too.

One reason is the Commission's and the Commission Members' and the Commission Officials' self-interest in achieving an image as a political actor. The Commission, however, has too few disposable financial resources for "large scale initiatives" in distributive policy (since most of the budget is bound by agriculture and some existing distributive programmes) and therefore tends to regulatory policy:

"Given this constraint, the only way for the Commission to increase its role is to expand the scope of its regulatory activities. This is precisely what happened, and what will probably continue to happen in the future ... . Thus any satisfactory explanation of the remarkable growth of Community regulation must take into account both the desire of the Commission to increase its influence - a fairly uncontroversial behavioral assumption - and the possibility of escaping budgetary constraints by resorting to regulatory policy making." (Majone 1989, p. 167, see also Majone 1992, pp. 137-8).

With a conservative, traditional regulatory policy, the Commission as an institution and the concerned Commission officials can hardly achieve a political image. Thus, the pursuit of a more active political role results in the attempts for innovative regulation which go beyond the Member States' traditional approaches, extending into new regulatory areas like consumer protection, environment protection and occupational health.

We emphasized that not only the Commission as an institution, but also the individual Commission officials are interested in an innovative, high-level regulatory policy. This can be derived from the particular employment situation of the Commission officials. Although empirical research on the Commission's internal social structure is lacking, it is possible to supply a theoretical foundation for the typical impression of everyone who has some contact with the Commission, i.e. that the Commission officials' typical motivational structure is quite different from that of the average national government official. While the staff of the national governments is often recruited from persons who tend to be - compared with their peers who choose an industrial career - solid, correct, security-oriented, conservative, risk-averse and often somewhat narrow-minded, the Commission recruits its staff from people who are highly motivated, risk-oriented, polyglott, cosmopolitan, open-minded and innovative - features which add to a common self-image of Commission officials: "At least trilingual, the Eurocrats are the *avantgarde* of the new European people." (von Senger und Etterlin 1992, p. 21) From the beginnings in the 1960s and up to the present, it has indeed been officials of a special type who chose to leave the relative security of their national administrations to go to Brussels to do there a well-paid but personally extremely challenging job. These people mutually stabilize their motivational structures with a distinct *esprit de corps* and with success criteria, benefit structures and career schemes which appear to honour behaviour which is more *political-entrepreneur*-like than bureaucratic in the classic sense (this impression is shared e.g. by Bach 1992, p. 26). The

structural conditions of recruitment and career favour a tendency to support new ideas and to pursue a strategy of innovative regulation which attempts to go beyond everything which can presently be found in the Member States.

A second reason for the Commission's support for a high level of protection is the Commission's institutional self-interest in maximizing its authority and resources. The higher the level of European regulation, the more authority and provisos of action the Commission will get.

A third reason may lie in Rehbinder/Stewart's assumption that the more powerful (highly industrialized) States' interests are favoured by the Commission, because the diminishing acceptance of the EC by the population of the advanced Member States, who may fear that their historical achievements are jeopardized by social and ecological dumping, can be very critical for the EC - as was seen when a majority of Denmark's population rejected the Maastricht Accord.

The Commission officials' actual behaviour, in the committees involved in directive preparation, is described by the interviewed committee members as follows:

The Commission officials listen (in the committees as in informal preconsultations) to everybody, but are free to choose whose ideas and proposals they adopt. This behaviour opens up great chances of influence for certain individual experts who, because they present ideas which are in line with the Commission's interests, may thus act as "partisans". Usually, the technical annexes of the health and safety at work directives are drafted by such (identifiable) partisans, who may come from the British labour inspection service, the German Federal Agency for Occupational Safety or a similar institution of another high-level country.

In the case of the Machinery Directive, for example, the technical annex with its risk assessment philosophy was drafted by a British labour inspector, who originally intended to reform the British regulatory system (which still follows the traditional, mechanistic concept of occupational health). When he had no success in his own country, he brought his innovative ideas to the European Community, where they were welcomed by Commission officials and eventually became European law.

Partisans have good chances within the committees, since most of the committee members suffer from the usual problems: limited working capacities, time pressure and the pressure to achieve a positive result. The IEP study speaks of a "common interest" in taking care of a matter, which leads to an informal, "'problem-solving' working style in which there are no 'diplomatic behavioural patterns' and no 'hidden power games'" (1989, p. 107). Hence, since every committee member, both from the Commission and the national delegations, is personally interested in effective problem-solving, there is no conflictual attitude of bargaining, coalition-building, plotting and other behavioural patterns which are rife within the Council. In the committees, there is little intergovernmental bargaining, but frequent transnational cooperation.

Committees are not "little Councils", because their participants are in a different situation. The committee members are usually technical experts from the intermediate and even the lower hierarchical ranks within the national governments. Their careers do not depend on their success

in intergovernmental bargaining (which is the ministers' task), but rather on doing good and noiseless committee work, good drafting work (e.g. avoiding legal mistakes, not forgetting important aspects) and coming to positive results on schedule while not neglecting their primary tasks at home.

"Experts, if left to themselves, do not make critical decisions. They attempt to solve problems once and for all, to deprive them of controversy." (Haas 1964, p. 115)

It is *not* the task of the national governments' representatives to bargain on directive proposals in the committees; it is rather their task "to highlight and then iron out those elements in a proposal which will render its implementation or application in the Member States difficult" (Weiler 1988, p. 353). Their committee work is focused on *legal* and *technical*, not *political* problems (ibid.). Furthermore, the phenomenon that the actors on the technical level share more common interests than the political actors (ministers and heads of the governments) - particularly the common interest in improving the level of health and safety at work regulation (and thus getting more authority and resources) - is to be observed in practical committee work (*copinage technocratique*, for this explanatory approach see Weidner 1955 and Beer 1974).

According to Kohler-Koch (1990, p. 224), the administrative actors may even have a common interest in transnational cooperation, in order to get more room for action and to get some independence from their own national governments and parliaments (see also Winter 1991, p. 166).

Similarly, Bach (1992, p. 24) states that administrative and regulatory processes are "de-nationalized" by passing them to the level of technical experts who are interested in pragmatic solutions. These experts tend to "problem-solving" instead of "bargaining" (to use Scharpf's [1985] categories) within transnational bureaucratic networks, which in turn grant them "privileged access to data and positions on decision-relevant processes in Brussels and often also to the respective state of decision in the other Member States. These can be used excellently for bilateral coalition-building on the level of officials, in order to promote or to obstruct single projects." (ibid., pp. 25f., my translation)

Given this configuration of interests, committees usually welcome initiatives from partisans who offer to do a great deal of the practical work. Furthermore, committees take the character of working groups, and social groups tend to follow leaders. The level of protection may be raised, since these partisans tend to be people with innovative ideas rather than conservative delegation members, because innovators sometimes try it on the European level, when they fail in their home countries (as in the case of the Machinery Directive), whereas conservatives do not engage themselves on the European level, from which they expect no threats. In this respect, the expectation of *social dumping* may turn out to be a "suicidal prophecy". Schmitter's interpretation is that the "rather extraordinary success of the Eurocrats in sustaining a consistently low political profile can be evidenced by the low scores for popular resistance" against integration (1992, p. 25).

Another startling phenomenon is the fact that the committee members sometimes do not maintain an overview of all of the consequences of the regulative provisions which they support. With regard to the innovative philosophy of the Machinery Directive, one interviewee remarked,

"I think they did not understand what we were talking about." The partisan, who drafted the Directive's technical annex, even claimed: "We hijacked the Directive."

These social dynamics of committees strengthen the position of the Commission, whose representatives are the chairpersons and thus control the committee work.

According to the results of the IEP study (1989, pp. 83-85), the Commission prepares the committee work carefully. Particularly when the subject is considered important, the Commission defines its course very precisely, usually on the level of Heads of Division (30 %) and Directors (41 %), but sometimes also on the level of the Director General (11 %), the Commissioner (3 %) or the College of Commissioners (7 %). As already mentioned, the original ideas and, if presented, proposals of the Commission are mostly modified during the committee work, but very rarely rejected. The modifications reduce the level of conflict, but usually leave the essentials untouched.

Another technique to increase the legitimation is to collect statements. As reported from the advisory committee, which is currently in charge of preparing the Pressure Equipment Directive (which is due in 1993), "everything is discussed. And to each issue there are at least two opinions. The Commission officials listen to everything, but don't participate in the discussions. Finally, the Commission presents a directive proposal, and every aspect of this proposal is legitimated, since there was always someone who supported it." (Interview, advisory committee member)

In this way, the Commission appears to get legitimation without effective participation. This is possible, because there is little formal voting, although all committees are supposed to take formal votes. In 56 % of the advisory committees (directive preparation is a merely advisory task without formal powers for the committees), formal voting never takes place (IEP 1989, p. 92).

The Commission's strategy to get a dominant position as the process manager is eased by the fragmentation of the national representation in Brussels, so that the overview of the total regulatory system "remains essentially in the Commission's hands" (Weiler 1988, p. 352). This is even true within single policy-fields like health and safety at work legislation. National experts, for example, tend to deal with 100a and 118a directives separately (e.g. Konstanty/Zwingmann 1991), although all health and safety at work directives follow the same underlying philosophy (even use the same formulations) and establish a rather coherent system of protection on a high and even level.

Another startling fact is, that obviously few actors are sufficiently informed about legal status, functions, authority and procedures of committees. At least no less than 39 % of the responding committee secretaries and chairmen (!) did not know the specific type of "their" committee regarding the Council decision 87/373/EEC on *comitologie*. (For researchers in this field, it is a frequent experience that committee members are not able to correctly name the committee to which they belong.)

Although the Commission has a strong position, which allows it to pursue its ideas and interests quite independently from the Member States, coalitions of the national delegations (with the

effect of eventually forming a blocking minority) are rare. A permanent coalition against the Commission was found in only 4 % of the examined committees, while in 64 % of the cases coalition-building never occurred (IEP 1989, p.99).

The Commission's *divide et impera*-strategy, that prevents coalitioning in the committees, gives it - at least in the national delegates' perception - an extraordinary standing within the committees, as a German government representative - with a clear feeling of anger and frustration - depicts:

"The EC Commission *quasi* determines the guidelines of the policy. The EC Commission has a monopolist position, it is not under parliamentary control. .. The EC Commission is like a tank, it gets through everywhere. It is a kind of dictatorship, without democratic control. .. If the EC Commission finds out that a blocking minority will not be achieved, it enforces its conceptions. .. 90 % of our proposals are rejected, unless we indicate that we have come to an agreement with the French delegation." (Interview, advisory committee member/national government representative)

It also becomes clear from the description of the chairman of the German delegation to the advisory committee on the preparation of the Machinery Directive, an official of the Federal Labour Ministry, that the Commission insisted in its draft proposal against the criticisms of many Member States's delegations - in one case (scope resp. definition of machinery) even against France, United Kingdom, Denmark and Germany combined (Kalwa 1988, pp. 56-57). Obviously, the Machinery Directive was one of the highly important issues where the Commission insists regardless of the committee's reservations - and where the governments - with only one exception - approved the proposal in the Council of Ministers in spite of the reservations of their committee delegations.

To sum up, in the preparatory stage of Community legislation there are several factors adding to the chance of high-level regulation:

* A common interest of the committee members in a level of protection which is higher than current regulation in their home countries.
* Greater influence of the national delegations from the high-level countries.
* Good chances for partisans with innovative ideas.
* The Commission's interest in high-level regulation, combined with the Commission's dominant and by the committees effectively undiminished role in the process of proposal drafting.

Proposals, however, are not binding. What happens to Commission proposals during the further steps of the legislative process?

3.3.5 The Fate of Commission Proposals in the Further Steps of the Legislative Process

Reviewing the history of the health and safety at work directives, the general pattern reveals itself, according to which the level of protection is even raised during the legislative process from the first Commission proposal to the final Council directive.

Especially the European Parliament and the Economic and Social Committee were involved in raising the level of health and safety at work legislation, as demonstrated by two examples:

Example 1: Selected steps of the genesis of the Machinery Directive 89/392/EEC

1. First Commission proposal from 22.12.1987 (COM(87)564 final; OJ No 88/C 29/01)
2. Modified Commission proposal from 24.6.1988 (COM(88)267 final; OJ No 88/C 214/23)
3. Comment of the Economic and Social Committee from 27.10.1988 (OJ No 88/C 337/11)
4. Legislative Decision of the European Parliament (First reading) from 16.11.1988 (OJ No 88/C 326/40)
5. Council Directive from 14.6.1989 89/392/EEC (OJ No 89/L 183/9)

The comparison of the First Commission proposal and the final Directive reveals only relatively small modifications in favour of more participation of the social partners and somewhat tighter technical provisions. One important extension of the Directive's scope, however, - the inclusion of wood working machines - was already proposed by the Commission with its modified proposal.

This extension was welcomed by the ESC, which also judged the high protection level philosophy and the innovative health and safety at work concept positively. The ESC also welcomed the Commission's intentions to improve the opportunities for the participation of the social partners in CEN/CENELEC standardization and in the Directive's execution (the ESC was informed about these intentions by informal consultations).

The European Parliament welcomed the Commission's intentions too, and formulated concrete proposals for amendment on the subject of the social partners' participation. The EP was entirely satisfied with the essential requirements.

Compared to the first Commission proposal, the final Directive was modified as follows (major modifications only):

* The goal of the preservation or improvement of the level of protection was added to the preamble.

* The provision was added, that opportunities for the social partners' participation in the work of harmonizing standards are to be created (Art. 5 (3)).

* The provision was added that a standing committee for the Directive's execution is to be installed (Art. 6(2)).

* The essential requirements were tightened up. Especially the absolute requirements approach (regardless of the technical opportunities) was added, the principles (annex I, No. 1.1.2) were tightened up considerably ("*without* putting persons at risk"; "the machinery must be designed to prevent abnormal use if such use would engender a risk")[31], some provisions were extended (No. 1.2.6. and 1.2.7) and the provision was added that interactive software must be user-friendly (1.2.8).

[31] Two modifications, however, weakened the original text: the reservation ("when it is used under the conditions foreseen by the manufacturer") in the preliminary observations and the word "*reasonably* be expected" in the obligation of 1.1.2. c).

In all stages of the Directive's history, the Commission acted as the dominant driving force, which was able to realize practically all of its intentions. The Commission was supported by the Economic and Social Committee and by the European Parliament, which seemed to be dominated by the Socialist faction (in the second reading the EP's rapporteur spoke also on behalf of the Socialist faction; OJ No 89/C 158/75) and which demanded some more regulations in favour of the Trade Unions without success.

Example 2: Selected steps of the genesis of the Display Screen Equipment Directive 90/270/EEC

1. First Commission proposal to the Council from 11.3.1988 (COM(88)77 final; OJ No 88/C 113/07)
2. Comment of the Economic and Social Committee from 12.12.1988 (OJ No 88/C 318/13)
3. Legislative Decision of the European Parliament (First reading) from 14.12.1988 (OJ No 89/C 12/92)
4. Modified Commission proposal from 28.4.1989 (COM(89) 195 final; OJ No 89/C 130/07)
5. Common standpoint of the Council (C3-9/90 - SYN 127; OJ No 90/C 113/75)
6. Decision of the European Parliament (Second reading) from 4.4.1990 (OJ No 90/C 113/75)
7. Council Directive from 29.5.1990 (90/270/EEC; OJ No 90/L 156/14)

When the first Commission proposal and the final Directive are compared, it can be seen that a couple of provisions have been formulated more precisely, that quite a few of the provisions have been tightened up and that important new provisions have been added. The general impression is that the text has been improved according to the Commission's original intentions and that the essentials have been tightened up considerably.

Both the Economic and Social Committee and the European Parliament demanded that the first Commission proposal be strengthened. The Commission reacted to these comments by presenting a modified proposal, which included some important proposals for amendment of the ESC's and the EP's comments. The main amendments were:

* The goal of the improvement of the level of protection of workers' safety and health was added to the preamble (according to the EP's proposal).

* The elimination of a reservation ("if necessary") regarding the employer's obligation to eliminate hazards (Art. 3 (2) in the final Directive) (EP proposal).

* A new article (final: Art. 7) was added, which provided the employer's obligation for an appropriate work organization. Measures (breaks) against monotonous work and continuous stress (as demanded by the ESC; the EP proposed a limitation of work at display screen equipment to 50 % of the daily working time).

* It was added that the workers and their representatives are to participate in the regulation of the working time (The EP demanded more comprehensive participation).

* In the technical annex several new provisions were added, according to EP proposals (e.g. the screen has to be free of reflections, the system is not to produce discomforting heat).

* According the ESC's main demand and the EP's demand, protection from radiation was added.

* In the section regarding software ergonomics, the EP's demand was added that no hidden checking facility may be installed.

While the ESC proposed moderate improvements of the level of protection, the EP's comments implied many demands for a rigid tightening up of the Directive proposal which were not accepted by the Commission. Of particular interest may be the fact that the EP proposed amendments with detailed technical specifications, e.g. limit values for lighting, noise and radiation. The Commission, however, and finally the Council, continued to apply the New Approach.

With the Council's common standpoint the Commission's proposals were not only adopted but some provisions were even tightened up, e.g.:

* The employers were obliged to keep themselves informed about the *latest* advances in technology and scientific findings concerning workstation design (preamble).

* Art. 7 (work organization) was tightened up (interruption of the work on a display screen with regular breaks or other tasks).

* In Art. 8 the workers' right of participation was greatly extended to all questions of the Directive.

* To Art. 9 the obligation of regular ophtalmological examinations was added, and it was added that the protective measures are to be free of charge for the workers.

* Several details of the technical annex were tightened up (e.g. footrest upon the request of the worker instead of if necessary).

* The provision of ergonomic software design was formulated more precisely with the effect of tightening it up.

Regarding one aspect, however, the modified Commission proposal was weakened: The provision that no hidden checking facility may be used was altered to the provision that such facilities may not be used without the knowledge of the workers.

In the second reading, the European Parliament made many more proposals for amendment with the intention of a further tightening up, which were not added to the final Directive, e.g.:

* Health and safety at work *on the highest possible level* (!) (preamble).

* Participation of the social partners, especially the trade unions, in the Directive's implementation (preamble).

* Special protection for pregnant women (preamble and a new article).

* Improved participation rights for the workers and their representatives (Art. 6 and 8).

* Many improvements in the technical annex, including the re-establishment of the rigid restriction of checking facilities.

But a few proposals were indeed at least partially adopted:

* The proposal to eliminate combination effects too (Art. 3 (2)).
* Ophtalmological examinations by persons with the necessary qualifications (Art. 9).
* Stricter requirements for the document holder (annex).
* Inclusion of the space requirements (annex).
* An extension of the software ergonomic requirements (annex).

The genesis of the Display Screen Equipment Directive is the history of an (almost) continuous tightening up. Both the Economic and Social Committee, and particularly the European Parliament, demanded stricter regulations, many of which were adopted by the Commission, and even the Council seemed to tighten up some provisions.

The Parliament's and the Economic and Social Committee's behaviour is not surprising. The EP and the ESC are European institutions which have a similar interest in overcoming intergovernmental bargaining (and blockades) and in attaining a distinct and innovative image. Furthermore, within the Economic and Social Committee and within the EP Committee - where the socialist faction plays a dominant role - phenomena occur similar to those in the advisory committees to the Commission.

The Commission itself quite often amends its proposals during the process. The measures are generally tightened up, especially when the Commission's basic intentions and the delivered comments go in the same direction. Then, the Commission adopts and even strengthens the proposals for amendment as far as they fit into its concept[32]. Many of the EP proposals, which are politically controversial, however, have no chance of further consideration. The possibility of enforcing unanimous consent within the Council to outvote an EP decision is not of much use, because the EP is trapped in the logical dilemma that unanimity would reduce the chance for high-level legislation[33]. Hence, the EP will be most influential, if it forms coalitions together with the Commission (Winter 1991, p. 163).

The right of proposal has been characterized as the main reason why the institutional equilibrium is biased towards the Commission. The history of the health and safety at work directives indicates that the Commission proposals have good chances of passing the Council without substantial amendments.

There are several factors why the Commission proposals do not fail in the Council although they provide a level of protection which surpasses by far the least common denominator of the Member States required for a qualified majority. The main reason is that the logics of decision-making within the Council is reversed by the Commission's prerogative of proposal (see *supra*). Package-deals, the notorious time-pressure and the fact that there is no alternative to the

[32] Similar processes occurred in environmental regulation, e.g. when the Commission adopted and even reinforced the Parliament's tightening up of the Small Car Directive (see Arp 1991, pp. 26ff. and Strübel 1992, p. 286).

[33] An example was the EP's proposal for more stringent limits in the Benzole Directive. The proposal for amendment failed, because it was not adopted by the Commission and the Council (as was to be expected) did not come to a unanimous consent on sharper limits (TGB 1991, p. 44).

Commission proposal contribute to a high barrier against rejection. The political price of vetoing, which is considered as "national obstructionism", is high; "the veto is a tactic to be used only *in extremis*" (H. Wallace 1990, p. 222). The division of labour between the European Council and the Councils of Ministers increases the barriers against vetoing against single proposals in the Council of Ministers, because the packages are tied in the European Council across policies. "It is possible then that within this process of decision-making by horse trading, proposals will be accepted by Member States despite objections from their internal bureaucracies" (Weiler 1988, pp. 353-354).

Finally, if the Commission proposal is above the level of protection of *all* Member States, relative deprivation is a lighter burden than absolute deprivation. As one representative of a German labour ministry, who belongs to an advisory committee, states:

"Naturally we are not satisfied with every aspect of the Commission proposals. But facing the high political costs within package-deals, the barrier against voting negatively is high. We would not recommend voting against the proposal in the Council of Ministers, when we can tell our minister that we can live with the Directive and that all others have to adapt too." (Interview)

This statement reveals a paradoxical effect of the "division of labour" between Council and Commission: the Commission was given the prerogative of proposal by the Member States, and it uses the latter to draw up innovative regulatory proposals providing a high level of safety and health at work, because, besides its institutional self-interest in innovative social regulation, this is its *task* as the Community's driving force and guardian of the *acquis communautaire*. The Commission does *not* intend - and claims it has not the necessary legal authority - to *bargain* on its proposals in the committees or elsewhere, neither with the Member States' representatives nor with interest group representatives, because this would be the Council's task (according to Commission official Zachmann 1988, p. 538). There is no safeguarding of national interests in the advisory committees.

As we have seen with the examples of the Machinery and the Display Screen Equipment Directives, the Council, however, usually does no more than slightly modify and ratify the Commission's proposals, because it is assumed that all interests, including all Member States' interests, have received due consideration during the complex preparatory process, including the committee work. Hence, at least in the area of health and safety at work legislation, the Commission's right of proposal appears to become *de facto* the power to determine the Community's regulatory policy: ".. the Commission proposal .. remains, despite Council amendment, the core legislative text of Community legislation" (Weiler 1988, p. 339).

An additional factor is to be seen in the fact that the low-level countries' reluctance to accept high-level legislation is also reduced by the opportunity to compensate the high requirements somewhat by weak implementation. The *de jure* transposition of the directives into national law already takes many years, since the directives provide generous time-limits for transposition and many States still delay transposition until, on the Commission's request, the European Court of Justice compels the States to transpose appropriately (for statistical data on the increasing number of violations of the Treaty see Joerges et al. 1988, pp. 276-280).

With the usual time-lag in mind, the minister who agrees to a directive in the Council has not much reason to be afraid of being made responsible for helping to provide a higher level of

protection. Even in Germany, where the ministry of econmic affairs was involved in the discussion of the health and safety at work directives from the beginning (VdTÜV 1988, DIN 1989), the gatekeepers of the employers' interests within the government did not become fully aware of the directives' implications (new liabilities for the employers, more rights for the workers, broad scope of the regulation of the working environment) until autumn 1992, when the transposition into national law was due. The political conflict was not raised in 1988, when the directives were prepared, but in 1992, when the consequences became visible (see IG Metall 1992).

Furthermore, low-level countries tend to be less accurate with *de facto*-implementation of health and safety at work regulation, as a delegate from a high-level country said: "We are used to obeying everything in writing. Other countries aren't that correct." (Interview, government official) Some of these countries do not have an inspection service capable of ensuring an appropriate *de facto*-implementation (see Vogel 1991, Baldwin/Daintith [eds.] 1992); in some countries (United Kingdom, Netherlands, Italy, Spain, Germany, France) it even looks as if rather rigid legal provisions are deliberately "softened" by weak enforcement structures and practices (Baldwin 1992, pp. 229-230).

Weiler made an interesting observation (1988, pp. 355-356): Member States which appear as "tough and detail-minded negotiators" in the Council (like Denmark, "verging almost on the obstructionist"), tend to implement the decisions rather correctly, while countries which are ready to compromise (like Italy, with a "reputation as one of the most *communautaire* Member States") tend to have very poor records of compliance (see also the Commission communication on implementation of the legal acts required to build the single market COM(89) 422 final of 7.12.1989).

At least in the past, the Commission seemed to ignore the *de facto*-implementation problems, because it has several reasons to do so:

* The opportunity of a weak *de facto*-implementation reduces the level of conflicts within the Council and eases decision-making.

* Since there are still too few harmonized standards, there is not much to inspect thus far.

* The Commission is busy with legislation and has no capacities to monitor *de facto*-implementation in the Member States.

"All in all the Commission for the most part gives very little impression of wanting to check up on how exactly Community Directives are being applied and to what effect. Commission officials perhaps lose interest in a Directive once agreed, and prefer to move on to framing other new Directives." (Siedentopf/Ziller 1988, Vol. II, p. 665)

But this situation might change. If the Commission has fulfilled most of its legislative duties to create the internal market, the institutional self-interest in maximizing resources and powers will make it seek additional tasks, which might be in the field of *de facto*-implementation of European law. There are first indications that the Commission is tending toward implementation: besides its increasing involvement in standardization, the Commission has already proposed the establishment of a European agency for health and safety at work (OJ 1991 C 271/3), which has already been demanded by the unions (Konstanty/Zwingmann 1991, p.

268, TGB 1991, p. 91) and which "would potentially enhance the Commission's health and safety capabilities significantly" (Baldwin 1992, p. 247). If the Commission becomes more active in implementation, the level of protection will become really high in the Member States.

Harmonized European legislation provides a surprisingly high level of health and safety at work regulation. The complex, opaque and Commission-dominated decision-making process leads to results which would never be expected from simple inter-governmental bargaining within the Council. The democratic legitimation of European decision-making is doubtful, but the results are surprisingly good - and much better than expected by mere inter-governmental bargaining. It seems that exactly the democratic deficits - the opacity, the different *de facto* participation chances and the Commission's leadership - are responsible for the good results. No wonder, that the Commission officials object the idea of more publicity in the preparatory stage of European legislation (IEP 1989, p. 145).

And the Commission's role does not end with the passing of directives by the Council. When a New Approach directive is passed, merely the legislative framework for regulation has been provided. Most of the *de facto* regulation is delegated to the European standardization bodies, raising the question of how different interests participate in this part of the regulatory process and how the peculiar relationship between legal and private regulation is managed.

4. Actors and Processes of European Health and Safety at Work Regulation - Part 2: European Harmonization of Technical Standards

In section 2.2.2, the formal process of technical harmonization was briefly described. In fact, the process may vary and be connected with several problems concerning the participation of different interests and hence the democratic legitimation of the resulting standards. A closer analysis of the problems and prospects of European standardizations starts with the working and decision-making methods of standardization committees, before turning to the chances of participation of different interest groups, and the recent discussion on remedies.

4.1 How Standardization Bodies Work and Make Decisions: The Role of Consensus and Majority

> "Standardization is a tug-of-war, a sports fight, which is not always fair. Politics are made there in a big way." (Interview, standardization committee member/government representative)
>
> "Many battles are fought." (Interview, standardization committee member/government representative)

The basic principle of decision-making in technical standardization on national, international and European level is *consensus*. This is very obviously for anti-trust reasons, because otherwise a majority of manufacturers could outvote competitors and pass standards which would discriminate against those manufacturers whose representatives only form a minority in th

committees. Therefore, the internal and sometimes external[34] regulations for the standardization process prescribe that standards have to reflect common interests and must not lead to special economic advantages for single participants (see e.g. the internal regulations of the German DIN: DIN 820 part 1, standardization, principles, No. 2). Consequently, standardization is carefully watched by anti-trust agencies. Anti-trust legislation, however, relates to economic disadvantages only, while non-economic interests generally have fewer possibilities to use the courts to assure appropriate consideration of their interests if they are outvoted.

Consensus, however, does not mean that each member of a committee has veto-power - otherwise the standard-setting process could easily be blocked by single participants. Inofficially, consensus is usually defined as "absence of substantiate opposition" (Interview, standardization manager). This means in practice that single opponents who insist in their rejection and who do not agree to a compromise are just ignored.

To achieve consensus, usually much discussion on the level of technical details is required within the working groups. This is the main reason for the long - and often criticized - duration of the standardization process (rarely less than 3 years and sometimes up to 10 years or more). Time is the price for the acceptability of standards. Each argument has to be discussed in detail, either until an agreement is found or absolutely incompatible positions have been cleared (and the standardization issue is dropped). Usually, the decision-making process is broken down into small steps: each formulation is discussed in detail, and after all arguments on each item have been exchanged, at the very end of the process, all committee members are asked whether everybody can accept the result or - the other way round - whether there is someone who still opposes it fundamentally. Inquiring especially about opposition against the result of an aching discussion process can be a technique to achieve consensus.

Although technical argumentation plays a key role in consensual decision-making processes, the numeric composition of the committees is still of some importance. First, the working methods vary greatly and there are some committees where decisions are frequently made by majority voting (and accepted by the minorities). But this is the exception. There are certainly more committees where there is no formal voting, but where majorities are nonetheless important. There are several reasons why the numerical composition of consensual committees is still important:

* Within majority factions there is a greater variety of technical expertise, and the majority factions thus have an advantage in technical discussions.

* The majority has better chances for differentiated argumentation strategies, because each member can have his or her own strategy and can attack one or two minority representatives from various sides.

* The majority can work more efficiently, because the majority faction can divide the workload among its members.

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[34] In Germany, for example, the system in which technical standards specify general requirements provided by law is regulated by a treaty between the Federal Government and the German Standardization Institute DIN. Before this treaty was signed in 1975, the DIN had to renew its internal regulations (DIN 820) according to the principles of consensus and multi-interest representation. Among the essentials of this treaty are, that the DIN must not change these internal regulations, and that the DIN has to respect the public interest.

* There are greater shares of speaking time for the majority faction.

* The participants within the majority faction have better support by others, and therefore, the debates are less exhausting for each individual within the majority faction.

* The members of the majority come less frequently into veto positions than minority members. But the one who always blocks will gradually be taken less seriously by the others and regarded as an outsider who is not interested in achieving a result (Battis/Gusy 1988).

The last aspect may be the most important. Standardization committees which have existed for many years are more than mere working groups, they become social groups too, and hence, standardization is not a mere rational process, it is also a *social process* (see Eichener/Voelzkow 1991). Social groups have a specific life cycle, often described as "forming, storming, norming, and performing" (Witte/Ardelt 1989, p. 255). Before groups can start working, some fundamental conflicts have to be settled ("storming") and some basic agreements and group-specific norms have to be found ("norming"). Once settled, these points are no longer discussed, and the group is ready to work efficiently ("performing").

The harder it has been to achieve a consensus, the more tenaciously this fragile consensus is defended against every criticism or proposal for amendment. If there is a minority of members who do not share these basic agreements and norms, they may be treated as social outsiders and discriminated against by more or less subtile practices. Important information is withheld from them; they are excluded from the "inner circles", where the fundamental decisions are made, mostly in an informal way; they are excluded from social activities and from professional networks.

"Personal contacts between the members have much effect. The committee members come closer over the years. In the course of time a committee becomes a closed circle. The people meet in a private atmosphere, e.g. with their wives at a lake resort. It then comes to a certain aversion against non-members and new members. The members together with the *clique* then agitate against every new one. This implies certain risks, but on the other side it contributes to the progress of work." (Interview, standardization manager)

"If you are member of a standardization committee, you are blind. You fight for your standard." (Interview, standardization committee member/industry representative)

To be not only in a minority position, but also treated as an outsider, can be quite unpleasant - hence, many individuals would rather either dispense with fundamental opposition and limit their contributions to minor corrections or leave the committee, because they see no use in participating in a committee where they and their arguments are not accepted (Eichener/Voelzkow 1991).

In order to be accepted, it is quite important to share the values, norms and symbols of the dominant social group which is involved in the standardization process. It is especially important to be a member of the same professional subgroup. In a committee regulating safety of machinery, for example, which is dominated by technicians, it is difficult for a psychologist or sociologist to be accepted, because he or she speaks a different language, has different ideas and concepts, different values and goals and quite often even different social behavior and a different outfit ("The outfit is a way to spoil one's job." - Interview, standardization manager).

The social dynamics of standardization committees are quite important for the chances of different interest groups to achieve influence, especially if a dominating majority is sent by one distinct group (usually the industry) while the representatives of the other interests (e.g. the employees' interests) form just a small minority.

These remarks are related to standardization committees in general. At the first glance, European standardization committees seem to work in a different way. CEN/CENELEC regulations provide that decisions are made by the national representatives' weighted votes (analogue to voting within the Council) within the Technical Bureaus. But in fact, the decisions are made on the lower levels, in the Technical Committees and in the Working Groups, where there is no weighted voting. On the working level, often not all states are represented, while other states send two or three representatives, and there are additional committee members with a *liaison* status. In Technical Committees and Working Groups, decision-making is usually consensus-based, and the way of working is the same as in other standardization bodies. There are only majority decisions in the case of severe conflicts in the Technical Bureau.

4.2 National and Functional Representation in European Standardization

When we analyzed the preparatory stage of European health and safety at work legislation, we quoted results of an empirical study on *comitologie*, which reflect quite a different influence of Member States within Commission committees, with the tendency that the Member States with a high level of protection are much more influential than the low-level States. A similar picture can be drawn when national representation in the standardization committees is analyzed. As an example, the national composition of CEN TC 114, the technical committee which draws up safety standards for machinery (including standardization mandates according to the Machinery Directive), shall be listed. The following table contains two columns of figures: the absolute number of experts who are listed in the CEN TC 114 expert list from February 1992 and the number of experts, weighted by the number of working groups in which they are active[35]:

CEN TC 114 "Safety of Machinery": territorial representation

Country	Abs. No. of Experts		Weighted No. of Experts	
total	253	100 %	419	100 %
Germany	59	23 %	82	20 %
France	39	15 %	57	14 %
United Kingdom	32	13 %	39	9 %
Austria	12	5 %	34	8 %
Belgium	20	8 %	31	7 %
Finland	14	6 %	28	7 %
Italy	12	5 %	27	6 %

[35] This analysis was made by Erwin Scherfer (1992).

Sweden	16	7 %	26	6 %
Denmark	12	5 %	22	5 %
Norway	12	5 %	22	5 %
Switzerland	10	4 %	16	4 %
Netherlands	5	2 %	9	2 %
Spain	4	1 %	7	2 %
Luxembourg	3	1 %	-	-
Portugal	2	0 %	2	0 %
Iceland	1	0 %	1	0 %
Greece	-	-	-	-
EC Commission			13	3 %
TUTB			3	1 %

It is not surprising that the German representatives dominate the Membership of CEN TC 114 (Germany also holds the TC's chair and secretariat), because Germany is Europe's largest manufacturer of machinery and has a long tradition of standardization. The high rankings of France and United Kingdom are also expectable. Some other facts are, however, remarkable. (1) Over 30 % of the working group members are representatives from EFTA States (which have a smaller share with regard to population and economy). (2) The rather small countries Austria, Denmark, Sweden, Norway, Finland and also Belgium appear to be relatively well represented, while the southern countries are fairly poorly represented, including the large countries Italy - as Europe's second largest manufacturer of machinery![36] - and Spain. Portugal practically does not and Greece literally does not participate in European standardization of safety of Machinery. Scherfer (1992, p. 6) draws the following conclusions:

* The countries with a high level of protection are quantitatively and qualitatively dominant (Germany, France, United Kingdom, Austria etc.).
* The countries with an innovative, "super high" level of protection are fairly strong, compared to their size (Sweden, Denmark, Norway).
* The countries with a low level of protection are insignificant.

This inequality of influence is an effect of the general rule that the more technologically advanced a country is, and the higher the level of health and safety at work is, the higher both the interest in and the capacities for participation in standardization are.

The functional composition of CEN TC 114 can not be described very exactly, since a number of experts cannot be definitely assigned to a special group. The relations between the functional groups can be estimated as follows:

[36] The system of technical standardization in Italy still is quite inefficient (Verboon/Andriessen/Kwante 1992, p. 51).

CEN TC 114 "Safety of Machinery": functional representation

health and safety at work institutions (labour ministries, labor inspection services, occupational injury insurances, research institutes)	90-100	36-40 %
industry (incl. associations)	90-100	36-40 %
standardization bodies	25	10 %
consumer organizations	1	0 %
trade unions	5	2 %
other (scientists, testing institutes, ministries of economic affairs etc.)	20-40	8-16 %

Compared to other standardization committees, the good representation of occupational health institutions (in particular the German *Berufsgenossenschaften* among them) and the relatively low share of industrial representatives is startling. One has to keep in mind that CEN TC 114 does not deal with special products but with safety of machinery in general, e.g. with principles, terminology, risk assessment and general protection measures for various kinds of machinery. Therefore, the interests of single manufacturers are not directly affected. A manufacturer, e.g. of grinding machines, will usually not send delegates to CEN TC 114 but to TC 65, which draws up specific standards for grinding machines; but a specialist for two-hand controls of a health and safety agency will go to the respective working group of TC 114 (WG 7). Furthermore, the machinery industry is extremely heterogenously structured, with few large producers but thousands of small and medium-sized enterprises, which have few capacities to invest in standardization, i.e. in contributions to the production of a public good. No wonder that among the industrial delegates to CEN TC 114, many are sent from large companies like Siemens, AEG, FIAT, Renault, Peugeot, Volkswagenwerk, Saab Scania, Volvo, Michelin, Norsk Hydro, ICI, Hoechst, Bayer, CIBA-GEIGY, Nokia or EDF.

Besides CEN TC 114 a lot more standardization committees draw up European Standards for safety and health at work. The CEN committees which are busy with standardization in the field of safety of machinery are listed as follows:

CEN TC 10 Passenger, goods and service lifts (chair: manufacturer, F / secretariat: F)
CEN TC 54 Unfired pressure vessels (chair: N.N. / secretariat: UK)
CEN TC 65 Portable grinding machines - mechanical safety (chair: manufacturer, D / secretariat: D)
CEN TC 69 Industrial valves (chair: industry, F / secretariat: F)
CEN TC 98 Lifting platforms (chair: technical supervising association, D / secretariat: D)
CEN TC 113 Heat pumps and air conditioning units (chair: industry, D / secretariat: D)
CEN TC 114 Safety of machinery (chair: standardization institute, D / secretariat: D)
CEN TC 121 Welding (chair: Institute, DK / secretariat: DK)
CEN TC 122 Ergonomics (chair: Science, D / secretariat: D)
CEN TC 123 Lasers and laser equipment (chair: manufacturer, D / secretariat: D)
CEN TC 137 Assessment of workplace exposure (chair: occupational health insurance, D / secretariat: D)
CEN TC 142 Woodworking machines - safety (chair: manufacturer, UK / secretariat: UK)
CEN TC 143 Machine tools - safety (chair: industry, UK / secretariat: I)

CEN TC 144 Tractors and machinery for agriculture and forestry (chair: industry / secretariat: F)
CEN TC 145 Rubber and plastics machines - safety (chair: manufacturer, D / secretariat: D)
CEN TC 146 Packaging machines - safety (chair: institute, I / secretariat: I)
CEN TC 147 Cranes - safety (chair: health and safety executive, UK / secretariat: UK)
CEN TC 148 Continuous handling equipment and systems - safety (chair: industry, F / secretariat: F)
CEN TC 149 Rail-dependent storage and retrieval equipment - safety (chair: manufacturer, D / secretariat: D)
CEN TC 150 Industrial trucks - safety (chair: industry, UK / secretariat: UK)
CEN TC 151 Construction equipment and building material machines - safety (chair: occupational health insurance, D / secretariat: D)
CEN TC 152 Fairground and amusement park machinery and structures - safety (chair: health and safety executive, UK / secretariat: UK)
CEN TC 153 Food processing machinery - Safety and hygiene specifications (chair: standardization institute, D / secretariat: D)
CEN TC 156 Ventilation for buildings (chair: standardization institute, UK / secretariat: UK)
CEN TC 168 Chains, ropes, webbing, slings and accessories - safety (chair: manufacturer, UK / secretariat: UK)
CEN TC 169 Lighting applications (chair: manufacturer, D / secretariat: D)
CEN TC 182 Refrigerating systems, safety and environmental requirements (chair: health and safety insurance, D / secretariat: D)
CEN TC 186 Industrial thermoprocessing, safety (chair: manufacturer, D / secretariat: D)
CEN TC 188 Conveyor belts (chair: Science, UK / secretariat: UK)
CEN TC 195 Air filters for general air cleaning (chair: manufacturer, B / secretariat: B)
CEN TC 196 Machines for underground mines - safety (chair: Science, UK / secretariat: UK)
CEN TC 197 Pumps (chair: manufacturer, F / secretariat: F)
CEN TC 198 Printing and paper machinery - safety (chair: standardization committee, D / secretariat: D)
CEN TC 200 Tannery machinery - safety (chair: manufacturer, I / secretariat: I)
CEN TC 201 Leather and imitation leather goods and footwear manufacturing machinery - safety (chair: manufacturer, I / secretariat: I)
CEN TC 202 Foundry machinery (chair: manufacturer, D / secretariat: D)
CEN TC 211 Acoustics (chair: institute, D / secretariat: DK)
CEN TC 213 Cartridge operated hand-held tools (chair: manufacturer, D / secretariat: CH)
CEN TC 214 Textile machinery and allied machinery (chair: manufacturer, CH / secretariat: CH)
CEN TC 218 Rubber and plastic hose assemblies (chair: UK / secretariat: UK)
CEN TC 228 Heating systems in buildings (chair: institute, DK / secretariat: DK)
CEN TC 231 Mechanical Vibration and shock (chair: occupational health insurance, D / secretariat: D)
CEN TC 232 Compressors - safety (chair: manufacturer, S / secretariat: S)
CEN TC 233 Biotechnology (chair: B / secretariat: F)
CEN TC 240 Thermal spraying and thermally sprayed coatings (chair: manufacturer, D / secretariat: D)
CEN TC 242 Safety Requirements for passenger transportation by rope (chair: manufacturer, F / secretariat: F)
CEN TC 247 Controls for mechanical building services (chair: manufacturer, CH / secretariat: CH)
CEN TC 255 Hand-held, non-electric power tools - safety (chair: manufacturer, S / secretariat: S)
CEN TC 270 Internal combustion engines - safety requirements (chair: N.N. / secretariat: D)
CEN TC 271 Surface treatment equipment - safety (chair: N.N. / secretariat: D)

CENELEC TC 44X Safety of machinery, electrotechnics

(source: CEN 1990, 1991)

The following table shows the national and functional structure of the key functions, the chair and the secretariat[37]:

[37] The chairman (it *is* usually a man) and the manager have the opportunity to control the discussions within the committees to a wide extent. As a standardization manager explains: "The sessions must be well-prepared. Everything must be pre-arranged so that chairman and manager can play into each other's hands. Nothing must be a matter of chance." (interview)

	chair	secretariat
country:		
Germany	19 = 42 %	19 = 39 %
United Kingdom	10 = 22 %	10 = 20 %
France	5 = 11 %	7 = 14 %
Italy	3 = 7 %	4 = 8 %
Denmark	2 = 4 %	3 = 6 %
Switzerland	2 = 4 %	3 = 6 %
Sweden	2 = 4 %	2 = 4 %
Belgium	2 = 4 %	1 = 2 %
group:		
industry	27 = 60 %	
safety institutions	7 = 16 %	
other	11 = 24 %	
total	45 = 100%	49 = 100 %

Regarding the nationality of the holders of the key functions, it appears again that almost only the highly-industrialized, "northern" States are present. With regard to the functional composition, the figures depict are more typical picture of standardization committees than the composition of TC 114. While safety institutions have quite a good stand in the TCs which deal with principal matters and do not directly affect specific manufacturers (e.g. 114 safety of machinery, 122 ergonomics, 211 acoustics, 231 vibration), the industry, almost exclusively manufacturers, dominates the technical committes which are responsible for specific technologies, while the interests in health, safety and humanization of work are underrepresented. In light of the fact that no less than 49 TCs are dealing with standardization of safety of machinery (and a couple more with other aspects of health and safety at work, e.g. equipment for protection, which are not listed here), the Trade Union Technical Bureau is in liaison with only 4 TCs (114, 122, 211, 231). Two conclusions can be drawn from these analyses:

First, the somewhat dominant role of experts from the countries with a high level of protection in the process of directive preparation is reflected by the composition of the standardization committees and especially their key functions. The high-level countries control technical standardization too.

Secondly, health and safety at work institutions are well represented in the TCs which deal with general aspects, but the manufacturing industry dominates in the TCs which draw up standards for specific technologies. However, there is only a marginal direct participation of the trade unions and if so, then only in the committees dealing with general questions (the same is true for consumers and environmentalists). Obviously, there are severe barriers against a more adequate participation of the representatives of the people who have the strongest interest in occupational health and safety - the workers.

4.3 Factors of Success: Requirements for Successful Participation in Standardization Committees

Considering the working and decision making methods, there are certain requirements for successful participation (Eichener/Voelzkow 1991). If any interest group wants to influence the standard-setting process, it should fulfill the following requirements:

Physical Presence

To exert influence on standard-setting, it is necessary to send representatives to the committees and, in particular, into the working groups. And it is necessary that these representatives are present at most of the meetings (especially when important decisions are made) and participate in the technical discussions.

Submitting written proposals for amendment of published drafts is usually not very successful, because there is hardly an argument which has not been anticipated by the committee. And another social factor is important: After a committee has fought for years to achieve a consensus on a draft, the committee members will identify themselves with the draft and defend it against criticism from the outside. Written comments are often rejected by a form letter if the protesters do not personally join the meeting where the comments are discussed. Even then, there is empirical evidence that only marginal corrections can be achieved (unless the commentator is very powerful, e.g. a government).

There are some preconditions to the ability to participate physically in the standardization process:

First, an interested party has to *know* about the standardization process and about the organization and committee which is working on the standards. This sounds trivial, but it is not. Standardization has everywhere been extremely complex and opaque. This opacity has increased greatly on the European level. Especially in the field of information and communication technologies, besides the official standardization bodies CENELEC and recently ETSI, there exist quite a bunch of other organizations which work on standards (EWOS, AMICE, EBU, ECMA, etc.). Many of these organizations, like EWOS and AMICE in information technology, have a semi-official status and do the actual work of standard-setting, while CENELEC "just puts its stamp on the paper" (Interview, standardization manager).

All work items of standardization processes are published when they begin. Many interest groups, however, do not have the capacities to scan the long lists, which are published bi-weekly, and to filter out the important committees.

The second precondition for participation is sufficient financial resources. Traveling expenditures for TC and WG meetings all over Europe (or, on international level, all over the world) can be high - especially for non-economic interest groups with small budgets.

The third precondition is the availability of people with sufficient capacity to join the committees and to work there effectively. The crucial factor for the people who are sent into the committees is expertise.

Technical Expertise

Technical expertise is absolutely necessary in order to assert oneself in the discussions. Every question is discussed on the level of technical details. If you object to draft formulations, you must present a technically correct alternative formulation. If you demand higher safety requirements, you must prove that the existing technology is dangerous, that means, you must present reports of accidents, and you must present solutions which are technically and economically practicable. General demands are useless: "The one who comes with a political statement has lost." (Interview, standardization manager)

Members of standardization committees not only have to be experts - they have to be highly specialized experts in the very field that is being standardized, who must know the state of the art and must have construction knowledge.

Expertise, of course, implies that the representatives must have the time and the opportunities for well-prepared participation in the meetings.

Command of Foreign Language and Technical Terminology

Expertise is one critical factor of success, another is a sufficient command of working languages, especially English and often French. To be able to communicate, you must know the languages, including the legal and technical terminology. The materials and discussions are usually in English, and interpreters do not help much, because they cannot translate the important details. Translations of written materials come too late.

The language requirements are significant barriers for many interest groups. It is usually no problem for the industry to find experts with foreign language knowledge or even foreign country experience or, if not, to send their representatives to language courses. Representatives of unions and of state governments complain that they do not have such opportunities. This can lead to the situation that in national shadow committees those people are elected as national delegates to European committes who are able to speak English. And if these persons systematically belong to one interest group, there will be a bias in the representation of the national interest.

Social and Cultural Integration

The social character of the standard-setting process has already been discussed. To be accepted as a peer in discussions, the representatives should be integrated in the dominating social and cultural networks. If you know colleagues and experts in other states, if you have friends in other states, you have more access to information and connections. You can prepare discussions and decisions informally, on the telephone, at meetings in other contexts, or even privately.

Bargaining Power

Another factor is the power of bargaining in the discussions. The industry can threaten that they will obstruct the implementation of standards whose safety requirements go too far. On the national level, governments often have strong positions, because they can threaten that there will be legal regulation if a standard does not satisfy the public interest. Disperse (non-monopsonist) users (if there are users, which might not be the case if there is an anticipative standardization of new technologies), consumers and workers have much less, if any, bargaining power.

On the European level, on the one hand, the national governments have lost their regulative power. On the other hand, the possibility of declaring that standards do not conform to the essential requirements by directives creates a new bargaining power for those interests which have the chance to exert influence on their government to bring the matter before the Standing Committee.

4.4 The Participation Chances of Different Interests

Corresponding to the uneven ability to meet the requirements for successful participation in the standardization committees, the different interest groups have different chances of exerting effective influence.

Large firms undoubtedly have the best chances, especially when they operate in various Member States. Of all interested parties, large firms have the most resources - staff, expertise, development facilities - to participate effectively. Large companies have special standardization departments, where strategies are made, and can recruit technical experts from their research and development facilities. And large companies can invest considerable resources into standardization, because they can internalize a direct, and positive return on investment. Their chances on the market depend on standards, so that influencing standard-setting is directly related to success or failure on the market.

Furthermore, large companies have structural advantages. Especially in the field of information technologies, the large manufacturers are not only familiar with the complex and opaque organizational network, they even create and control standard-setting or preparatory organizations. In some fields, European Standards are *de facto* made by manufacturers' associations and are just published by the official body. The multinational activities are reflected in multinational presence in the standardization committees, too. In some international or European committees, especially in information technology, you can find several representatives of *one* multinational corporation as national delegates of *several* states. The multinational activities enable such firms to perform different strategies: regarding the three levels of standardization (national, European, and international), a large company can be active on all three levels, e.g. if a firm considers its chances on the European level as rather weak, it can concentrate its activities on the international level, find there other coalition partners, and push the setting of an international standard, which may easily be adopted as a European standard.

Small and medium-sized firms have many more problems in participating in European standardization. Their resources are too scarce, especially in the case of expert staff, to be invested in standard-making. And the smaller firms are confronted with the dilemma of collective goods. Standards are collective goods - if everybody, including one's own competitors, profit from standards, why should just one little firm bear the considerable costs of standardization?

The same dilemma applies for large and heterogenous groups of *users*, which are in general economically much less affected by standards than manufacturers. Another problem arises in anticipative standardization of new technologies: for these technologies, there are no actual users when standards are developed.

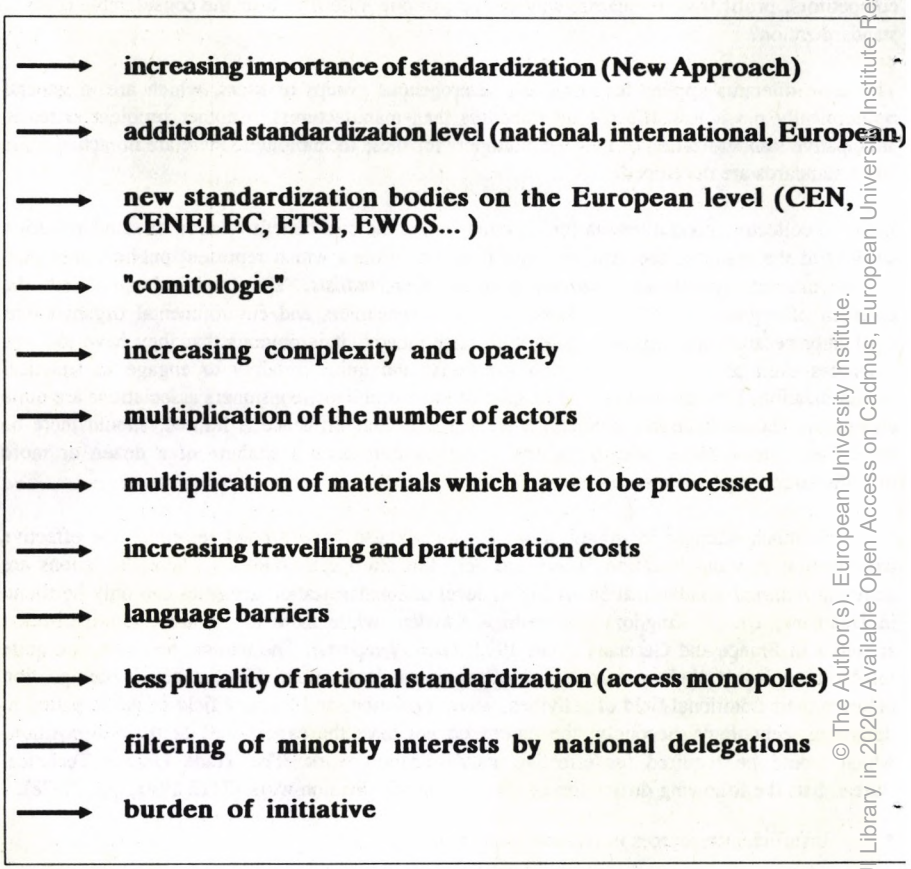
Both the collective good dilemma (or, in other terms, the cost-benefit-relation of standardization work) and the resource problem are critical for the groups which represent public rather than private interests: *consumers, workers and environmentalists*. The trouble begins with the problem of organizing collective interests: many consumers and environmental organizations exist only because they are subsidized with state money. It is obvious that they have too few resources even to perform their main functions, and quite certainly to engage in technical standardization. It is remarkable that in spite of these problems, consumers associations are quite engaged in standardization - although it is clear that their influence is limited, should there be some committees where one consumers' representative faces a phalanx of a dozen or more manufacturers' representatives.

Although much stronger in organization, the *unions* also have limited resources for effective participation in standardization. There are only few European countries where the unions are active in *national* standardization. A higher level of standardization activities can only be found in Denmark, United Kingdom and perhaps Sweden, while there are indirect standardization activities in France and Germany (TGB 1992, country reports). The unions, however, are quite reluctant to invest their resources in technical standardization. First, there is competition between their traditional field of activities, wage regulation, and the new field of participation in designing technology. Secondly, the unions do not have the expert staff at their disposition, which would be required for effective standardization work. The Trade Unions Technical Bureau lists the following difficulties of effective standardization work (TGB 1991, pp. 77-78):

* Insufficient resources in relation to the workload.
* The union representatives' comparatively low level of expert knowledge, compared to industrial representatives.
* The difficulty in developing a single union opinion, since there is territorial rather than functional representation within the Technical Committees.
* The difficulty in securing representation of the union opinion in the national delegations, because they are dominated by manufacturers and, to a less extent, by industrial users (*filtering* of minority interests).

Besides the TUTB observers, almost only Danish unionists and one German unionists participate in CEN committees (Verboon/Andriessen/Kwantes 1992, p. 45, see also the expert list of CEN TC 114).

Fig. 4: Impacts of European Standardization on Participation Chances



Governments, although they delegate regulation authority to private standardization bodies, participate in standard-setting committees too. Limited resources - personnel, knowledge and expertise -, however, have been one of the reasons for the delegation of technical regulation, so that participation of goverment representatives must often be of limited intensity. In spite of the limited capacities, in national standardization, goverments can exercise considerable influence on standard-setting, because government representatives can threaten with legal regulation, if the standards do not sufficiently reflect the public interest. The other side - the industry - will of course argue that government proposals are technically impracticable and economically harmful, so the government officials still have to have good technical arguments. If, however, it comes to a fundamental interest conflict, the threat with legal regulation is a very good bargaining lever that makes the other committee members anxious to give at least enough regard to the public interest to prevent government intervention.

On the European level, the national governments lose this weapon. The only formal instrument of national governments in European standard-setting is the Standing Committee. Otherwise, governments, like any other interested party, can send their representatives into national shadow committees and eventually into the national delegations to European committees.

Shifting standardization from national to European level increases the participation barriers for those interest groups which have been weak anyway. Because a another level (the European level) was created, the amounts of materials which have to processed multiply. Distances become greater, travelling expenses increase too. Complexity and opacity - a cardinal problem of the EC anyway - also increase greatly. Finally, language barriers emerge (see *fig. 4*).

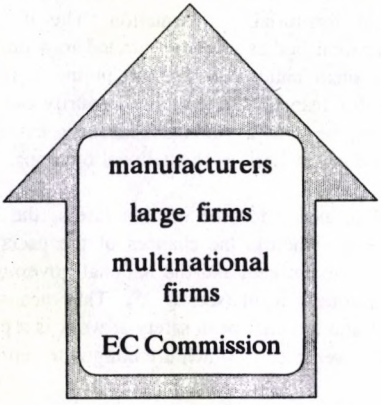
These problems, which basically reflect resource deficits, are reinforced by structural problems. European standardization follows the principle of territorial representation. The different interests that are gathered in the national standardization bodies are concentrated to a uniform national opinion, which is then represented by a small national delegation in the European committee. This is also a process of filtering. In this manner, the national minority opinions have no chance at all to reach the European level, because a national consensus has to be achieved before a European consensus can be reached on the basis of the national opinions.

In sum, the relative chances of participation and influence for the manufacturers, the large firms, and especially the multinational firms increase, whereas the chances of the users, the small and medium-sized enterprises, the consumers, the workers and the national governments grow weaker when standard-setting shifts to the European level (see *fig. 5*). This means, the consideration of non-industrial and public interests - and the interest in safety at work is a public interest - becomes weaker. Particularly the national governments, which are obliged to represent the public interest, lose their power.

This situation leads to a problem of democratic legitimation: If regulatory powers are delegated to private-law standardization bodies, then standard-setting must be organized as a pluralist decision-making process with equal *de facto* chances for all relevant interests to participate in this process. The state cannot withdraw completely from standardization. Different interests have different capabilities of organization and conflict (Offe 1969). If some interests lack the ability to organize and to participate in standardization, government has to guarantee that the

Fig. 5: Changing Participation Chances for Different Interest Groups by European Standardization

- complexity/ opacity
- technical expertise requirements
- procedural competence requirements
- language competence requirements
- expert staff requirements
- resource requirements
- R&D-capacity requirements
- cost-benefit-relation
- connections, lobby influence



weak interests also have adequate chances to receive consideration. Principally, there are several ways for governments to become active (see Eichener/Voelzkow 1991).

First, governments may regulate the self-regulatory processes by providing institutional and procedural regulations to guarantee that there is a pluralist representation of interests within the regulatory bodies (e.g. formal opportunities of participation for all interested parties, publication of drafts and public enquiries, the obligation to take public interests into account, etc.). Governments can enforce such regulations by framework legislation for standardization, by treaties with the standardization organizations, by sending representatives into the supervising boards, by financial subsidies bound to conditions or by other measures (see Schuppert 1981).

Secondly, governments themselves can participate in decentralized regulatory processes by sending representatives to the committees who advocate the public interests. Government is not a homogenous actor, but rather a network of ressorts, and hence "the" public interest is in practice not clearly defined, but rather there is a heterogenity of conflicting *ressort*-specific public interests (e.g. the ressorts of economic affairs have usually other interests in occupational health and have obligations to other clientele groups than the ressorts of labour). Given these facts, there may even be democratic concepts which give up the assumption that governments have a monopoly in defining "the" public interests and which instead consider the different ressorts' public representatives just as equal actors in the same sense as the private interest groups' representatives. Regulation in consensus-based standardization bodies may take the character of "mutual partisan adjustment" (Lindblom 1965).

Thirdly, governments may force the private-law regulatory bodies to take account of the public interests by threatening with intervention. Governments must keep the proviso of legislative regulation for the case that private regulation does not produce democratically acceptable results. The proviso of intervention then serves as the "sword of Damocles" hanging over the standardization committees. Governments, however, have to take care that this "sword" stays "sharp", e.g. that they themselves have the resources to regulate if need be. Special agencies staffed with scientific experts may serve as "grinding stones"[38]. Facing the restrictions of legislative regulation, the threat with the proviso of intervention stays effective only when rarely used, because if it turns out that the government is not able to use it, the threat would no longer be taken seriously.

Fourthly, governments can threat with the proviso of altering the institutional arrangement of self-regulation. Governments can withdraw self-regulatory authorities also without returning to state regulation but by transfering it to other, competetive institutions. An impressive example was the Commission's initiative to found the European Telecommunications Standards Institute ETSI and to recognize it as a third official European standardization body - which was clearly an affront to CEN and especially to CENELEC (Reihlen 1989, Falke 1991, p. 123), particularly considering that ETSI is organized according to the principle of direct functional representation on the European level and not to the principle of territorial representation as CEN and CENELEC.

[38] An example is the fact that the quality of environmental standardization in Germany in considerably after the *Umweltbundesamt* (Federal Environmental Agency) was founded.

Fifthly, governments can produce equal opportunities for the participation in self-regulatory arenas by exercising influence on the system of organized interests itself, especially by promoting the organization of diffuse interests which lack the ability to organize themselves. In many countries, for example, consumer associations exist only on the basis of government subsidies. Within a concept of "public pluralism" (Kelso 1978) or of an "associative democracy" (Cohen/Rogers 1990), government not only delegates regulatory powers to arenas of functional representation, but actively tries to balance the powers of the different interest groups by supporting the weak interest groups, in order to create the pluralist equality of chances required for the democratic legitimation of self-regulatory processes.

In some Member States, at least some of these measures have already been taken by the governments. With the shift of technical standardization to the European level, these measures may not be sufficient anymore, because barriers arise and national governments as gatekeepers of the weak interests lose their influence on the European level. This creates a vacuum which should be filled by the European "government", which must develop "functional equivalents for the mechanisms established within the national frameworks for the regulation of self-regulation" (Joerges 1991, p. 36, my translation): the Commission.

4.5 Again the Commission: its Role in Standardization

The Commission's role as an active and independent actor in the process of European integration is not exhausted when a directive is proposed to the Council. The Commission also remains an important actor in the standardization phase of the regulatory process, although, within the New Approach, most of the regulatory workload is transferred to the standardization bodies. The Commission uses all four above mentioned measures - though to a varying extent - to exert influence on the standardization process.

First, the measures to provide an institutional and procedural framework have already been discussed - from the Information Directive and the General Guidelines, over the Machinery Directive's provision that the Member States are to take measures to ensure the participation of the social partners, to Commission negotiations with the European standardization bodies. Furthermore, the Commission exercises considerable control over the standardization processes via its mandates, which contribute to the budgets of CEN and CENELEC to a large extent.

Secondly, the Commission is increasingly active in monitoring the standardization process. The Commission has begun to place consultants and observers with a *liaison* status in the CEN Technical Committees (including CEN TC 114, which is responsible for safety of machinery standards) to make sure that standards are set according to the Directives' original intentions (Kommission 1990). The TCs themselves are interested in these *liaisons*, because they can thus be sure to set standards which will not be brought before the Standing Committee and eventually rejected by the Commission. Together with the chairman and the secretary, the Commission's consultant to the TC (usually the person who contributed to the drafting of the directive) appears to be very influential. It is remarkable that the Commission's consultant to the CEN TC on Safety of Machinery is exactly the person who heavily contributed to the drafting of the

Machinery Directive - a fact which emphasizes the role of individual partisans in all stages of the European regulatory process.

In this manner, the preparation of legislation and standardization are closely linked by network structures: on the one hand, with their work in advisory committees, standardization experts are engaged in directive preparation; and on the other hand, with consultants, the Commission supervises standardization work. Frequently, very few persons play the role of key agents in these informal networks. Therefore, it is important for interest groups not only to count on the formal channels of influence, but to particpate in the personal networks:

"Because of the central role which the Commission of the EC will continue to play in European standardization for a longer time, the building-up and the maintenance of the relations to the concerned offices (network) are of great relevance." (Wengel 1992, p. 34, my translation)

Thirdly, the proviso of rejection - after having considered the Standing Committee's opinion - is the Commission's main instrument for disciplining the standardization bodies (and legitimating the delegation of technical regulation to private-law organizations). In practice, however, the Commission does not want the Standing Committee to really become active (Kommission 1990). In fact, none of the main actors, neither the Commission nor CEN/CENELEC, has an interest in frequently using this procedure. Rejections of European Standards would damage CEN/CENELEC's image as politically neutral and effective organizations, while they would also affect the Commission's intentions:

If the Standing Committee were frequently appealed to, it could be expected that the parties outvoted in the standardization committees would bring the same interest conflicts (with probably the same arguments) before the Standing Committee and thus turn it - like a court of appeal - into a second arena of bargaining. Since the Standing Committee and the finally deciding Commission require technical expertise to judge the conflicts, an apparatus of technical subcommittees would be required, which would duplicate the structure of the CEN/CENELEC technical committees, and a staff of technical experts representing the different interest groups' points of view, who would probably be the same people as in the CEN/CENELEC committees. The results would be that the consensual base of standardization work would gradually erode and the standardization processes would be extremely delayed - jeopardizing the Commission's goal of creating the internal market as soon as possible.

Apparently, the Commission has no intention of allowing the Standing Committee to become effective. Hence, national governments' proposals to establish technical subcommittees, in order to enable the Standing Committee to judge technically about standards, have been rejected by the Commission (until now, not more than one technical subcommittee - for cardial pacemakers - has been established). The Standing Committee procedure should be restricted to cases of violations of essential procedural requirements (e.g. if one of the social partners was refused access to national shadow committees) or to exceptional cases of apparent disregard of a directive's requirements, when an "emergency brake" has to be pulled (Kommission 1990).

Since both the Commission and CEN/CENELEC are interested in the Standing Committee's inactivity, it makes a lot of sense to assume that the main function of the Standing Committee is just to exist and not to work. Because of its mere existence, the CEN/CENELEC committees

will be interested in making "good", directive-conform standards in order to avoid intervention. The proviso of rejection of a standard is like the sword of Damocles hanging over the standardization bodies, and only remains sharp because it is rarely used.

Fourthly, the Commission has begun to support the weaker interests, especially the unions, by funding a technical bureau for the observation of European standardization. This strategy will be discussed in detail in section 4.5.2.

However, the Commission is still not satisfied with the performance of European standardization, including accountability of public interests. Recently, the Commission has begun exercising increased control over the institutional organization of standardization. With the Green Paper on the Development of European Standardization and its follow-up, the Commission demonstrated that it is determined to alter the institutional arrangement of European standardization if the standardization bodies do not satisfy its expectations.

4.5.1 The Problems with the New Approach and the Commission's Proposals for a Cure: the Green Paper on European Standardization

The Commission has not been entirely satisfied with the actual performance of the European standardization bodies in two respects:

First, the Commission recognized that non-industrial interests, particularly the employee's interests, have fewer chances to participate effectively in standard-setting.

Secondly - and this was the more important motivation to publish the Green Paper - the Commission recognized that the harmonization of European Standards was advancing too slowly to provide the badly required standards on time.

Both problems were critical for the New Approach. The entire strategy of delegating *de facto* regulation to private associations would be compromised, if the democratic legitimation of the standards were poor, due to a lack of pluralist interest representation, or if the private bodies failed to provide the standards on time, so that the technically unspecified essential requirements would cause a considerable judicial uncertainty (as feared by the vetoing German government).

Therefore, the Commission published quite a few proposals for remedy in the Green Paper on the Development of European Standardization: Means for Faster Technological Integration in Europe, published on 8.10.1990 (COM(90)456 final).

The main intention of the Green Paper's many proposals is the acceleration of the standardization process. Our analysis focusses on the organizational changes which would affect the participation chances of different interests.

A first group of proposals is concerned with the institutional system of standard-setting organizations.

First, the Commission proposed an active encouragement of more sectoral "Associated Standardization Bodies" by CEN/CENELEC. In fact, the Commission had already started to establish new, sectoral standardization bodies besides CEN and CENELEC. The European Telecommunications Standards Institute ETSI (a successor of the European confederation of the national Post administrations CEPT) has already achieved official status, and other institutions may follow, perhaps starting with the European Workshop for Open Systems EWOS (for information technology standardization). The promotion of sectoral standardization bodies undoubtedly weakens the position of CEN/CENELEC and the official national standardization institutes which support CEN/CENELEC, and strengthens the Commission's position as a process manager, because the Commission has the power to decide which organization gets standardization mandates and financial support. Since the Commission support is the main financial source for the European standardization organizations, they are quite dependent on the Commission's subsidies.

Secondly, it was proposed that European Standards should exist in their own right. Currently, European Standards only become effective when they are published as national standards by the respective national standardization organisation. It seems quite natural that European Standards exist in their own right, but in fact this proposal contained hidden dynamite. Since the largest national standardization institute, the German DIN, gets 60 % of its finances from the sale of standard sheets and related commercial activities, this proposal threatened the foundations of existence of at least some of the national standardization bodies.

Thirdly, the Commission proposed the creation of European Standardization Bodies, which possess exclusive authority in their areas, i.e. a (partial) shift to the principle of direct functional represention on the European level. ETSI used to be a European organization with direct membership of the interested parties from all over Europe, regardless of their home country. However, to be recognized officially, ETSI had to introduce a formal decision-making procedure with weighted national votes. Especially CEN and CENELEC (the CENELEC Director demanded a "democratic procedure") exerted pressure for this reform.

Fourthly, a greater share of the practical standardization work shall be transferred into "project teams" or "drafting secretariats", which shall be located directly within the industry. Two already practised examples for this strategy are (1) the Computer Manufacturers Association EWOS, which actually draws up standards which have just been formally ratified by CENELEC, and (2) the industrial consortium AMICE, which already drafted a European pre-Standard for the future key technology of computer integrated manufacturing (CIM).

The effects of the transfer of standardization work to the industry would be reinforced by the Commission's proposal to heighten industry involvement - meaning higher financial contributions from the industry.

A second group of proposals focussed on reforms of the standardization process in order to accelerate its speed.

Fifthly, the Commission proposed that the principle of majority voting should be applied more consistently, instead of the *de facto* dominating consensus principle.

Sixthly, the public enquiry periods should be shortened and the period for public comments should be shortened from four to two months.

An unintended side effect both of the institutional and procedural means for the acceleration of standardization, however, would be a further deterioration of the participation chances of the already underrepresented interests. The delegation of standardization activities to a greater number of sector organizations and industrial drafting-secretariats and project teams would increase the already existing opacity and would diminish the access of the non-industrial interests to the actual standardization committees, especially because the *de facto* drafting groups outside CEN/CENELEC are usually not bound to the procedural regulations of the official organizations. The means for process acceleration would add to these negative effects, because the shortening of the public enquiry periods reduces participation chances for the interested parties, who are not represented by delegates in the European standardization committees. This is of particular importance for European standardization, because minority interests are usually not represented within the national delegations on the European level. With stricter majority voting, minority interests will certainly be given less consideration than with the attempt to achieve consensus.

To compensate these negative side-effects for a pluralist interest representation, the Commission proposed a third group of measures:

Seventhly, the Commission proposed the installation of a European Standardization Board and a European Standardization Council for coordination (more coordination is also required to compensate the increasing institutional complexity) and supervision. With the European Standardization Council, the influence of consumers, employees and administration is to be guaranteed, since the Council is to be composed of 2 representatives of the consumers, 2 union representatives, 2 representatives of EC and EFTA, 3 representatives of the three European standardization bodies and no less than 9 representatives of the industry.

Whether the proposed composition of the Standardization Council would strengthen the influence of the non-industrial interests or stabilize their weakness, is doubtful. There can be no doubt, however, that the Commission's influence on standardization would be increased by the establishment of these coordinating institutions.

Eighthly and finally, with the Green Paper, the Commission encouraged the unions (and users and consumers) to participate in European standardization and requested the standardization bodies to become more open for these groups. The (controversial) main point of this proposal is that participation *at European level* - not at national level - should be opened up to interested parties (all interested parties, not only non-industrial interests).

The assessment of the Green Paper's eight proposals, which have been discussed in this paper from the view of participation chances, must remain at best ambiguous. Probably, the participation chances for the workers' interests and the public interests would decrease rather than increase, because the measures would raise the barriers for the participation of the non-industrial interests greatly. In particular, the transfer of actual standardization work to industrial teams appears to be very problematic.

To compensate this problem somewhat, the Green Paper also pointed to the Commission's already existing support of the workers' interests.

4.5.2 The Commission's Support of the Less Represented Interests

As already mentioned, a crucial condition for the democratic legitimation of the New Approach's *de facto* delegation of regulatory powers to private-law standardization bodies is a pluralist interest representation within the standardization bodies. Consequently, the Machinery Directive obliges the Member States to "ensure that appropriate measures are taken to enable the social partners to have an influence at national level on the process of preparing and monitoring the harmonized standards" (89/392/EEC, Art. 5 (3)). What "appropriate measures" are, however, is vague. Usually this provision is considered merely as the obligation that the national governments are to ensure that the national standardization bodies are just formally open to the participation of the social partners. If, for example, in one EC country, a trade union asks for participation in the national shadow committee to a CEN TC and if access to this shadow group is formally refused, then this union can ask its national government to bring this matter before the Standing Committee.

Formal access, however, is only a necessary, not a sufficient condition for actual participation. The delegation of regulatory powers to private-law arenas of functional representation requires that all societal interests have approximately equal *de facto* chances of participation. Concepts of "public pluralism" or "associative democracy" therefore provide that the interests which are less able to organize and to participate are supported by the government. When the Community shifted to the "New Approach" to technical harmonization and standardization, the problem of deficient abilities of participation was early recognized and the Community indeed began to support the weaker interests, especially the trade unions - not only in the sector of standardization. E.g. the Maastricht 11-member agreement on social policy (Art. 3 (1)) officially approves the support of the social partners for participation in the *social dialogue*.

The Commission also recognized early on that the trade unions lack the resources and thus the material ability to participate effectively in European Standardization. In its message on the Action Programme for Safety, Work Hygienics and Health Protection in the Working Environment (OJ No 88/C 28/02), which was approved by the Council Decision of 21.12.1987 (OJ No 88/C 28/01), the Commission announced that it intended to provide the European Trade Union Confederation with the financial means to establish a Technical Bureau for the observation of European standardization.

Models for this Technical Bureau might have been the 1975-established Consumers Council in the German DIN, which is a government-funded bureau with the task of supporting the participation of consumer interests in standardization, and government support for union participation in standardization in Denmark, France and Sweden (see country reports in TGB 1992).

The Trade Union Technical Bureau (TUTB) was installed in Brussels in 1988 and is currently staffed with five research officers. It is financed by the EC Commission and the EFTA. Its

activities include the observation of European standardization processes in the area of health and safety at work, the definition of priorities for union participation, the establishment of a network of union-oriented experts, the organization of the participation of union representatives in European standardization, the delegation of TUTB officers to standardization committees (e.g. CEN TC 114) and the communication of the relevance and the results of standardization. The TUTB also coordinates the work of the trade unions' experts working in the *ad hoc* groups of the Advisory Committee on Safety, Hygiene and Health at Work (TGB 1991, p. 40).

Though quite successful, the TUTB has its limits, of course. Its director complains that the TUTB officers have no formal authority as mere observers, that the flow of information both from CEN/CENELEC and from the Commission is frequently obstructed, that it is often difficult to find experts, that union representatives are usually in a minority position and not in bipartite comittees and that, of course, the resources are not sufficient (Sapir 1992a, b).

Although the TUTB has too few resources to cover all fields of employee-relevant European standardization satisfactorily, the subsidies are probably already approaching the upper limit of what can be expected from the Commission. The TUTB approach is limited in another respect, too.

As a European institution, it is a foreign element within the institutional system of European standardization, which provides no room for a *European* representation of interests but only room for national interest representation. Within the present system, the main arenas for the improvement of the material participation opportunities for the social partners have to be the *national* standardization bodies. In all twelve Member States, national equivalents to the European TUTB should be installed, and in all twelve Member States, the unions themselves should develop the organizational capacities to use their formal participation chances (see Eichener/Voelzkow 1992a, b).

The Commission, however, has decided to install the TUTB as a European institution. This, along with the fact that the Commission enables European (not national) union and consumer representatives to attend CEN/CENELEC Technical Committee meetings as observers, adds a facet of direct functional representation to the still territorially organized standardization process.

4.5.3 From Territorial to Direct Functional Representation on the European Level?

On the other hand, the support or facilitation of improved participation on the part of the unions is very interesting, because it may indicate an important shift in standardization strategy. At present, European standardization is organized according to the principle of territorial representation: the national bodies send their delegates to CEN and CENELEC. There is evidence that the Commission indeed aims at a future reorganization of standardization according to functional representation on a single European level (which is certainly not yet practicable). Of course, the national institutes oppose these tendencies. So the Commission's complaint that the existing system (of territorial representation) does not allow full participation of consumers and workers, and the Commission's reaction of support for the unions on the

European level may be an argument to eventually reorganize the total system of standardization. The Green Paper already contained the proposal to open up participation to the interested parties directly at the European level.

The present system of territorial representation remains within the logics of the traditional approach, viewing the European Community as a Federation of independent states. Different functional - private and public, industrial and non-industrial - interests are, in a first step, aggregated to single national interests, which are then, in a second step, transposed to the European standardization bodies, where a harmonized European standard will be passed. The territorial organisation of European standardization is appropriate, if it is assumed that the heterogenity of interests of the same functional group between the Member States is greater than the heterogenity of the interests between different functional groups within each Member State. Only then is it useful to aggregate the different functional interests first and then the different national interests; otherwise, the different national interests should be aggregated within each interest group in a first step, and then directly represented within the European standardization bodies.

The obvious difficulties of the interested European parties in finding common positions were indeed taken as arguments against harmonized European Standards (and thus against the New Approach alltogether):

"There are voices which talk of a European representation of the interested parties in European standardization. These voices are far ahead of time. There is, thus far, no European industrial opinion on a concrete standardization project. There is no opinion of the European science, of the European consumers, of the European trade unions." (Geisendörfer 1989, p. 9, my translation)

However, the present system can raise considerable problems for the representation of the minority interests: Given the fact that, for example, the employees' interests have different chances of influence in different Member States, what happens in fact, is that, on the European level, the chances of influence of the employees' interests are weighted with the number of the Member States whose delegations at least partially transpose the employees' interests to CEN, CENELEC or ETSI. When, for example, the unions are represented in the shadow committees of only one Member State (e.g. Denmark or Germany), then there is only one national delegation within the European technical committee which regards the employees' interests at all - and this delegation may be stigmatized as "the union group" by the others.

The Commission, by establishing the observership or *liaison* status for European union representatives, and by funding the TUTB, thinks more in terms of a functional represention of integrated European employees' interests. The range of these measures is still limited, because they only cover the observation and, at the most, the coordination of representation and influence, but not the right to vote, which is still reserved for the national representatives in the Technical Bureaus.

The Green Paper, however, contains several measures for an evolution of the European standardization system towards more integration, e.g. that European Standards should exist in their own right or that a European Standardization Board and Council should be established, which add weight to the European organizations. The current arrangement could eventually be transformed to a system of direct functional representation on the European level. In such a

system, the interested parties would directly participate in European standardization committees. Two alternative options are thinkable: *Either* the different interests are represented in the standardization committees by their European organizations (e.g. European industrial associations of the different branches, European consumer associations, the European Trade Union Federation), which, in a first step, formulate a common position. Then there would be no inter-State bargaining in the European committees at all. *Or* individual firms, associations and trade unions have direct access to the European standardization bodies (perhaps with quotas for parties from the different Member States). Then the situation could arise in which a trade union representative from one country would come into conflict with his colleague from another country within the committee. In both cases, the national standardization bodies would lose their functions as national coordinators. (They would probably take over sectoral administrative tasks of the European standardization work, since CEN/CENELEC would have too few resources for that).

What would such a shift from the principle of territorial to functional representation imply for the chances of participation? Instead of a quick answer, we should differentiate between a short-term (up to 5-10 years from the present) and a long-term perspective (see *fig. 6*).

In the short run, the present sytem favours the participation of the weak interest groups. The access to the national standardization bodies, both for committee membership and for comments on European Standard drafts, which are still published by the national institutes, is easier than the access to a European institution with longer distances (and higher travel expenses), language barriers and more opacity. Furthermore, the unions and the other organized interests would have to settle their problems with different opinions on levels and philosophies of protection.

In the long run, however, the shift to functional representation would be connected with more chances than restrictions for the non-industrial interests. One reason is that any interest group which already organizes on the European level and which is represented in many Member States has a structural advantage over the merely national groups. The large-scale industry, which already *has* a common European point of view, must be counterbalanced by an integrated European view of the consumers and the unions. Multinational firms can send their representatives via many national delegations to the CEN/CENELEC/ETSI committees and are thus able to multiply their influence. The unions (and the other non-industrial interest groups) would also have to send representatives in the respective shadow committees and national delegations in many European countries to form a counterbalance against the industry. But it is very unlikely that the unions would get the chance to participate in their national standardization bodies in more than a few Member States. For a CEN committee dealing with sensoric devices for automatic safety stops, for example, the unions would need experts for this technology in many countries - which would be quite a task, since it is already difficult for the unions to find at least one expert for such a field. Thus, also from the organizational viewpoint, the shift to functional representation might be better for the participation chances of the unions, assuming that they have some time to manage the problems of European organization. For this task, they have already been supported by the EC Commission. And it seems to be easier for the unions to get support from the EC than from all national governments.

The TUTB could serve as a nucleus for building a European structure to organize the participation in European standardization. Instead of many organizational units for

Fig. 6: Comparison of Territorial vs. Functional Representation Regarding Participation Chances of Non-industrial Interests

	short-term	long-term
territorial representation **promotors:** **CEN, CENELEC, national standardization bodies, national governments**	access to national organizations is easier (channels, contact networks, transparency, spatial distances, no language barriers, technical philosophies)	requires representation in many (if not all) EC member countries (like large industries)
functional representation **promotors:** **EC Commission, ETSI**	at present no single European opinions, no efficient European organizations	multinational firms have single European opinions, counterbalance required. European organization is inevitable, single opinion comes with further integration central Commission support of European organizations is possible (interest coalition) institutional self-interest of Euro-organizations drives integration forwards

standardization in many countries, the European trade unions would need just one unit in Brussels, which could draw upon a large reservoir of technical experts all over Europe. To resume our example, for the European Trade Union Federation it would be sufficient to find just one expert for sensors in any State and to send him or her to the European standardization committee. The precondition is that the ETUC would have managed to build up a working network of technical experts. To overcome the difficulties of reaching a common European position, the ETUC would need an institutional arrangement of process management and decision-making equivalent to the configuration on the level of EC decision-making. A strong European organizational unit with an institutional self-interest in effective European standardization work, which could be built up around the TUTB, could serve as an equivalent to the Commission and could manage the interest conflicts on the less problematic working level of technical experts.

4.5.4 Comments on the Green Paper and the Commission's Follow-up

The Green Paper was intended as a provocation by the Commission and was perceived by the addressees as such. The Commission received no less than 252 comments which were directly submitted to the Commission, while many more comments were addressed to national governments and standardization bodies, and later submitted to the Commission as coordinated national responses. The Commission made a synopsis of the comments (Commission 1991) and published on 16.12.1991 a Follow-up to the Green Paper: Standardization in the European Economy (COM(91) 521 final). The following analysis is an interpretation of these Commission papers.

Especially the national standardization bodies regarded the Green Paper's proposals as a threat to their existence. The Commission's tendency towards functional representation was clearly recognized by the national bodies, which already tried to stop the early steps in this direction.

1. Promotion of Sectoral Standardization Bodies

There was no support for the creation of new European standardization bodies on sectoral lines, which would complicate the standardization process (p. 5). There was some support for Associated Sectoral Bodies (like EWOS), if participation of all interested parties is ensured (UK, EFTA, UNICE, BEUC, pp. 11-12).

2. European Standards to Exist in their Own Right

This proposal naturally provoked firm protest from the national standardization bodies. The reactions of governments and industrial associations were mixed (especially problems of legal compatibility were foreseen for cases where national law refers to standards). The BEUC expressed support (pp. 18-19).

3. European Standardization Bodies which hold Exclusive Authority in their Area

For similar reasons, this proposal also raised serious objections. Besides the self-interest-motivated comments of the national standardization organizations, some governments, the EFTA secretariat, the Economic and Social Committee, some industrial associations, the ETUC and the CCC argued that this would put small and medium-sized enterprises, the employees and the consumers at a serious disadvantage (pp. 28-29).

4. The Use of "Drafting Secretariats" and "Project Teams" and Higher Industry Involvement

The proposal of more industrial funding received much support, but some comments expressed concern that this would favour large companies. Especially the social partners feared that higher industrial contributions might jeopardize the influence of parties with modest financial means (pp. 7-8).

The proposal of drafting secretariats and project teams received much support from many sides, too. However, the Economic and Social Committee and a few other commentators expressed their fear that this might imply that only the industry would be involved in preparing drafts which might lead to a neglect of the safety aspects. Therefore, also some of the supporters - including the European consumers association BEUC and the German DIN (where industrial teams are already in practice) - demanded rules which ensure that all interests are taken into account and that the results reflect a consensus and not the views of individuals (pp. 10-11).

5. More Systematic Use of Majority Voting

This proposal was generally rejected. Consensus is widely regarded as an essential condition for the acceptability of standards. ETUC feared that majority voting would strengthen the role of the industry and EBUC asked "How would this operate other than to the disadvantage of minority interests? Consumer input should be safeguarded by the creation of an appeal procedure where majority voting disregards consumer interest" (pp. 14-15). But also the main industrial associations generally rejected majority voting.

6. Shorter Public Enquiry Periods

This proposal was also rejected by almost all commentators (governments, standardization bodies, industry, BEUC, ETUC) with the common argument that this would jeopardize the consultation with all interested parties, and the acceptance, without having a substantial accelerating effect (pp. 16-17).

7. European Standardization Board and Council

Although it was agreed that better coordination between the existing official (CEN, CENELEC, ETSI) and associated standardization organizations (e.g. EWOS) is needed, "an evolutionary approach is strongly preferred to any immediate organizational reform" (p. 5). The trade unions

and consumers, however, supported the proposed institutions under the condition that they are adequately represented in these coordination bodies (p. 26).

8. Participation at European Level to be Opened up to Interested Parties

This proposal seemed to provoke the most comments. Most of the comments were negative, because the weak interests would be unable to participate on the Eurpopean level, especially the small and medium-sized enterprises. The national standardization bodies naturally claimed that "national representation is the only way to ensure adequate participation in the work and voluntary implementation of its results on the part of all affected" (here: DIN). Also CEN and CENELEC, which already released a memorandum on union participation in European standardization in 1989 (CEN/CENELEC Memorandum No. 5), insisted that unionists participate primarily by membership in the national delegations (Huigen 1992). On the other hand, ETSI favoured the proposal and expressed its willingness to find appropriate mechanisms for membership of trade unions.

The responses regarding non-industrial interests were mixed. The BSI argued that at present consumers are full voting members of its technical committees and national delegations. The observership on the European level (without the right to vote) represents a lesser capacity; hence, if national delegations disappear, consumers must be more than observers. The industrial associations UNICE and ORGALIME were opposed to further integration of consumers and trade unions in European standardization, because the only way of ensuring balanced representation of different interests are the national delegations. The ETUC (which is already favoured by the Commission policy) naturally supported the proposal, but added that the social partners' influence is important on the national level, too. BEUC and CCC claimed that observership is not sufficient and demanded full voting rights. Some comments (including that of the Danish government) proposed that trade unions and consumer organizations should be funded by the Commission to build up specific organizations for observing standardization, defining priorities and designating experts to participate in the committees (as practised with the TUTB; pp. 36-38).

The Commission reacted to the comments by presenting a follow-up paper (COM(91) 521 final) with modified proposals:

* The public enquiry periods can be shortened only if national standards are simply adopted as European Standards (No 27).
* Branch associations shall be encouraged to build up associated standardization bodies, which shall be rather autonomous to limit the collisions with other standardization works (No 27).
* The proposal that European Standards should exist in their own right is dropped, but the obligation to publish European Standards as national standards is tightened up. And the Commission intends to refer to European Standards instead of national standards in the directives (No 53).
* Small, full-time working project teams are proposed for certain situations (No 27).
* The national standardization bodies' interests in conserving the principle of territorial representation is acknowledged, but the Commission demands that this principle is not to

become a monopoly. The Commission points to other interests in standardization directly on the European level requiring direct functional representation in certain areas of standardization (No 33).

* European trade unions, consumer organizations and associations of artisans and small and medium-sized industries are to express common interests on the European level in addition to the national level. Therefore, the Commission, the EP and the ESC are convinced that the European Standardization Bodies must permit direct participation of European organizations on the European level in the form of non-voting observerships on all organizational levels from the working group to the general assembly (No 33-34). CEN, CENELEC and ETSI have already reacted to this proposal (No 35).

* The Commission approves its policy of giving financial support to the interest groups with insufficient means for participation, and announces that it will continue to support the unions and consumer associations and that it will begin to moderately support small and medium-sized enterprises (No 37).

* The Member States are requested to support the interest groups in addition to the manufacturers, in order to ease these groups' participation in the standardization (No 19).

* The idea of the European Standardization Board and Council is dropped, but the Commission announces the installation of a common presidents group for better coordination between the bodies, and of a European Forum for Standardization for a dialogue with the social partners and consumers. The Forum shall be able to deal with every question that might arise regarding European standardization, particularly matters of representation and participation. The membership of the Forum is to be larger than the proposed Council and the representation of the industry is to be balanced by national governments' representatives. The number of consumers and union representatives is to be increased from 2 to 3[39] (No 39-43).

* The Commission increases its involvement in the standardization process by giving orders to plan sectoral standardization programmes (No 23-25).

The essentials of the Commission's Follow-up have been formally approved by Council Resolution from 18.6.1992 (OJ No 92/C 173/01).[40]

When the Green Paper and its Follow-up are compared, it appears that, although some proposals have been weakened or even dropped, the original intentions are generally confirmed. There is, however, a remarkable shift in the motives. While in the Green Paper the motive of acceleration clearly dominated, the problem of accountability has now gained importance. The Commission even speaks of a "process of democratization of standardization, which now gets more competences" (Farnell 1992, p. 104). The previously pursued strategy of supporting the weak interest groups is confirmed and extended and, with the Standardization Forum, somewhat more "regulation of self-regulation" (Joerges 1991, p. 36) is introduced in order to aid the less represented interests in articulating their wishes. Despite the heavy protests, the Commission

[39] The following composition is proposed: 1 representative of each national Government (EC and EFTA states), 5 representatives of the common presidents group, 12 representatives of the industry (including small and medium-sized enterprises), 3 representatives of professional users, 3 representatives of the consumers, 3 representatives of the unions, 1 representative of the European Organisation for Testing and Certification, 1 representative of the EC Commission, 1 representative of the EFTA Secretariat (No 42c).

[40] This Council Resolution is another proof of the thesis of the Commission's leadership in European integration policy, since the national governments expressed different opinions with their comments on the Green Paper.

insists that the national way must not be the only way for the representation of the intereste parties and that there must be both effective national and direct European representation (Farnel 1992, p. 104).

The story of the Commission's attempt to reform the institutional arrangement and the procedur of European standardization is an example for the relevance of the peculiar configurations o actors. If we consider the institutional self-interests of the main actors, we get a configuration o interests as follows:

* The Commission is interested in a shift from territorial to functional representation.

* The national standardization bodies and the national governments want to keep th present system of national delegations.

* CEN and CENELEC, as territorially organized bodies, which depend on the nationa institutes, support the national bodies.

* ETSI, as a functionally organized institute, which has been promoted greatly by th Commission to be recognized as the third official European standardization body supports the Commission.

* The weak interest groups - the trade unions, the consumer associations and th associations of the small and medium-sized enterprises - are primarily concerned abou their chances of influence. Unions and consumers have been supported by th Commission and already favour the Commission's ideas of further integration, while th small and medium-sized firms expect risks from a shift to functional representation Therefore, the Commission intends to support the participation of the small and medium sized enterprises, too.

* The large corporations seem to be indifferent, because they have good chances o participation anyway; they probably tend more to functional representation to sav capacities by eliminating one of the three levels of standardization.

* The Commission can argue that, under the present arrangement, the national standard bodies and the national governments fail to ensure that the unions and consumers hav sufficient *de facto* participation chances.

In this configuration, both for the Commission and for the national governments, supporting th trade unions' *de facto* opportunities to participate in standardization can be an instrument fo improving one's political position: the German government already plans to finance a Germa equivalent to the TUTB (whether such an institution would help the workers, however, doubtful, since the *Berufsgenossenschaften*, who are fighting for their regulatory powers, ar bent on capturing this institution before it exists).

As in directive-making, also in standardization, the determinants of the regulatory outcomes ar to be sought in the configuration of actors who are not only motivated by their clientele interests but also by their institutional self-interests in maximizing powers and resources. Ar like in health and safety at work legislation, it is most unlikely that standards will be passed o the level of the least common denominator. But whether the European occupational health an safety standards will really be on the *highest* level of protection, according to the latest state o the science of technology in favour of humane working conditions, now depends on the abili of the workers' organizations to respond to the chances provided by the Commissio

Government support of the weak interests is just half the story, the second half is the organizations' willingness to build up organizational structures to take advantage of the chances of participation (Eichener/Voelzkow 1992a, b, see also TGB 1991, p. 9). Trade unions usually demand extended participation chances; in European standardization, there is a configuration of actors which is clearly in favour of the unions' chances to participate in this very important regulatory process. The future will show whether the European unions use their opportunities.

5. Conclusion and Perspectives

According to the New Approach to Technical Harmonization and Standardization, the process of European health and safety at work regulation is divided into two phases: *legislation* and *standardization*. From the point of view of the interest in a high level of protection, there are political risks in both phases. In the phase of legislation, there is the risk of legislation on the level of the least common denominator, or *social dumping*, because of the logics of intergovernmental bargaining and the opportunity of a couple of low-standard countries to form a blocking minority against high-level directives. In the phase of standardization, there is the risk that the interests in occupational health and safety are not given adequate consideration because of insufficient *de facto* chances of participation of the groups who represent these interests, mainly the European trade unions.

In actual European health and safety at work regulation, however, both risks could be avoided to a considerable extent, because there is a specific configuration of actors in favour of high-level and innovative regulation. Mainly the European institutions, primarily the EC Commission, which turned out to occupy a dominant and driving position in the process of directive preparation and whose innovative ideas were supported and somewhat enhanced by the European Parliament and the Economic and Social Committee, pursued a strategy of innovative regulation. Neither within the Council, which made the final decision, nor within the consultative committees was the Commission's intention of high-standard legislation blocked by the national interests of the Member States with lower levels of protection.

However, although the results of European health and safety at work regulation are quite good - for many observers *surprisingly* good -, the democratic legitimation of the European decision-making process is doubtful, at least in this sector of regulatory policy. The Commission's role goes far beyond mere process management in the preparatory stage of European legislation, but the Commission is a key actor with good *de facto* opportunities to impose her concepts during all stages of the complex regulatory process. Empirical evidence and theoretical reasoning indicate that the Commission's leading role is basically unaffected by the advisory committees of the Member States' representatives. Of course, the Commission adopts many proposals from partisans within the committees, from the Economic and Social Committee and from the European Parliament, but the Commission adopts them only, *if* they fit into her strategy. The extremely complex and opaque regulatory process offers many chances for *lobbying* and the Commission is open to and explicitly invites any articulation of interests and any help from outside experts. Opportunities to express interests and to offer expertise, however, must not be mistaken for opportunities for effective participation in decision-making. The Commission listens to everyone but decides on its own whose ideas to adopt and whose to reject.

The deficit of democratic legitimation remains, even if the Commission, which is institutionally interested in an innovative regulation, opts for a high level of health and safety work and even acts as an advocate of the workers' interests (not without strengthening its own position when supporting Union participation in European standardization).

The opportunity to escape from political responsibility has been mentioned as one factor contributing to the Member States' willingness to give up the veto-power by signing the Single European Act. The price of diffusing responsibilites by shifting major parts of the *de facto* decision-making process to complex, opaque and anonymous network-like structures is the erosion of "traditional democratic and parliamentary norms":

"Governments become less responsible for the decisions affecting the citizens by whom they are elected. For the normal citizens the 'state' becomes less and less a clear object of identification. .. In such an interlocked system politicians cannot be responsive to nor responsible for their electorate." (Wessels 1990, p. 238)

The politicians' growing habit of blaming the European Community for home-made problems (from financial deficits and rising taxes to economic problems of worn-out industries - see Hänsch 1990, p. 245) does not help to change the negative attitudes toward European harmonization in many Member States. The example of the German debate on the health and safety at work directives points to a even more important source of discomfort with Brussels. In particular, many of the interest organizations which have important mediating functions between governments and citizens contribute to the conservation and reinforcement of prejudices on European decision-making - including the myth of *social dumping* - because they are afraid of losing their own regulatory authority in the process of institutional re-arrangement (e.g. the German *Berufsgenossenschaften*).

Indeed European integration requires that national institutions with a high level of legitimation - governments and powerful interest groups - *must* lose much of their influence in Brussels to overcome the mutual blockade situation of inter-national bargaining. If national governmental representatives in the consultative committees complain that the Commission rejects 90 % of their proposals, this comes close to the mathematical number of rejections which are required to prepare a directive proposal which is evenly influenced by all of the 12 Member States (with a mathematical share of 1/12 for each State) and free of national biases. Furthermore, the Commission has also to seek a balance between the official national interest as articulated by government officials and national minority interests, which may be expressed by various societal partisan groups. Facing the multitude of national governmental and non-governmental interests on the European level, a "success quota" of "only" 10 % appears to indicate even a quite strong influence - compared to the influence of others. Reality is, of course, much more complex and cannot be appropriately modelled by such simple arithmetical games. I merely wanted to demonstrate that no single actor can reasonably expect more than a marginal identifiable influence on European decision-making.

European health and safety at work regulation indeed appears to be a blend of influences from many (advanced) Member States - e.g. the New Approach from Germany, the occupational health concept from Denmark and the Netherlands (and non-EC-Member Sweden), the risk assessment approach from the British health and safety executive, the technical rather than

personal protection approach from France etc. The high level of protection is partly the result of the fact that the most innovative elements from various countries have been combined.

Exactly the fact that the Commission is concerned with avoiding situations of national dominances - of "relative deprivation" for the other States - creates the feeling of disregard of one's own interests. In the current political system of the European Community there is no adequate compensation for this loss of democratic legitimation. The European Parliament and the (in public widely unknown) Economic and Social Committee are the least influential European institutions, and most of their effective influence on European decision-making comes from acting within the hidden networks of preconsultations in the preparatory stages of the decision-making process.

Although between 1985 and 1992 the Commission's strong position has been an important reason for the new and "unexpected" drive towards integration, the democratic deficit in European decision-making may become critical for Europe's future. The Danish population's rejection of the Maastricht Accord (which paradoxically introduces and enhances democratic procedures to some extent), the small majority for the Union Treaty in the French referendum, the British Government desertion from the European Currency System and partial dissociation from the European Community demonstrate that people and governments in the Member States are increasingly concerned about losing national sovereignty.

When both the British Prime Minister and the German Chancellor blamed the Commission for being too dominant and practising some over-regulation and over-harmonization during the currency crisis in late September 1992[41], these comments reflected widespread negative attitudes against the "Eurocrats" in Brussels. Commission Vice President and Commissioner of DG III, Martin Bangemann, reacted to these criticisms on the one hand by playing down the Commission's role and pointing to its concern for subsidiarity but on the other hand by emphasizing the necessity of harmonization in technical standardization, indicating that the Commission's course in technical regulation won't change (on 23.9.1992, as quoted by the European press, e.g. Frankfurter Allgemeine Zeitung from 24.9.1992).

After the long period of stagnation from the late 60ies to the early 80ies, the period between 1985 and 1992 - from the Commission's White Paper and the Single European Act over a comprehensive harmonization of law up to the Maastricht Accord on the European Union - has certainly been marked by a fresh drive towards integration. Facing the European crisis in autumn 1992, the suspicion arises that the speed of the drive towards integration may have been accelerated a little too much, provoking a roll-back in some Member States, most evidently in Denmark, the United Kingdom and France. What are the prospects for European integration in the future?

41 Probably the most important statement was an official statement addressed to the Bundestag, when Chancellor Kohl spoke of "centralist misdevelopments", a "tendency to regulate all and everything on the European level" and a "frequently observable regulatory mania (*Regelungswut*)" and demanded that a reasonable equilibrium between local community, region, nation-state and European Community be regained by enhancing the principle of subsidiarity (government statement before the ***Bundestag*** of 25.9.1992).

Returning to a policy of minimum harmonization on the level of the least common denominator would certainly not be acceptable for the highly-industrialized Member States, and doesn't appear to be a realistic option, since, at least in the area of health and safety at work, most of the harmonized European regulation has already been enacted. On the other hand, it seems to be unlikely that the Community will be able to continue on its path of tough regulatory harmonization with the same speed as maintained during the last years, especially if the total effects of European regulation become increasingly visible after the time-lag between directive passing and *de facto*-implementation.

One reaction to the legitimation crisis could be a more consequent application of the principle of subsidiarity to something called "Europe à la carte" or "two-speed Europe": a looser international regime with special membership conditions for single countries which are not willing or not able or not permitted (in the case of the monetary system) to participate fully in the European Union. In such a perspective, there would be a core group around the large and economically strong Member States Germany and France, probably including the Benelux countries and perhaps Denmark, and a more or less peripheral group of States which are politically reluctant to join this core group (such as United Kingdom) or are economically too weak to participate fully in economic integration. However, as Bangemann made clear, such "à la carte" memberships are only practicable in some new and additional sectors of integration policy, but not in the sectors where harmonization is essential for the completion of the internal market, because there, as in legal harmonization, the principle "all or nothing" is in effect (Weiler 1982a). In health and safety at work regulation, it is hard to see how the wheel could be turned back and how a "two-speed Europe" could be realized without a new segmentation of the internal market. To protect their industries against *social dumping* from low-level states, the countries with high levels of protection would have to erect new trade barriers. Accordingly, the ministers of finances confirmed during their meeting on 28 September 1992 that there won't be a Europe of two speeds.

"All or nothing" characterizes the future of the Community too. If there is only a choice between the erosion of the Community or ongoing harmonization (perhaps with a somwhat reduced speed), the legitimation crisis can only be overcome by reforming the Community decision-making process itself. Because there is no return, the Community has to take the next step on the ladder towards a mature political system on a supranational level.

This is not the place for intricate discussion of options for the democratization of the European Union. Only some thoughts shall be presented which arose from the analysis of the decision making processes in health and safety at work regulation. The deficit of democratic legitimation which is the cause of the increasing discomfort, results from the considerable transfer of regulatory powers to the EC. This transfer of powers to the European institutions, of which the most important ones - Council, Commission and Court of Justice - lack democratic legitimation requires compensation. However, it is evident that any strengthening of national bodies - either governments, parliaments or interest groups - will raise the level of conflict in European decision-making and increase the dissatisfaction with its outcomes. One approach to settling the legitimation problem is to enhance the powers of the European Parliament - which is generally demanded as a necessary prerequisite of a democratic political system on the European level. Another, additional approach, is to balance the transfer of powers to European decision-making bodies (including the EP) by enhancing the autonomy of the sub-national regions at the same

time ("Europe of regions"; see Hull/Rhodes 1977 or, more recently, the articles in von Alemann/Heinze/Hombach 1990). In federal Member States (like Germany), the transfer of regulatory powers in fields where the regions (in Germany the *Länder*) are legally competent (in Germany *inter alia* safety) even leads to serious judicial problems, if the regions do not formally participate in European decision-making (Falke/Joerges 1987). The establishment of an (advisory) committee of the regions by the Maastricht Accord is one reaction to such demands.

Facing such reforms, Schmitter (1992, pp. 40-76) is concerned about the Community's future. He expects that the Community's stability will be threatened by a further diversification of decision-making institutions and processes (e.g. the creation of a new advisory committee of the regions, the new powers of the European Parliament up to an exceedingly complex co-decision procedure [Art. 189b], the Conference of the Parliaments [*les Assises*], the dialogue of the social partners according to the 11-Member agreement on social policy, and a couple of other measures which are less important for our topic but highly important for others, e.g. the European Central Bank).

On the other side, regarding the improved opportunities for *divide et impera*-strategies, this diversification of decision-making structures would probably strengthen the Commission's position and "weaken further what is left of sovereignty at the national level" (Streeck/Schmitter 1991, p. 154). As Elias (1969) worked out in his study on the formation of the modern nation-state, regional particularism generally tends to strengthen the centre, because then the central power is able to play off the regional actors against one another. If a multitude of regions tries to participate in European decision-making, single tunes will merge into a diffuse choir and national positions will be weakened, because regions - forming transnational coalitions - will fight against their national governments on Brussels's stage (von Senger und Etterlin 1992, p. 24, Morass 1992, p. 303).

However, such institutional diversity is characteristic for *mature* political systems with a multitude of regionally and functionally differentiated interests and actors. All modern nation-states have *de facto* network-like decision-making structures with a diversity of channels of influence for various territorial and functional actors.

Even in the absolutist states there was a tendency towards *de facto*-decentralization of powers (which eventually led to their transformation), because with increasing functional differentiation there is increasing functional interdependency; and when the level of interdependency increases, systems become more and more self-dynamic and less controllable (Elias 1969, vol. 2, pp. 147-148). Or, as Deutsch analyses this phase in the process of state formation:

"The over-all size of the decision-making group became much larger. An increasing number of decisions was no longer made by identifiable individuals or small identifiable groups. Rather, decisions emerged as the outcome of the partly impersonal interplay of a large number of semi-independent pressure groups, each of which concentrated its energy mainly upon the pursuit of a very few limited objectives, often with scant regard for the effects of its action in the larger national and international context." (Deutsch 1970, pp. 23-24)

The decision-making structures within the European Community are already network-like. In the process of maturing, the political system of the Community will become even more complex[42]. The complexity and opacity of European decision-making has been in favour of the Commission and of a few partisans whose ideas were adopted and supported by the Commission. Unless there are Member States which will retreat from Community - which becomes increasingly difficult with further integration and dependency -, the further development, including the effects of the Maastricht Accord, will probably weaken the national actors and strengthen the European actors. If this happens, the only chance to counterbalance the Commission's central position and to introduce more democratic participation and legitimation can be on the supranational level.

Usually, democratization of European decision-making is seen as enhancing the powers of the European Parliament. There are, however, serious barriers to and side-effects of enhanced decision-making powers of the European Parliament. A grave barrier is that there is still no European political public - an indispensable precondition for a working parliamentarism (Schneider 1992, p. 28). A paradoxical side-effect of enhanced decision-making powers could be a weakening of the European Parliament's political role, because then the national parties would certainly tighten up their control over their Members of the EP, which would probably lead to a re-nationalization of the debates and decision-making patterns within the EP. It would be fatal for European integration, if the logics of inter-national bargaining would be transfered into the European Parliament. Currently, the political influence of the EP - which appears to be *de facto* higher than formally - stems from two phenomena: First, that *de facto* decision-making in the EC happens within informal networks spanning around the Commission. And secondly, that there is little national attention and control of EP activities. The Members of the EP are to a considerable extent both independent and isolated from the national political arenas and the EP has become a path for political careers which is quite distinct from the career paths in the national parties. The Members of the EP react to this situation by focusing their activities towards European integration - similarly as the actors of the other supranational institutions, the Commission and the Court of Justice. It is doubtful, whether the Parliament would be able to keep its potential for integrative and innovative policies, if its activities became *high politics*.

For these reasons, it seems to be wise to bet not only on the European Parliament to achieve a democratization of European decision-making. More democratic or, more soberly, at least more participative decision-making also requires a stronger *functional representation* of societal interests on the European level. An additional system of functional representation to balance the different functions (economy, technology, social welfare, ecology etc.) or, in other terms, the interest groups (firms, workers, consumers etc.) is especially required in the European Community, which has historically been biased towards the economy (besides agriculture) and where the system of territorial representation, primarily the Council, is unlikely to safeguard appropriate regard of a balanced public interest. The current tendencies towards improved

[42] In his three scenarios for Europe's future, Wessels (1992, pp. 55-6) links the dynamics of integration with the structure of decision-making processes. Whereas reduced complexity of decision-making procedures will occur both in the "backlash" scenario (re-nationalization) and in the "federal quantum leap" scenario (constitutional federalism with diminishing powers of national actors), in the "trend extrapolation" scenario, continuing integration is associated with increasing complexity of procedures in order to create more channels for participation - probably the most appropriate mechanism to cope with the peculiar combination of the continuance of basic national sovereignty with increasing regulatory powers on the supranational level.

participation of the workers, the consumers, the regions etc. can indeed be viewed as attempts to come to holistic rather than particularistic definitions of the public interest on the EC level (Zellentin 1992, p. 72).

Especially for the regulation of occupational health, the role of intermediary organizations in the European decision-making process appears to be central. Organized interests have important mediating functions in mature, network-like democracies (Cohen/Rogers 1990). On the one hand, they articulate the interests of their clienteles to parliaments and governments (*pluralism*). On the other hand, organized interests are engaged in implementing state policy, and partly "incorporated" into governmental regulatory processes (*corporatism*[43]). In European health and safety at work regulation, associations perform both functions. Participation of organized interests is provided both in the process of directive preparation and in standardization. Particularly the delegation of technical regulation to the private-law standardization bodies is an outstanding example of corporatist governance.

That pluralist participation in decision-making and corporatist participation in governance do not currently work entirely satisfactorily, however, results from the fact that most interest groups - including the standardization bodies - are organized on the national level. Most of the European peak organizations which already exist are weak federations of the national associations without direct membership (like CEN and CENELEC, while ETSI permits direct membership), with few resources of their own (compared to the resources of the respective national organizations) and, usually, very little authority to act on behalf of their members (see Kohler-Koch 1992). Within the European organizations, national thinking is still rife and conflicts between the national member organizations limit their ranges of action, whereas the national organizations still continue to operate on the European scene independently and not seldom against one another. The activities of most European peak organizations is limited to, important enough, the observation of European regulatory processes, while they would be overcharged with the task of interest aggregation and representation (ibid., p. 96). Only the industrial associations - 94 % of the 525 registered European organizations - are fairly strong because of better personal and financial resources, accumulated experiences, built-up communication networks and channels of influence (ibid., pp. 95-6).

Streeck and Schmitter (1991) go so far as to speak of "the failure of Euro-Corporatism" - at least on the premise that fully-developed corporatism requires centralized collective bargaining between monopolist organizations of capital and labour (according to Schmitter's definition of corporatism; see Schmitter 1974, pp. 93-98). Their analysis, however, is based on two consequences of the intergovernmentalist supposition that the primary mechanism of European

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[43] "Corporatism" is understood here as the integration of organized interests into the processes of policy-making and policy-implementation (Voelzkow 1991). Whereas many scholars define corporatism this way *by function*, (e.g. Anderson 1977, p. 191; Lehmbruch 1979, p. 55; see also the definitions quoted by von Alemann/Heinze 1979), Schmitter (1974, pp. 93-98) defines corporatism *by structure*, i.e. as a system of government-acknowledged interest organizations with a *monopoly* of representation within their domain (while *pluralist* systems are characterized by less government regulation and competing interest groups). It is usually assumed that (regulatory) function and (monopolist) structure correspond (with a cautious formulation: Schmitter 1981, p. 67; critically: von Beyme 1981). The difference between both definition approaches becomes significant, if this is not the case, especially if groups without a monopoly of representation are incorporated into governmental decision-making processes (see *infra*).

decison-making is negative integration. One consequence is that the pressure groups which are interested in deregulation ("business" or "capital") have to do nothing more than just to refuse to empower their European peak organizations to participate in European arenas of corporatist negotiations and to enter into binding obligations on behalf of their national member organizations (ibid., p. 141). The strategy to "prevent centralization of [corporatist, V.E.] regulatory capacity simply by refusing to build the organizations necessary for them to be able to make binding commitments at the central level" (ibid., p. 142) is successful because of the second consequence, the mutual blockade of the veto-powered national governments within the Council, whose institutional self-interest in avoiding any loss of sovereignty is reinforced by the "capital's" pressure on them to prevent social regulation on the European level. The result is that the nation-state remains the primary scene of social regulation and hence the main target of interest group activities.

"In the history of the Community up to the present, intergovernmentalism and the veto powers of individual nations were always strong enough to preempt or modify centrally made decisions. Organized interests thus had no other choice even if they were otherwise inclined, than to maintain a strong national base and to cultivate established channels of influence. This .. holds in particular for groups and in policy arenas *where the interest is more in nondecisions than it is in decisions*. As long as the Community - that is, its nonintergovernmental institutions such as the Parliament and the Commission - cannot autonomously determine the range of policy that come under its jurisdiction, its ability to influence the structure of organized group interests will remain low indeed." (Streeck/Schmitter 199…, p. 143)

At least in the specific sector of social regulation which has been analyzed in this paper, things have changed in the meanwhile. First, the Commission has acquired quite a bit of process control in all phases of the regulatory process and become a key actor in the process of European decision-making. Hence, the Commission has become a target of associative pressure and the Commission itself eagerly promotes a constituency of European interest groups (also providing it with expertise and working capacities). Secondly, the mechanism of negative integration was turned into a mechanism of positive integration, when the main negotiations were shifted away from the Council to the consultative committees. Within these committees the logics of decision-making are reversed: while unanimous decision-making is in favour of obstructionism, the working style of a consultative committee is in favour of high-level regulation, because it creates a vacuum to be filled with positive proposals, adding to a growing list of items which are taken into consideration by the directive-preparing Commission.

It is the logics of positive integration within network-like decision-preparing structures that is responsible for "babies growing fat", as Commission President Delors put it on the Birmingham summit of 16.10.1992 (quoted after Der Spiegel of 22.10.1992). The more actors - national government representatives, European Parliament, Economic and Social Committee, single interest groups, standardization bodies etc. - express their demands the more likely is it that new regulations are added to the original Commission proposal. The depicted genesis of the Display Screen Equipment Directive is a good example of such a "baby", which gained considerable regulatory weight by adopting additional proposals of the ESC and the EP. These procedural logics also contribute to the observed tendency of a high-level regulation.

Since any actor applying to the Commission has a chance of positive influence, single interest groups can no longer prevent the development of a corporatist system of interest representation by simply refusing to join it, because the influence of their counter-organizations will be even

greater if it is not balanced out. The Commission's readiness to engage partisans for the work of drafting the technical annexes (and consequent tasks) has been mentioned. The interested parties have a burden of initiative: only the one who participates in the decision-making process has a chance of influencing it - the one who refuses cannot prevent decision-making any more.

Streeck and Schmitter are right that the emerging "postindustrial" Euro-Corporatism will be quite different from the kind of corporatism which is typical for mature capitalism, i.e. a corporatism characterized by established arenas of autonomous regulation by monopoly organizations of capital and labor. To the degree that the class conflict is be replaced by a multitude of other, interfering conflict lines - between higher and lower industrialized countries, wage maximization and humanization of work, polluters and environmentalists, workers and consumers, manufacturers and users, small and big business, region and nation-state etc. - the system of organized interests - "disjointed pluralism" as called by the authors -

"would be characterized by a profound *absence of hierarchy and monopoly* among a *wide variety of players of different but uncertain status*. Interest associations, and quite a few of them, will certainly be among those players. But they will have to compete for attention with national states, subnational regions, large firms, and specialized lobbyists, leaving their constituents with a wide range of choices among different paths of access to the Community's political center and enabling them to use threats of exits to coerce their representatives into pluralist responsiveness." (Streeck/Schmitter 1991, p. 159)

This is an excellent description of the incorporation of organized interests (both non-governmental and governmental actors) into the network of European decision-making in health and safety at work regulation since the introduction of the New Approach. The fact that the Commission or the standardization bodies are open to any group applying to them, or, in other terms, that there are no monopolies of interest representation gives rise to a theoretical problem: classical corporatist theory assumed that functional integration in governmental policy-making requires monopolist representation of interests, because otherwise the interest groups have no opportunities to enter into obligations which are binding for their constituents, because their constituency can withdraw support and change to other, competing organizations.

Fortunately, this problem does not occur in European regulatory policy, because the outcomes of corporatist regulation are generally binding, either directly legally binding - like the directives - or, within the framework of directive reference, *de facto* binding - like the standards which are set to specify New Approach directives. Since standardization bodies are not interest organizations but meta-organizations to which the interested parties express their demands, the delegation of regulatory functions to associative bodies can be called a *pluralist corporatism* (as against Schmitter's "monopolist" corporatism), because the democratic legitimation of this associative regulation *requires* the participation of a *plurality* of organized interests rather than monopolist structures of interest representation, which would necessarily fail to cope with the extreme heterogenity of interests within the European Community, both in terms of territorial and functional diversity. The heterogenity of interests, which cannot be reduced to simple dichotomies (like that between labor and capital), has always been the reason why technical regulation cannot be organized by bipartite or tripartite bodies but only by committees consisting of a variety of actors and using consensus or, at the very least, qualified majority voting as the primary decision-making technique.

The pluralist way may even be the only way that corporatism can work on the European level[44]. When the outcomes of health and safety at work regulation and of the "social dialogue", which started in January 1985 in Val Duchesse (Kommission 1991), are compared, the former appears to be far more successful than the latter, the long and cumbersome negotiations of which resulted in not much more than a few noncommittal resolutions (although a slow progress must be conceded since 1985). The story of the social dialogue also reveals that monopolist interest representation on the European level suffers from the overwhelming, obstructionist influence of the national member organizations.

The developing, pluralist Euro-corporatism, however, is connected with another, more severe problem. For a working political system on the European level, the interest groups must be *responsive* to the opportunities of the European decision-making structure and must become able to participate effectively in the complex networks. This requires a different strategy towards European regulation: Instead of defending national positions against European regulation, which is still primarily regarded as a threat (especially for monopolist regulatory authority within corporatist frameworks on the national level), European regulation has to be viewed as an opportunity for social innovation.

European integration has become a matter of fact. The arena for interest group activities has been shifting from the national capitals to Brussels. This shift was regretted by most interest groups, because it was connected with the loss of well-known lobbies, procedures and contact persons, of channels of communication, of vested rights and - frequently - of monopolist access to relevant actors within the national political system. However, fighting against the transfer of regulatory powers to Brussels does not seem promising, because the EC will regulate anyway even without participation of the groups who fail to direct their attention to Brussels. For most interest groups, the time has come to adjust to the new situation and to direct the focus of their attention to the lobbies in Brussels.

If you can't beat them, join them. Interest groups - and other actors - have improved chances of influence, if they organize directly on the European level and join the existing coalition of European actors -of the Commission, the Court of Justice, the European Parliament and the lobbyists who are already present (see von Senger und Etterlin 1992, p. 21). The standardization-related political and financial support of the Trade Union Technical Bureau and of the consumer organizations are examples that the Commission is willing to support European interest groups, because it fits into its strategy towards Europeanization of decision-making. Interest groups - or innovators within such groups, who do not succeed on the national level and who may try to realize their ideas on the European level - may take advantage of the institutional self-interest of the European actors in creating a European system of corporatist governance. There have already been examples of a filtering of the rather innovative individuals and factions

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[44] Another discussion would be to compare both kinds of corporatism (or, in Schmitter's terms "pluralism" and "corporatism") in the light of the theory of democracy. Whereas it is an important condition for the legitimacy of monopolies of functional interest representation that the individuals' interests are primarily defined by their roles and occupations and thus clearly identifyable and unambiguous, a pluralist corporatism offers choices according to individual preferences. Hence, pluralist corporatism may be more appropriate for post-industrial societies (e.g. as pictured by Beck 1986), when socio-economic classes dissolve into individualization and new problems of survival arise beyond the conflict of capital and labour.

who got oriented towards Brussels from the rather conservative ones who remained focused on the national arenas.

A positive influence on European decision-making requires a positive, offensive attitude. Still the behaviour of many actors seems to be determined by expectations, which have been rendered misdirected ever since the Single European Act and the Commission's fresh regulatory drive . If European regulation is not taken seriously, if deregulation is still falsely expected, chances of influence are squandered. As mentioned above, expecting *social dumping* from European regulation seems to become a suicidal prophecy, expecting *innovative regulation* may turn out as a self-fulfilling prophecy.

Abbreviations:

AMICE	European CIM Architecture
BEUC	European Consumers Organization
BSI	British Standards Institute
CCC	Consumers Consultative Council
CEN	European Committee for Standardization
CENELEC	European Committee for electrotechnical Standardization
CIM	Computer Integrated Manufacturing
DIN	German Institute for Standardization
EC	European Community (-ties)
EFTA	European Free Trade Association
EP	European Parliament
ESC	Economic and Social Committee of the European Communities
ETSI	European Telecommunications Standards Institute
ETUC	European Trade Union Confederation
EWOS	European Workshop for Open Systems
ISO	International Organization for Standardization
ORGALIME	Liaison Group of the European Mechanical, Electrotechnical, Electronic and Metalworking Industries
TC	Technical Committee
TGB	Trade Unions Technical Bureau
TUTB	Trade Unions Technical Bureau
UNICE	Union of Industrial and Employers Confederations of Europe
WG	Working Group

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Note: Some of the documents and publications which appear here in the German version are also available in English.

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