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**European Integration and Cultural Policies  
Analysis of a Dialectic Polarity**

LÉONCE BEKEMANS

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**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**

**EUROPEAN CULTURE RESEARCH CENTRE**

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**European Integration and Cultural Policies  
Analysis of a Dialectic Polarity**

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"Europe is not an economy and not quite a political entity, it is a thousand-year-old culture. Any European action must start from a realisation of this fact."

H. Brugmans

EUROPEAN INTEGRATION AND CULTURAL POLICIES  
ANALYSIS OF A DIALECTIC POLARITY

Léonce Bekemans\*

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## I. European Integration and Cultural Diversity

### A. Integration theory and culture

The rising intensity of European economic integration and the extraordinary events in Eastern Europe may result in the emergence of new challenges to the future of the overall integration process. The new momentum of the European Community, generated by the European Single Act and the realisation of the internal market, seems to have a decisive impact on the integration process. It should not be forgotten that the word "culture" is never mentioned in the EEC Treaty. However, the ultimate success of this dynamic process will depend on the inclusion of culture, being the ultimate justification of a European Union. The confinement of Europe's destiny to that of a large single market would certainly be too narrow a scope of such a process, and would prove to be a self-defeating goal in the long run.

The meaning of the word "culture" depends on its use. It can be taken in either a narrow or wider sense. The notion of culture can be restricted to the arts, literature, music, or philosophy. Its field is then the world as a whole. In its wider sense, culture refers to a complexity of values, customs, ideas, and political and social institutions, in which case it determines the human and social relations of a specific society, in casu Europe. In this wider sense, culture becomes central to the notion of a Community and its future, even if this Community is economic in origin. The

reality of European culture is an accumulation of diversified, but nonetheless coherent, identities and reference systems which are not easily confined within a closely integrated system.

Processes of integration can be assessed in three different ways: in terms of social interaction, in terms of political decision-making and in terms of common identity (1). And accordingly, West European integration in the cultural field can be assessed along these three dimensions; i.e. informal cultural interaction, formal processes of cultural co-operation and the existence of a "European cultural identity".

Following the founding fathers' proclamations, the primary task of the European integration process was to revitalise an entire civilisation which had been overwhelmed by war's devastation. The determination to "lay the foundations of an ever closer union among the peoples of Europe" was clearly stated in the preamble of the EEC treaty. Historical reasons explain why this process was tackled from an economic standpoint: it was linked to the economic rationale of a distribution of resources and a unification of the

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1) Leon Hurwitz, Contemporary Perspectives on EC Integration, London: Aldrich Press, 1980, p.3-23. For a good overview of the different approaches to integration theory see Charles Pentland, International Theory and European Integration, London: Faber & Faber, 1973. For a critical but stimulating view on West European integration see Stuart Holland, Uncommon Market, London: The MacMillan Press Ltd., 1980.



market. It was hoped that European loyalty would grow alongwith the functional integration of its economy. In fact, economic integration was only meant to be a starting point for a more intensive integration in the future. At the time of the EC's creation, the adherents of the functionalist theory of integration hoped that the common management of parts of the economies of the member states by common institutions would set a wider process of political integration into motion. It was believed that economic integration would in due time, urge the States to co-operate in non-economic matters which were at that time still under their sovereignty. Therefore, due to these spill-over effects, more power would be transferred to the European institutions, thereby creating in the end, a sort of European Federation, which would replace the nation states and be of direct importance to the European citizens.

This neo-functionalist approach argues that economic integration in Europe will inevitably lead to a unification in other fields. Neo-functionalism (1) aims at the realisation of a supra-national system through socio-economic means, i.e. combining gradual economic

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1) See, Ernst B. Haas, The Uniting of Europe: Political, Social and Economic Forces 1950-1957, Stanford: Stanford University Press, 1958; Leon N. Lindberg, The Political Dynamics of European Economic Integration, Stanford: Stanford University Press, 1963; Leon N. Lindberg and Stuart A. Scheingold, Europe's Would-Be Polity: Patterns of Change in the European Community, Englewood Cliffs, N.J.: Prentice-Hall Inc., 1970.

co-operation with the goal of political union. Federalism(1), on the contrary, relies on political variables to create a supra-national structure. The growing institutional involvement of the EC with culture seems to illustrate the functional spill-over of the economic integration process in the cultural sector (2). Market integration, however, primarily affects culture in its material appearance, i.e. as a product of an activity, and not so much for its basic values.

Although the economic benefits of European integration have been thoroughly discussed and analysed, the socio-political problems of integration have been somewhat neglected by social scientists. In particular, the citizenship aspect of interstate integration is emerging as a sensitive issue, involving tensions between supra-state, nation-state and regional loyalties, identities and commitments.

The so-called cultural crisis in Europe has its subjective and objective roots (3). The vision that the founding fathers had of a unified Europe is still incomplete. National interests are still the dominating force in the conduct of European affairs. The Europeanisation of reality has not been followed up by an institutional response,

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(1) See Henri Brugmans, La Pensée politique du fédéralisme, Leyden: Sijthof, 1969.

(2) See Part III of this article for an overview of increasing EC involvement in cultural affairs.

(3) See closing speech of W. Maihofer in D. Roche (ed), Actes du Colloque "Culture et Cultures Européennes", Florence: Institut Universitaire Européen, 1987, p. 322-326.



although the objective facts of the integration process in-creasingly demand a European dimension of national policies. It also implies that further integration has to include the cultural space of Europe by preserving the European cultural heritage and promoting its cultural identity.

The socio-political problems of European integration are mainly related to the absence of strong cultural attachments, the marginalisation of smaller communities on the periphery of the European market, and the consequent threat to the continuity of languages and minority cultures, the possibility of strong religious conflicts, and the demographic imbalances resulting from the migration and transfer of populations from the South to the North.

The function of education must primarily be to awaken cultural awareness. Universities can play an important role in the formation of a European consciousness by developing an integrated system of higher education and by stressing the European dimension in the curriculum of national universities. In this perspective, the ERASMUS programme is one of the most exciting initiatives of the European Community in recent years as it stimulates the mobility of university students of the EC countries. Also the Jean Monnet project, recently launched by the European Commission, is an example of such an approach (1).

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(1) O.J. No C 308/13; the project aims at stimulating the study of European integration in national universities.

The neo-functional approach shows its shortcomings when it is applied towards a European Union which finds its justification in culture. The philosophy behind the EC Treaties has only partially been verified. The power of each single State is not as great, but a new European structure is still not in sight. The limitation of the scope of action of the EC Treaties is increasingly felt as a major handicap to the role which the EC might play in the process of European integration.

Consensus on further European integration can not only be found in the neo-functional theory of international co-operation, but must be based on broad public support, and on the recognition of cultural identities at European, national and regional levels. Mechanisms of integration did not set the agenda for future activities by their own motion, but had to be embedded within some broader purpose of action, to be enacted by the citizens of Europe.

Within this context, cultural policy cannot be considered as an instrument aimed at guiding cultural activities in the name of a general European interest. Culture has its own development capacities and European cultural identity should be seen as a project of permanent creation and exchange to which the citizens of Europe can refer. We need to consciously promote identity as an integrative factor. Such a common project for the future can accelerate the integration process in a decisive manner.



Henri Brugmans was convinced that Europe constitutes a culture in its own right, a civilisation that is singled out by its special geographic environment, basic values and common cultural heritage, and shared experiences (1). Europe undoubtedly has a common cultural history which was never confined to national frontiers.

The historical components of a European cultural identity (e.g. the Renaissance, the Enlightenment, the Industrial Revolution, etc.) have also been stressed during a UNESCO conference held in Helsinki in December of 1980. This awareness of a European dimension of culture as a justification for the European Union was already discussed at The Hague Congress in May of 1948 (2). The Congress established a close link between the realisation of a political union between states and the need to mobilise Europe's citizens around shared cultural values. It certainly is an important starting-point for actual policy-making and common action in the cultural field. The teaching of "European" history in our schools may then be seen as a cohesive factor in such a process of integration.

The affirmation of cultural identity was also the causa movendi for the Madrid Declaration on a European cultural space in October, 1985. The Conference of European

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(1) Henri Brugmans, Towards a European Cultural Policy, Brussels: European Cooperation Fund, 1978.

(2) Brugmans H., Le congrès de la Haye - avant, pendant et après, in Nederland en de Europese Eenwording, P.M. Hommers (ed), Den Haag: Martinus Nijhoff, 1980, p. 152-169.

intellectuals reconfirmed a cultural Europe beyond that of a market in which variety and diversity might prosper. The conclusion asked for concrete and institutionally efficient measures and actions to move Europe from a pure state of the market to a state of a cultural dynamic space. This is very much related to a Europe of the regions in which the various levels of cultural identity (European, national regional) are complementary and self-enforcing in an European context.

The Tindemans report of 1976 on European Union also drew the attention of the European Community to the fact that Europe cannot proceed to a greater degree of political integration without the underlying structure of a unifying European identity (1). In order to accomplish this goal, the Report proposed two courses of action: the protection of fundamental, consumer, and environmental rights, and the concrete manifestations of European solidarity by symbolic actions. This position was underscored by a number of European Councils in the eighties. No much attention was however given to the regional dimension of cultural identity.

Recent events and developments have indicated the growing political importance of the right to cultural identity as one of the prime means for developing Europe's future. We should be aware that fundamental decisions are never based on statistical evidence of mere economic interaction. Every

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(1) Bull EC, Supplement 1/76



debate that has focused on the great economic choices before us has undoubtedly suffered from not incorporating culture as one of the basic factors of their arguments. Incorporating the qualitative factor of culture in the European integration process implies, however, a number of challenges which are both intricate and complex (1). Therefore, a clarification of the bases of common perspectives at regional, national and European Community levels is needed if the dangers of a homogenised, bureaucratised approach to a European cultural dimension is to be avoided.

#### B. Formal and informal cultural interaction (2)

In order to comprehend the explanatory power of neo-functionalism in the European integration process, distinction should be made between formal and informal processes of cultural interaction. Informal cultural interaction is often difficult to assess in relation to the

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1) The importance of the cultural dimension as an essential part of the integration process is discussed in D. Roche (ed), Actes du Colloque "Culture et Cultures Européennes", Florence: Institut Universitaire Européen; March 1987; A. Rijksbaron, W.H. Roobol & M. Weisglas (eds), Europe from a Cultural Perspective, The Hague: OPR, 1987; and R. Papini (ed), Per una politica culturale europea, la sfida dei diritti culturali, Milano: Massimo, 1986.

(2) A good juridical analysis of the formal processes of cultural co-operation within the West European system is given by B. De Witte, Cultural Linkages, paper presented at the Brussels Working Conference of the project "Dynamics of European Integration", 17-18 February, 1989.

flows of cultural goods (e.g. works of arts, records, films, books, etc.) of persons exercising cultural activities (e.g. actors, writers, painters, etc.) and of a number of invisible flows (e.g. communications, services, etc.) and to the measuring of cultural flows and their effects.

Such informal processes are an important element in stimulating the awareness of a European dimension of culture, and consequently crucial to ongoing future process of integration. They are often assessed as a basis for the regulatory initiatives of governments. The long-standing tradition of essentially informal but clearly non-institutionalised Nordic cultural co-operation illustrates extensive informal cultural interaction which is based on shared cultural identity.

At the economic level, there is a fairly close overlapping of informal and informal integration. In the field of culture, on the contrary, it seems that formal co-operation is neither a natural outgrowth nor the direct source of informal interaction. There is no evidence to suggest that the patterns of informal interaction lead to similar patterns of formal integration: often there appears to be tension between both processes in the European Community.

This is in striking contrast with the importance of cultural flows across the Atlantic and the almost total absence of formal links between the United States and European countries in this field. The overwhelming consumption of American and Japanese television programmes



in Europe is but a deplorable example. Similarly, another major cultural flow, that between North and South, especially between West European countries and the native countries of their immigrants, is only institutionalised in part. On the other hand, relations between West European countries appear to be less intensive at the informal level, and more heavily institutionalised.

At the formal level, a distinction can be made between national and international regulations. Unilateral regulation by each State is often explained as an attempt to limit or control undesirable forms of cultural movement. Three structural types of measures can be distinguished which limit cross border flow or exchange; each is applicable to the various forms in which culture moves (goods, services, persons):

- a. Outright prohibitions on entry or exit;
- b. Direct discriminations against foreign cultural goods or operators. A typical and very common example is that of governmental subsidies to the national production of films;
- c. The vast category of what is known in European Community law as measures having an equivalent effect. These are measures that do not openly use citizenship or national origin as distinguishing criteria, but nevertheless have a detrimental effect on the movement of culture.

Examples of such limitations on the flow of culture are the many private regulations, often backed by state legislation. Thus, broadcasters may use self-imposed quotas on foreign programming; book traders and librarians agreed to impose

resale price maintenance systems affecting international book trading; the International Council of Museums ( a non-governmental organisation) has adopted a code of ethics on measures limiting the illegal trade of works of art, national orchestras employ mainly national musicians, etc.

International legal rules may influence the movement of culture in various directions: they can restrain, permit or constitute informal flows. Restrictive international rules react against national standards which are considered as unduly lenient to undesirable forms of cultural movement. Normally speaking, States can impose any desirable restrictions through unilateral action controlling incoming and outgoing flows. Some forms of cultural movement, however, escape such easy control, and common action is therefore required on behalf of the sending and receiving States.

The obvious example is audio-visual broadcasting, which is transmitted by satellite so that it cannot, unlike other carriers of cultural content (goods or persons) be stopped at the State borders. The receiving State might resort to jamming, but this is both costly and an ineffective solution. Governments can also join forces to stop forms of broadcasting which they consider undesirable. Co-operation between exporting and importing countries also may curb illicit flows, like those of art objects (UNESCO Convention 1970, European Convention 1985). However, a more positive action should be thought of for the audio-visual sector, for instance within the context of television and education.



The typical relation, however, is the other way around: international rules try to expand cultural flows by removing national restrictions. A distinction is made between permissive and constitutive rules. Permissive rules are the characteristic feature of economic and cultural relations in the Western world. They create a framework of rules permitting informal interaction by private actors; typical sets of permissive rules are those of the GATT, the EEC Treaty and many Conventions adopted within the Council of Europe (1). On the other hand, constitutive rules intend to increase cultural flows but under close governmental control. They are a typical feature of many bilateral agreements providing for educational and cultural exchanges often determined by an intergovernmental mixed commission (e.g. cultural relations between East and West, until recently).

#### C. Different dimensions of cultural co-operation

Apart from the importance of formal and informal integration schemes in culture, different dimensions of European co-operation in cultural affairs exist, according to different political priorities and set in different legal

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(1) The many publications which resulted from the international research project on "Methods, Tools and Potential for European legal integration in the light of the American Federal experience", with headquarters at the European University Institute of Florence, clearly present the European and American experience of integration through law.

frameworks (1) (e.g. UNESCO-Europe and the Agreement of Association (1945) and a series of special conventions; Helsinki-Europe and the Conference on Security and Co-operation in Europe (1975); the Council of Europe and the European Cultural Convention (1954); the European Communities, the Treaty of Rome (1957) and the Single Act (1986); the Nordic Council and its agreements in 1962 and 1971; Foundations and non-governmental organisations with European dimensions such as the European Cultural Foundation in Amsterdam (2); a whole series of cultural co-operation agreements between countries, etc.).

Certain traditional conditions for closer cultural co-operation, linguistic, social or political, go far beyond the formal framework of the Europe of the Twelve. The following examples indicate possible links of EC Member States and certain cultural regions of reference and influence which are set in a whole range of different

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(1) European Handbook for Cultural Affairs, Nomos: Baden-Baden, 1985.

(2) The European Cultural Foundation, a non-profit-making private body established in 1954, has played an important role in the promotion and stimulation of cultural, social, educational activities, and research of a European nature through its network of national committees and institutes. Its subsidy programme has made it possible to support and participate in a number of projects of European interest related to environment, education, European cultural co-operation, East-West relations, the media, and the employment problems of young people and migrant workers. Often its role has been underestimated. Its ERASMUS bureau assists the Commission in the administration of the ERASMUS programme and its EURYDICE European Unit activates and co-ordinates the Community Education Scheme.



frameworks of international co-operation, be it general purpose organisations or specific cultural co-operation. The examples seem to suggest that geographical proximity or membership in the European Community are less important than linguistic, historical and cultural links:

- France and the francophone communities in Belgium, Luxembourg, Canada, and to a lesser degree, Switzerland, have co-operation agreements which have concrete consequences for their cultural policies (i.e. linguistic laws, media co-operation). This co-operation is organised around the "Agence de Coopération Culturelle et Technique" (1);

- a comprehensive system of cultural co-operation exists between the five Scandinavian countries in the framework of the Nordic Council, including the areas of education, science, research, media, and communications (2);

- the cultural co-operation among Commonwealth nations covers the fields of science, sports, literature, and publishing;

- a network of intense informal relations between the German language countries (The Federal Republic, Austria and Switzerland) exists in the fields of theatre, literature, music, radio, and television;

- the Mediterranean countries occasionally co-operate in cultural affairs.

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(1) Etat de la francophonie dans le monde, Paris: La Documentation Française, 1986

(2) Handbook of Cultural Affairs, op.cit., p. 80-87.

- the French-Saar cultural treaty (1948) which aimed at the integration of the Saar in France set up a French-German University (which still exists), favoured French teaching in the schools, and stimulated cultural exchange through artistic activities and sports events (1).

The different dimensions of cultural co-operation and cultural action present a variety of systems in which government representatives, experts, and other responsible persons in the cultural policy field meet regularly. The juridical base of co-operation differs significantly. Areas of cultural co-operation also differ, depending on their relative approaches and objectives.

However, the scope of engagement does not speak of the effects of cultural co-operation. The type of integration does have an impact: the Rome Treaty does not contain specific articles in the cultural sector, yet the decisions of the Commission often have important consequences for professionals and cultural industries in general. On the contrary, the Council of Europe, solidly based on the Cultural convention of 1954, serves as a mere forum for an exchange of viewpoints, a bundling of efforts and sharing of experiences in the field of cultural policy, with no binding

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(1) Amtsblatt des Saarlandes, 1948, pp. 1203-1204.



decisions for the Member States (1).

Although the Council of Europe could have accomplished more, it has established an international link between cultural administrators and published numerous reports on a wide range of topics. It remains an important intergovernmental institution for the co-ordination of existing cultural activities as well as the promotion of new ones. An effective consensus-building relationship between the two organisations can only be advantageous to those concerned with the formulation of cultural policy in Europe. A recent example of the undeniable potential for such co-operation is evident in the Assise sur "l'Audio-visuel" (Paris, September 1989) in which both the Council of Europe and the European Community co-operated (2).

#### D. Scope of Community Action

In the framework of this prospective survey, starting point is the formal interaction of culture, the European Community framework of the regulation of culture in view of market

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(1) Article 3 of the Convention provides that "the contracting Parties shall consult with one another within the framework of the Council of Europe with a view to concerted action in promoting cultural activities of European interest." The Council for Cultural Co-operation, the Standing Conference of European Ministers of Education, and a number of specialised bodies (e.g. the Steering Committee on the Mass Media) constitute the intergovernmental framework of this concerted action.

(2) See infra.

integration versus cultural diversity. However, the importance of informal processes in the cultural field implies care in including such a very sensitive issue into the political arena. Any notion of a policy of centralisation with respect to culture must be avoided to repeat past errors.

There is much opposition to a bureaucratic or politicised form of culture. Yet culture is a central political issue. In today's world, major confrontations tend to imply cultural controversy (e.g. regional and national autonomy claims such as in Spain, Belgium, the USSR; or international confrontation such as the Israeli-Palestinian conflict or the Iran-Iraq war). Such disputes indicate the limitations of mere economic reasoning in integration processes, even if economic co-operation may prove to be a precondition of transcending such cultural/political conflict.

Community action in culture is confronted with the ambiguous task of combining economic competence with cultural ambitions in a strict legal framework. Its objectives and means have still to be clearly defined and its political legitimacy assured. It certainly implies that any Community action in cultural affairs has to avoid the search for uniformity in applying economic laws, and allow for the diversity of living patterns and cultural expressions within the European Community (e.g. minority language groups, migrants, etc.).



Moreover, European culture is not a mythical or untouchable concept confined to the limited area of Europe of the Twelve, but rather a complex of distinctive spiritual, moral intellectual, and emotional traits with concrete cultural manifestations which express the pluriformity of the European society. Any community action in the field of culture will therefore have to show the maximum respect for the ethnic, social, and cultural characteristics of each of the different countries and regions within the Community, if the realisation of the internal market by the end of 1992 is to be a step towards further integration. A mere integration through the market opens up a European cultural space which is vulnerable to the outside, if a regulation through law is not applied in some specific cases as a positive discrimination.

The Community's legal competence and political legitimacy for entering the cultural field is more contested than in many other areas. This is reflected by the ambiguous legal status of the main legislative organ in this field: a hybrid institution called the "Council and the Ministers responsible for Cultural Affairs meeting with the Council", which can adopt either Community acts (as "Council"), intergovernmental acts (as Ministers responsible for Cultural Affairs") or mixed acts, the legal status of which is problematic (1). Such unorthodox institutional procedures

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(1) Johan Ryngaert, Le Conseil "mixte" culture: un événement vite redimensionné, in Rivista di Studi Politici Internazionali, 1987, n. 216, p. 581-590.

are intended to resolve the problems of Community competence in the cultural sphere (1).

As to objectives, there is wide scepticism concerning any goals for cultural policy on a European level, related to a whole range of factors ranging from management to constitutional aspects of such a policy. Many argue for a minimalist approach by assigning to the European Community, the task of encouraging cultural activities by providing a favourable socio-economic environment thereby in principle protecting the diversity of cultures within Europe in the face of a growing market integration. It is doubtful whether such an approach will generate the public support essential to the further progress of European integration.

The legitimacy of cultural policy at a European level implies the question why and to what extent should the state intervene in a sector which itself implies a high degree of creative freedom? And if public intervention is accepted, should it not be left to the local or regional structure? These questions are amplified in the European context of institutions which are placed in an economic and legal setting.

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(1) B. De Witte, *The Scope of Community Powers in Education and Culture in the Light of Subsequent Practice*, in Bieber & Ress (eds), *The Dynamics of EC Law*, Baden-Baden: Nomos, p. 61-281.



Several policy choices are being confronted within the context of market integration versus cultural diversity in Europe: inward- and outward-looking policy, centralised and decentralised policy, positive and negative integration policy. In the further course of the paper the analysis and evaluation of the actual Community framework and action in the cultural sector is seen as the point of departure in indicating the appropriate setting for conducting cultural policies in Europe. The actual realisation of a Citizens' Europe will require an imaginative approach to Europe's destiny, if the citizens will actually support it. This policy should be outward-looking, decentralised and positive. It should have a multi-dimensional perspective which includes the European Community, the national and the regional dimension. A positive action programme based on interregional co-operation in the cultural sphere should perhaps be a first concretisation of such an approach.

## II. Bases of Community action in Culture

### A. Market integration within the European Community

The general aim of the European Community has been to facilitate economic flows between its member countries by creating a common market ( or by now "internal market") for goods, persons, services and capital. On the other hand, the words "culture", "education" and "broadcasting" are not mentioned once in the EEC Treaty, not even after its amendment by the Single European Act.

Yet, it has now been clearly pointed out, primarily through judgements of the European Court of Justice and initiatives of the Commission, that there is no clear dividing line between economy and culture. The immediate consequence is that Community law fully applies to cultural goods and activities since these have an economic dimension. The only in-depth involvement of the Community in culture is the application of the market integration principle (i.e. negative integration) to the cultural sector.

As regards the creation of the internal market by the end of 1992, it has become clear that the prime objective of the "cultural" programme of the European Community is the elimination of all national obstacles against the free flow of cultural goods and services, and the free movement of cultural operators within the Community's territory ("negative integration"). National and regional cultural policies are then limited by the market integration rules.



It has also become clear that restrictive national rules are not always simply arbitrary discriminations against foreign persons or goods. They often serve what is perceived to be a legitimate national interest, i.e. the preservation of the country's cultural identity. Conflicts are therefore bound to arise between the principle of free exchange of culture and that of the protection of national and regional cultural identity.

The growing discussion on a differentiated integration (i.e. géometrie variable) process can be placed in this context. While exceptions to negative integration should be limited to a minimum in order to promote exchange of culture beyond national frontiers, positive integration could allow for forms of partial integration. This might be the appropriate approach for cultural co-operation (1).

The objective of establishing a fully integrated internal market by 1993 involves a more thorough "coverage" of the four Community freedoms and, hence, may lead to the "discovery" of new instances in which cultural policy interests appear to conflict with market integration. The possibility of conflict between the "open borders" objective

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(1) A good overview of the different arguments is found in Gedifferentieerde integratie in de Europese Gemeenschappen, Interuniversitair Instituut voor Internationaal Recht T.M.C., The Hague: Asser Instituut, 1985.

and cultural policy priorities needs to be assessed in view of the internal market repercussions in the cultural sector.

# 1. Free cultural exchange

a. The abolition of customs duties and charges having an equivalent effect (articles 9-22 EEC Treaty) applies to cultural goods as well as to all other goods. This has been confirmed by the Court of Justice.

The free movement of goods (Art. 30 to 34 EEC Treaty) applies, in principle, to cultural goods and other goods as well. These articles prohibit quantitative restrictions and all measures having equivalent effects as regards the cultural goods market. Article 36 allows for an exception to the free movement of goods, justified on grounds of "protection of national treasures possessing artistic historic or archaeological value".

In this context, special measures are required for regulating the category of works of art: the harmonisation of criteria and procedures ensuring the protection of national treasures possessing artistic, historic or archeological value; setting up deontological codes, identifications sheets, and a specialised information centre for the fight against the theft of works of art; a harmonisation of tax laws and, in particular of the VAT; abolition of securities in the case of temporary import.



In 1968, the Court of Justice had already decided that all products forming the object of a commercial transaction should come under the rules of free movement of goods, whatever their other qualities might be (1). A possible conflict may arise if the Commission decides to propose a harmonisation of the criteria to be used by the member states in this respect. Another issue relates to the harmonisation of indirect taxes. The proposed VAT harmonisation regarding works of art and collector's items causes concern that it may benefit the extra-EEC art market, and therefore be detrimental to a European cultural heritage. Another thorny issue concerns bookprices. Community involvement in the book industry is justified by the Community law on competition under Art. 85.

b. The freedom to provide services includes the provision of cultural services across Community borders, which according to the European Court of Justice, also includes the cross-border distribution of broadcasting services (2). If one accepts to define broadcasting within a larger concept of culture, then it is clear that it is an element of cultural policy that lies within the Community's competence. The commission's present efforts to propose direct community action in the broadcasting sector are the result of such an understanding.

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(1) Commission vs. Italy, Case 7/68, dealing with export taxes on works of art.

(2) Sacchi, Case, n. 155/73.

The field of audio-visual services in Europe clearly illustrates the possibilities and limitations of Community policy, and hence, distinctly indicates the emerging conflict between market integration objectives and cultural policy objectives in a European framework. The Commission has proposed the creation of one single broadcasting area extending over its entire territory, allowing for a fair competition of community enterprises within a single European area.

As broadcasting has basically developed in a national framework, each country's regulations often hinder the actions of those wishing to carry out broadcasting activities going beyond the national borders. These obstacles mainly consist in various limitations on advertising in the programmes, but they also concern the owners of author's royalties and of related rights authorising cable broadcasting of radio and television programmes for each separate member state.

The Commission launched an ambitious project of harmonisation of national broadcast regulations, first outlined in its Green Book "Television Without Frontiers", adopted in May 1984 and then concretised in a draft directive on transfrontier broadcasting. The directive was finally approved by the Council of Ministers by a qualified majority in Luxemburg, October 3, 1989. At the same moment the Assise "sur l'audio-visuel", organised by the French government in co-operation with the Council of Europe and



the European Community, launched the "Audio-Visual Eureka" (1). This loose institutional scheme was inspired by the Existing Eureka programme (2).

Here as well, the discussion centres on the compatibility of cultural policy programming standards with the freedom to provide services. In nearly all European countries, public but also private broadcasters are subject to a number of regulatory provisions. Some of them are directly inspired by reasons of cultural policy, i.e. the imposition of national quotas, the regime of film diffusion on television, provisions for regional and minority cultures; others are only influenced by pure economic objectives, such as publicity earnings. When involved with actual policy-making, Community action has to take these often conflicting tendencies into account.

c. The freedom of establishment in other Community countries is guaranteed to professional and independent commercial operators or firms in the cultural and educational sector as well as in other economic sectors. Indeed, one of the first activities to be liberalised through secondary community legislation was that of film production distribution and performance.

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(1) J. Lang, The Future of European Television and Cinema, in European Affairs, 2/88, p. 12-20.

(2) C.A. Collard, Eureka ou une coopération technologique européenne, in Revue trimestrielle de droit européen, 1988, p. 6-22.

In addition, Art. 57 of the Rome Treaty expressly empowers the Council to adopt directives on the mutual recognition of diplomas and study certificates. The specific directives already enacted, and to an even greater extent, the recently adopted directive for a general system of recognition necessarily impinge on national policies relating to higher education.

Freedom of establishment in the film sector (at the production, distribution, and performance levels) has existed for many years now. But national regulations of the film sector continue to be problematic under a number of other headings of Community law. The established practise of dividing the market for film distribution (including its videogram and television exploitation) according to national boundary lines would seem hardly compatible with the ordinary rules of competition law and those on free movement of goods.

Most States also have an aid system for the production of national films. This is justified by plausible reasons of cultural policy but at the same time seems to be in clear violation of the Treaty rules on state aid. Several infringement procedures have been launched by the commission (against Germany, Italy, and France), but the legal situation is not as yet clear.



In 1985 the Commission proposed a Community aid scheme for non-documentary cinema and television co-production (1). The proposal was not adopted by the Council because Denmark had misgivings about the Community's legal competence to act in this field. "Negative integration" might threaten the cultural identity if no accompanying measures of "positive integration" are taken at the Community level. Subsequently the Commission presented a more modest "action programme" which developed into the MEDIA programme (2).

d. Community citizens also benefit from the rules on free movements of workers even if their work is of a cultural or educational nature. This principle does not only entail the right to take up employment in the cultural and educational sector, but also the right to be treated equally with nationals for all welfare benefits including access to education, educational grants and educational scholarships, even those provided under a bilateral cultural agreement.

The Commission considers that it is essential to eliminate the barriers still hindering the free movement of

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(1) COM (85) 800 final

(2) MEDIA stands for "Measures to Encourage the Development of the Audio-visual Industry". It aims at creating a European film distribution system which could facilitate exchanges of national production and support pilot projects on research and development of computer graphics. The Commission requested a total appropriation of ECU 5.5 million for 1988.

self-employed workers and workers in paid employment in the community. It considers that community citizens must be able to freely exercise their profession throughout the Community, without any formalities that are likely to discourage them.

With regard to workers in paid employment, it should be pointed out that free movement has almost entirely been realised and that the Rome Treaty limits the right of the public administrations of member states to reserved jobs for their nationals. However, certain problems persist and the Commission will submit proposals required for removing these last obstacles concerning free movement and residence of Community migrant workers.

With regard to the right of establishment of self-employed workers, little progress has been made, particularly because of the complexity of the work involved in harmonising professional qualifications.

In view of the free movement of cultural workers, it should be added that studies are being carried out in order to assess the specificity of artistic professions and the socio-economic situation of cultural workers. The social dimension of the market integration process also holds for the cultural sector.

2. Compensation for the negative effects of market integration



Apart from establishing the common market for cultural goods and activities, in the sense of abolishing discrimination and other restrictions to the free flow of culture within existing cultural policies, referred to as "negative integration"), Community institutions have also started exercising in recent years, regulatory powers of their own ("positive integration"), in order to harmonise national rules or enact additional Community schemes (1).

I cite a few examples in which the realisation of the Common Market implies an obligation to harmonise national legislation.

- The link is clearly illustrated by the case of transfrontier broadcasting: the draft version of the directive by which the Commission aims at abolishing national regulations that obstruct the diffusion of foreign programmes ("negative integration") also provided for some harmonisation of these programmes, including a quota for programmes of EC origin ("positive integration"). However, the final Community directive does not provide any type of quota, only a "political obligation" to produce programmes of European origin.

- Several proposals have been made for tax harmonisation with special reference to the cultural sector (i.e. social

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(1) B. De Witte, Cultural Policy: The Complementarity of Negative and Positive Integration, in Schwarze & Schermers (eds), Structure and Dimensions of European Community Policy, Baden Baden: Nomos, 1988, p. 198-204.

security conditions, reduction of VAT payments on art sales, special tax arrangements for cultural foundations, etc.).

- A European directive obliges the member states to organise education in the official language of the host country and education in the native language, for children of immigrants coming from other member states. Its aim is to avoid that cultural diversity create obstacles to the free movement of workers.

### 3. Article 235

Apart from the application of the explicit Treaty provision, Community powers can be expanded on the basis of article 235. The creation of ambitious new policies (e.g. regional policy, environmental policy, research policy, etc.) has been inspired by the recognition that the gradual establishment of the common market was leading to a "regulatory" gap, i.e. national regulatory policies could not simply be abolished, but needed to be replaced by new regulatory regimes at a Community level.

This article has played a prominent role in the development of new economic policies at the Community level. It has, however, been used very sparingly in the field of culture. The main legal reason is that cultural action at a Community level is not considered necessary in the course of the operation of the common market. This restricted use of article 235 in the cultural field expresses the preponderance of the market integration objective in the Community's integration process.



## B. Specific Internal Market Consequences

The completion of the internal market may have important (positive and/or negative) consequences in the cultural sector for the different member states. As to formal cultural interaction, it has been stated that the role of the Community is clearly determined by the powers and resources endowed to it by the Treaty establishing the EEC, recently complemented and modified by the provisions of the Single European Act.

Acting in the cultural sector at the Community level is equivalent to applying the EEC Treaty and Community policies to social and economic circumstances in which culture develops, but is also equivalent to taking the appropriate measures required for the realisation of the objectives as referred to in the Treaty of Rome. This has been the task of the Commission's White Paper on the completion of the Internal Market, adopted by the European Council in June 1985 in Milan (1).

The aim of the White Paper is to specify the programme and timetable with a view to the completion of the internal

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(1) COM (85) 310 final

market by the end of 1992, and contains a programme of actions relating to the measures to be taken in order to achieve this objective. In March of 1988, the European Commission presented its third annual report to the Council of Ministers and European Parliament, regarding the implementation of the Commission's White Paper (1).

In the previous section we have briefly reviewed the possible consequences and/or conflicts which might result from the general application of market integration to the cultural sector within the European Community. In the following section, we will try to briefly indicate the specific internal market consequences which may result from the application of the few directives in the White Paper directly relevant to the cultural sector.

The White Paper distinguished three categories of measures to be taken: the removal of physical barriers (First Part), the removal of technical barriers (Second Part), and the removal of fiscal barriers (Third Part). An action timetable for the completion of the Internal Market follows an agreed-upon classification (i.e. field, document number, date of Commission proposal and date of adoption by the Council).

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(1) COM (88) 134 final



# 1. Free movement of cultural goods

Specific directives on the free movement of cultural goods have not been proposed or adopted in either the first or second part. Cultural goods follow the general rules with no specific applications. In the part regarding the removal of fiscal barriers, two directives concerning the VAT for cultural goods have been proposed.

a. The seventh VAT Directive concerns collector's items, antiques and used goods (1). This proposal aims to complement the common VAT system concerning the system to be applied to used goods, works of art, collector's items and antiques. It fills a particularly important gap from the point of view of the neutrality requirements of the Community VAT system, a principle which has been confirmed and specified by the Court of Justice in a set of important judgements. The directive has not yet been adopted.

b. The seventeenth VAT Directive concerns the temporary importation of goods other than means of transport (2). It contains exemptions from payment of VAT in the case of temporary art exhibitions. The directive, which allows for derogations for Greece and Germany, was adopted on July 16, 1985 (3) and entered into force on January 1, 1986.

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(1) COM (88) 846

(2) COM (84) 412

(3) OJ (85) L/362

## 2. Free movement of cultural services

In the first part, concerning the removal of physical barriers, no directive has been proposed concerning the free movement of cultural services. In the second part, a proposal for a directive on the removal of technical barriers has been put forward by the Commission in 1986. It concerns a directive on the co-ordination of certain provisions laid down by law, regulation, or administrative action in member states concerning the pursuit of broadcasting activities (1). After two years of difficult discussion, the Council adopted the directive on October 3, 1989.

The main purpose of the directive is to permit broadcasts, particularly television broadcasts to be received and retransmitted freely in all member states. Once the directive enters into force, any broadcast complying with the laws of the member states in which it originates, should then be able to circulate freely throughout the Community. The co-ordination proposed takes the form of a limited number of "soft law" rules constituting the minimum necessary for the protection of the different interests in cause. The legal basis remains, however, quite vague and unstable, being the result of the diverging opinions among the member states.

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(1) COM (86) 146



Still, the directive represents an example of the combination of negative and positive integration by providing for the approximation of the laws of member states concerning:

- the production of television programmes within the Community;
- the distribution of Community works by television broadcasters;
- broadcast advertising and sponsoring;
- copyright in the retransmission of broadcasts by cable;
- the protection of children and young persons;
- the law applicable to broadcasting;

There has also been an institutional element in this debate on "the European television space". The Council of Europe has always contested the competence of the European Community in this field. Its own convention on "cross-border broadcasting" was adopted on March 15, 1989. The European Community argued that the convention of the Council of Europe does not go as far as the Community Directive in promoting the European audio-visual industry and that it is incompatible with the Rome Treaty for the following reasons:

- the obligation, written in the convention, prohibits cross-border advertising aimed at the public of another member state;
- the arbitration provided for the settlement of disputes. the Court of Justice of the European Communities will no longer have exclusive competence in the interpretation of Community law.

### 3. Free movement of cultural workers

As to the removal of physical and fiscal barriers for the free movement of cultural workers, the general rules are applicable. With regard to the removal of technical barriers, a directive, setting up a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, has been adopted by the Council on December 21, 1988 (1).

This EEC Directive contains four important aspects:

- a. It is of a general nature. The new system is to be applied to all regulated professions for which a university level of training of at least three years is required and which has not yet been the subject of a specific directive.
- b. The recognition is based on the principle of mutual confidence, with no prior co-ordination between the teaching networks and training systems required.
- c. The recognition is granted to the fully qualified professional who has already received the training required above and beyond the university diploma.
- d. In the case of major differences between the member states with regard to education and training, the directive provides compensatory mechanisms.

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(1) COM (86) 257



### C. Problem Areas

As a synthesis of the discussion on market integration in the cultural sector, we will briefly indicate a number of specific areas where the conflict between free cultural exchange and protection of cultural identity is apparent at the European level(1).

**Censorship:** National governments fear that satellite broadcasting will open up the home market for uncontrolled import of programmes. As the conflict between freedom of expression and the exercise of public regulatory power takes a different form in each State and always reflects a different balance of interests, EC action is very difficult to implement.

**Customs:** Customs controls on intra-Community movement of cultural goods are, in principle, fully liberalised by the EEC Treaty. Still customs procedures are used as regulatory devices (e.g. French blocking of the import of video recorders, the difficulties of touring companies). In extra-Community trade, customs duties are payable and cultural goods can be double-taxed on entry from a non member state. Temporary imports undergo even greater procedural difficulties.

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(1) N.M. Hunnings, The Market for Culture Regulation-Deregulation, paper presented at the Conference "Europe in Transformation: The Cultural Challenge", Florence, March 25-28, 1987, 14 p.

**Taxation:** It is permissible for member states to impose a tax on the royalties due to authors in another member state, thus reducing their net return from foreign sales. Publishers and book wholesalers often refuse to meet single orders from other member states, thus hindering the purchase of foreign books. The imposition of VAT on cultural goods and services is a burden to economically weak enterprises (e.g. the Community refusal of zero rating on books).

**Employment:** In order to improve the conditions of cultural workers and to guarantee social security protection, a fictional employee status has been created. This, however, leads to a number of complications regarding income tax, employment law, and structures of artistic organisations.

**Competition:** Antitrust rules should apply to cultural activities in the normal way and particularly in the case of the giant entertainment industries, such as the music and audio-visual sectors where a claim for special treatment on cultural grounds has little justification. The film and publishing industry in many member states are claiming derogation from EEC competition laws. The aspect of competition law which causes the greatest EEC problems in a cultural context is state aid, for this brings into sharp prominence, the philosophic conflict between pure market forces and the public benefit derived from maintaining uneconomic cultural activities.



Copyright: It was created to protect "literary and artistic property" and its payment system is based on royalties. It has increasingly been used as a device for restricting markets because of the economic control exercised by the producer over cultural goods. This monopolistic attitude may have serious implications for market integration.

### III. Community Action in Cultural Affairs

#### 1. Cultural action of EC institutions

The main basis of the Community's action and operations in the cultural sector is the general application of the Community law, issued under, say Art. 48 et seq (free movement of services) or Art. 235 (the competence power). Also Art 117, 118, and 128 on social policy have been used as a legal basis for EC action in this field.

In practise, action has concentrated on four main areas: free movement of cultural goods, the improvement of living and working conditions for cultural workers, widening the audience in the face of new media technologies and the conservation of the architectural heritage. From the preceding account it appears, however, that there is no specific legal basis in the EEC Treaty dealing with cultural policy-making by the EC institutions. A brief assessment of the actual activities of the main EC institutions in the cultural field may somewhat correct the overall impression.

From 1969 onwards, the Community Heads of State or governments have frequently stressed the importance of joint action in the field of culture. Since 1982, informal meetings of Ministers responsible for cultural affairs in the Community have been organised to discuss possibilities for cultural action and co-operation. Formal meetings began in November 1984. Attention is mainly drawn to the Community aspects of cultural industries (e.g. book sector,



audio-visual sector, etc.) as well as to the cultural aspects of the economic and social policies of the Community (e.g. living conditions of artists, financing of culture, etc.).

In May 1988, the Council and Ministers responsible for cultural affairs meeting within the Council agreed on the future organisation of their work by setting up a Committee on Cultural Affairs (1). This committee, which consists of the representatives of the member states and of the Commission, has the task of evaluating all proposals relative to cultural co-operation and monitoring the implementation of actions decided within the Community system or within the framework of intergovernmental co-operation. At the same meeting, conclusions were adopted on a multinational programme of priority action regarding cultural co-operation in the Community (i.e. audio-visual sector, books, training and business sponsorship (2)).

A number of European Parliament resolutions have urged Community action. The first was passed on May 13, 1974 (3); the most detailed on November 18, 1983 (4). Apart from the

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(1) OJ 88/C 197/01

(2) OJ 88/C 197/02

(3) OJ 74/C62; on the preservation of the architectural heritage.

(4) OJ C 342/127; on the strengthening of Community action in the cultural sector.

budgetary control on expenses in the cultural sector, the Parliament has often taken an initiating role in the debate on cultural matters. In particular, the Parliament's Cultural Affairs Committee has played an active role in identifying a host of cultural problems as well as in outlining possible solutions (e.g. reports on migrant workers, the preservation of the architectural heritage, the use of minority languages, film promotion, the setting up of a European Community Youth Opera, the founding of a Centre for European Culture and Civilization, etc.).

The European Commission has vaguely responded to these pleas. In 1973 it set up an administrative unit to deal with cultural issues. These are now being dealt with within the Directorate-General X on information, communication and culture. In 1977 (1), 1982 (2) and 1987 (3) it published communications on possible Community action in this area.

The recent creation of a number of Committees within the European Community framework has increased the institutionalisation of formal cultural interaction. On October 7, 1988 the Commission created a committee of experts in the field of cultural statistics; top priority was given to the booksector. On November 7 a committee of cultural consultants was set up which, with the help of seven expert groups (book, radio-cinema-television, theatre,

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(1) Bull EC Suppl 3/77

(2) Bull EC Suppl 6/82

(3) COM (87) 603



music, visual arts, cultural patrimony and cultural formation), is preparing a report on the perspectives of cultural action in Europe. The increased institutional development can be interpreted as a means to strengthening the Community's legitimacy in the cultural field.

Financial support to the Commission's suggestions and proposals seems to be the main instrument for specific EC action in the cultural sector. The cultural budget of the Commission increased from ECU 26.700 (0.0003% of the total Community budget) in 1976, over ECU 685.000 (0.003%) in 1982 and ECU 6.342.353 (0.017%) in 1987 to ECU 11.370.000 (0.026%) in 1988. It has been conducted by specific budget lines in the Community budget related to the promotion and development of cultural activities and manifestations (cf. article 393 of the Community budget from 1976 to 1981 and article 67 from 1982 onwards) or by non-earmarked lump sums (e.g. the EC financing of part of the now defunct European Foundation, the European Cinema and Television Year in 1988) (See Annexes).

Up to now, the Community subsidies to promote and develop cultural activities cover a heterogeneous range of items: e.g. the European Community Youth Orchestra, the EC Choirs, the Mudra dance centre of Béjart in Brussels, the European Festival of Wiltz in Luxemburg, a poetry festival, a jazz orchestra, a Baroque ensemble, the Royal National Eisteddford festival of Wales, manifestations in the framework of the cultural capital of Europe, the restoration

of the Acropolis, and the Doge palace in Venice and various other activities, manifestations and restoration projects in the different member states. The modest budgetary allocations of the Commission to the cultural sector, however, reflects a rather ad-hoc distribution of financial support, indicating the lack of a comprehensive view of the Community's role in the development and promotion of the cultural sector.

The amount of money spent on culture by the Community is not the only criterion by which we can judge the effort. It does, of course, constitute one criterion. It certainly shows the unstructured and small-dimensioned scale of the interventions. Only recently some more structural financial intervention has been introduced (e.g. the financing of the programme on the preservation of the architectural heritage augmented from ECU 400.000 in 1984 to ECU 2.700.000 in 1988; subsidies to the audio-visual sector increased from ECU 986.678 in 1987 to 7.000.000 in 1989). One of the most ambitious initiatives by the Commission has been the European Community Action Scheme for the mobility of university students (ERASMUS).

In its Communication of October 12, 1982 to the Council and Parliament, the Commission finally presented a summary of concrete proposals, cultural actions and operations which it



launched before 1982 (1). The proposals made direct reference to the articles in the Treaty for justifying this Community action (2).

A substantial part of these proposals for action was meant to remove national barriers to the free movement of cultural goods, services, and/or persons. They aim at ensuring an equal legal treatment for goods, services, and persons in and outside of the cultural sector. These equal treatment policies are the normal Community actions with the view of realising the Treaties and striving for the implementation of the proposals within the Community framework.

A growing ambiguity of Community action in the cultural sectors is being acknowledged, pressed between the competing goals of market integration and those of the preservation of

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(1) Bull EC suppl. 6/82. The overview presents a number of ad-hoc activities in the area of freedom of trade in cultural goods (e.g. simplification of administrative formalities at Community internal frontiers, introduction of record cards for works of art), the improving of the living and working conditions of cultural workers (e.g. compiling and distributing statistics on the social situation of cultural workers, equal duration of copyright and performers' right), the widening of the audience (promotion of "live" music and "live" theatre, travelling exhibition of young Community painters) and the conservation of the architectural heritage (e.g. financial support from Community Funds, tax reliefs on conserving the private architectural heritage).

(2) Community action to improve the living and working conditions of cultural workers on the basis of Articles 117 and 118; exchanges of young cultural workers under Article 50; financing the conservation of architectural heritage under Article 130.

cultural identity. The debate is set against the background of the discussion on supranationality and intergovernmentalism. In cultural affairs we have recently experienced a relaunching of intergovernmental co-operation within the Community framework, despite the predominantly economic (neo-functional) context of the Community (e.g. EUREKA, EURYDICE, etc.).

## 2. Confronting tendencies in the 1980's

In the early eighties, the confronting tendencies in member states' cultural policy-making were becoming evident at a Community level. The Genscher-Colombo plan (1) in 1981 reaffirmed the political will to create a European Union based on European identity and proposed, inter alia, close cultural co-operation in an institutional setting. The section on cultural co-operation of the "Solemn Declaration on "European Union", issued by the European Council meeting at Stuttgart, on June, 1983, bears witness of a wish to extend the scope of European co-operation in the cultural field. Cultural co-operation was to be pursued not for its own sake but "in order to affirm the awareness of a common cultural heritage as an element in the European identity"(2).

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(1) Pauline Neville-Jones. The Genscher/ Colombo Proposals on European Union, in Common Market Law Review 20, 1983, p. 657-699.

(2) Bull EC 6/83



The Declaration added a number of concrete policies to achieve that goal (1).

Promotion of, and resistance to, EC cultural action have often manifested themselves simultaneously. The Solemn Declaration of Stuttgart in 1983 illustrated both tendencies. Despite the narrow scope of the Declaration's proposed common action, its expression of political will was conditioned in two respects: 1) it refers to its draftmen's firm commitment to engage in cultural co-operation in the context of the Council of Europe and 2) it highlights certain constitutional constraints which may

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- (1) "- development of the activities of the European Foundation and the European University Institute in Florence;
- closer co-operation between establishments of higher education, including exchanges of teachers and students;
  - intensified exchanges of experience, particularly among young people, and development of the teaching of the languages of the Member States of the Community;
  - improving the level of knowledge about other Member States of the Community and of information on Europe's history and culture so as to promote a European awareness;
  - examination of the advisability of undertaking joint action to protect, promote and safeguard the cultural heritage;
  - examination of the possibility of promoting joint activities in the dissemination of culture, in particular, as regards audio-visual methods;
  - more extensive contacts between writers and artists of the Member States and wider dissemination of their works both inside and outside the Community;
  - closer co-operation of cultural activities in third countries, within the framework of Political Co-operation."

determine the possible scope of Community cultural action in the future. This text remains the most authoritative statement of policy objectives in this field.

In the meantime, the European Parliament acting on its own initiative adopted in February 1984, the Draft Treaty establishing the European Union (1). The federalist Altiero Spinelli was the inspiring force of this radical approach towards further European integration. Even the inclusion of a cultural article to the Treaty was proposed:

"The Community will contribute in the exercise of its powers, to the consolidation of a European cultural identity and the promoting of common cultural values, whilst respecting cultural diversity. Particular attention will be paid to a better understanding of the culture and history of each people and to the development of new means of communication, particularly audio-visual communication".

"Persuant to the aims of paragraph 1, as wide as possible co-operation will be sought with other European countries and with relevant international cultural organisations and, in particular, the Council of Europe" (2).

By the end of 1985, things had apparently changed. Indeed, the European Single Act, the result of an intergovernmental

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(1) European Parliament, Draft Treaty Establishing the European Union, Luxembourg: Directorate-General for Information and Public Relations, February, 1974.

(2) H. d'Ancona, Culturele Samenwerking als complementering van het EG-beleid, in Nieuw Europa, 11, n. 3-4, sept. 1985, p. 126.



conference prepared by the Dooce Committee (1) completely fails to mention cultural policy. The Adonnino Committee (2), also established at the Fontainebleau meeting of the European Council in June, 1984, published its report for a Citizens' Europe which included several cultural policies. The proposals to encourage, at the Community level, European audio-visual co-production and the "European Film and Television Year" in 1988 were the only actual results of the report. None of these Committees did, however, resolve the competing values between Europe's cultural ambitions and the political and economic objectives of the Treaty of Rome.

The missed chance of the European Foundation is just another example of the confronting tendencies in member states' cultural policy-making. In 1982, the then member states' governments signed an agreement to create a European foundation to be based in Paris (3). It was not created by Community law based on article 235, but by an international convention (4). Since 1983, the Commission has contributed financially to the preparation of the functioning of the foundation (see article 676 of the Community's general

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(1) Report of the Ad hoc Committee on Institutional Questions to the European Council. Europe Documents No. 1349/1350. March 21, 1985.

(2) A People's Europe. Bull. EC Suppl. 7/85.

(3) Bull EC 6/1983

(4) Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council (OJ B5/C 199/01)

budget)). Finally in May 1987, the Netherlands refused to ratify the agreement and the Foundation never began operations.

The Single European Act and the internal market are the two major events of the mid-eighties that have relaunched European (economic) integration and given the Community a new momentum. Still it has to be seen if this process of increased economic co-operation in the European Community contains the necessary elements for the preservation and development of its cultural content, and hence the condition sine-qua-non for a European Union. It is doubtful whether the logic of neo-functionalism will be sufficient to launch a Citizens' Europe if it is not effectively implemented by a co-ordinating body dealing with cultural policies at a European level.

In general, we can distinguish three aspects of a Citizens' Europe which have already been put forward in specific proposal. Firstly, political aspects such as an increase in fundamental rights in European Community law, voting rights for subjects of member states in the country of residence and co-operation between member states in the field of criminal law and police can be distinguished. Secondly, various proposals have been submitted to widen the scope of action of the Treaties and of the Community law to people who are not active in an economic sense, such as students and old-age pensioners and to facilitate the free movement of persons and their goods and capital. Thirdly, there is a



category of proposals in the cultural and social sphere intended to create a sort of "European feeling", i.e. the abolishment of customs signs, the European capital, and symbolic measures such as a European flag, anthem and European money.

With its third memorandum on Community cultural action, the Commission proposed the relaunching of cultural action in the Community (1). It presented the general guidelines and a programme framework for the period 1988-1992, aimed at strengthening the debate on the objectives and means of Community action in the cultural sector. The programme framework concerns five areas in which concrete action are proposed, i.e. the creation of a European cultural space; the promotion of the European audio-visual industry; access to cultural resources; cultural training and an intercultural dialogue with the rest of the world. There is some hope that the discussion will clarify the bases of concerted and co-ordinated action in the European Community and in Europe as a whole.

This brief historical survey clearly illustrates that the Community action in the cultural sector is part of the dynamic process of integration. Promotions of cultural co-operation and EC cultural action have thus been countered by impediments which, in turn, have been followed by new promotional initiatives. It takes place in a climate of ambiguity and confrontation. Financial and institutional

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(1) COM (87) 603 final

barriers are hampering the creation of anything that resembles genuine EC cultural action. Barriers to the growth of institutionalised EC cultural action are generated not only by the prevailing scarcities in relevant Treaty provisions. Difficulties also stem from some of the member states' politics and their constitutional resistance to participation in EC cultural action.

Although the Treaty of Rome does not lay the foundations of a European cultural policy, it provides the requisite means of taking Community action in the cultural sector, a sector defined by persons and undertakings dedicated to the production and distribution of cultural goods and services. That also implies economic and social questions and these are Community affairs. Even within the Community institutional framework of specifically economic powers, the Community institutions have made only modest use of economic and social measures in order to take Community action in the cultural sector.



#### IV. New frontiers for cultural policies in Europe

Both the limits of the neo-functional approach to the process of European integration and the increasing European consciousness of a common civilisation are pressing for the centrality of culture in the political and economic process of integration. The question of cultural rights has become central to integration. Europe cannot be defined in terms of economic space, without being finalised in terms of cultural space as well. The success of further European integration will be based on the awareness of commonly shared values rooted in historic realities.

Objective facts ask for a Europeanisation of policies at internal and external levels. Cultural policy at a European level is subsequently necessary for both the protection and promotion of cultural identity at European, national and regional level and the realisation and completion of a European cultural space. It is however very difficult, but extremely challenging, to elaborate a European cultural project which embraces both the differences in European cultures and its common European roots. Only a project based on such an awareness will allow for the diversity of cultural pluralism of existing cultural policies within a European structure. The combined process of supranational organisation and decentralisation in Europe will open up new frontiers for the various cultural policies. An institutional response to these new developments is needed.

The possibility of conflicts between "economy" and "culture" within the Community institutional framework has seldom been openly acknowledged. When it is recognised, the approach is often unbalanced because of the adoption of one dominant perspective. According to the internal market perspective, the Treaty rules on negative integration are fundamental principles of Community law. Exceptions, whether they are inspired by cultural or other regulatory needs, are restrictively interpreted in the light of the anti-discriminatory common market policies of the European Community. The ultimate aim is harmonisation at a European level in order to have a free exchange of culture within a European space.

According to the cultural policy perspective, culture is basically excluded from the competence of the Community, so that encroachments by EEC law in this field, whether they are an expression of market integration or positive Community policy, are restrictively interpreted. Cultural policy remains a prerogative of the nation state. It is often argued that national cultural sovereignty is preconditioning the preservation of cultural nationhood.

In most European countries a tradition of systematically integrated activities in the cultural sector exists. The basic characteristics of cultural policy-making at local, regional and national European levels have primarily been interventionary (i.e. subventions, regulations, and propaganda). The field of action of such a policy usually concerns the preservation of cultural heritage, the



production and distribution of creative culture, the transmission of culture through the media and the development of cultural skills. With the EEC a fourth level of cultural policy-making enters the picture. The tradition of positive discrimination of culture at a state level runs, however, counter the anti-discriminatory tradition of the process of European economic integration.

Both approaches provide unsatisfactory answers. On the one hand, the establishment of the internal market is an important, but not the only Treaty objective. The realisation of the internal market cannot have as a consequence, the elimination of cultural diversity within Europe by creating a uniform European cultural space through a process of complete harmonisation.

The presence in the film, TV and video sectors of dominant foreign mass cultural industries is unlikely to enhance the creation of any European cultural identity, at least not one based on Europe's own cultural premises. The cultural impact of foreign competition might even threaten traditional cultural values in the individual member states. Multilingual Europe must be equipped with appropriate means to face the American challenge if it wants to survive.

The existence of national "barriers", when they express interests of a non-economic nature, can, therefore, be justified. It would imply a positive discrimination towards regional and national cultures, literary works of minority languages, national film funds, national television

programmes, etc. The French proposal of a "European cultural policy à la carte" offered some interesting possibilities (1).

On the other hand, the fact that cultural policy has not, as such, been attributed to the European Community, is not a decisive argument, certainly not when the integration process is to grow beyond the market context. The removal of national boundaries opens up new spaces and widens the horizon, and not only from an economic and political perspective. Culture cannot be used as a guise for economic protectionism. Sometimes antagonism against a growth in EC competences and activities in the cultural sector might simply be a pretence for discriminative cultural nationalism, isolationism, and/or fear of meeting the challenge inherent in cultural co-operation which reaches far beyond the borders of the EC.

Instead of these one-sided approaches, cultural and economic values have to be carefully balanced within the dynamic process of European integration. There are indeed conflicts between market integration and preservation of cultural identity, with opposing legal arguments. Still the interpenetration between the two objectives requires a European response. Such a task can only be realised by

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(1) Pour une Europe de l'éducation et de la culture, Livre Blanc, Paris, 1987.



concerted and co-ordinated action of people and institutions involved in the cultural field. A prerequisite is a constructive dialogue with the various existing institutional frameworks and networks within and beyond the Community framework, in order to verify present obstacles and future possibilities.

In the previous sections we discussed a number of arguments (juridical, market integration and, national cultural policy objectives) against the feasibility of a European cultural policy. Yet at the same time, a half-hearted cultural policy at the European level is slowly developing (i.e. the Council of Europe has developed a network of European contacts on cultural policy based on the interests of municipalities and regions, the activities of the European Cultural Foundation, the resolutions of the European Parliament - the Draft of the Single European Act included a reference to culture -, the Lomé III convention contains a paragraph on cultural development, formal and informal meetings of the Ministers of cultural affairs of the European Community).

The growth of EC action in the cultural field, somehow represents a logical consequence of the intentions and visions of the Treaty draftsmen, i.e. to strive for the creation of an ever-closer union between the peoples of Europe and to enhance the quality of their living conditions. Indeed, the realisation of this ever-closer, higher-quality union seems to be intimately linked to the development amongst the citizens of a European awareness of

shared values within the context of cultural diversity. Any attempt at integration which ignores this impetus will meet with repeated failure. It ought to be borne in mind that, in the final phase of European integration, national identity will no longer be expressed in terms of political and economic sovereignty, these will by then have been put in the hands of a supranational or intergovernmental institution, but exclusively in terms of cultural identity.

What type of institution would guarantee the freest cultural development and effective cultural action at a European level? What is needed, is a policy of neither market integration and laissez-faire nor of European interference and complete harmonisation. We must have realised by now that cultural co-operation in Europe is of a different nature than the principles of economic integration laid down by the EC Treaty. Culture can certainly not be exclusively left to the authority of market laws.

We need an intermediary body in order to stimulate the links between the central and decentralised organs of power, a policy between complete harmonisation and government interference, being the combined result of supranational organisation and decentralisation. A decrease of central control would not mean isolation in such an area as culture. Ideally, cultural Europe should perhaps resemble Switzerland or West Germany: a federal system within which the component parts are autonomous, but are living together under the same roof in Europe's common home.



A co-ordinating transnational organisation such as that which exists in the Federal German Republic under the title of the "Permanent Conference of Ministers of Culture" could serve as a model for cultural policy-making at the European level. A centre for study and research such as the European Culture Research Centre of the European University Institute in Florence, could be available to all political and administrative bodies in search of independent and publicly accountable studies; it would also be capable of undertaking research projects on its own behalf in order to establish the permanent character of such a European Conference. Studies could indicate the appropriate framework for such a co-ordinated network of organisations and institutions and eventually suggest the type of research projects that could be undertaken.

A federal Europe, in which culture is dealt with by a co-ordinating institution, could effectively show that unity and diversity constitute a dialectic polarity allowing for permanent cultural cross-fertilisation. Pluriformity should, therefore, not only be stimulated as a creative power which benefits all subcultures, but also as a principle of safeguarding small, but vivid cultural entities. Cultural policy-making at a European level implies acceptance of the traditions of existing national and regional culture policies which are based on a selective use of regulatory power. The co-ordinating institution should therefore work in close co-operation with existing organisations and networks involved in cultural affairs.

In sum, European action in the cultural field should not aim at exerting direct influence on cultural activities in the name of a common interest. It should, however, create the conditions in which culture in its diversity of expressions and variety of capacities can help to develop and transform a Citizens' Europe into a European Union. Culture presupposes that peoples should meet and to neglect this fact is to deprive European integration of its chief justification. This implies a process beyond mechanistic market integration.

Within the context of the new frontiers for cultural policies in Europe, the European Community still has its specific role. The possible levels of action, measuring both the type of difficulties and choices that the present stage of Community integration and European co-operation offers, can be summarised as follows:

- the acknowledgement of the existence of a solid basis for action contained in the principles and objectives laid down in the Treaties. There is still much to be done in order to arrive at a free cultural exchange, even if we fully consider the limits of market integration in the cultural sector. This is true from the viewpoint both of the necessary supplement of the Community normative system and of the practical measures to be taken in order to promote the creation of a European cultural space (i.e. negative and positive integration in the application of market integration in the cultural sector). This is very much related to a policy of production and a European cultural



market with particular reference to the film industry, television, book publishing, protection of author's rights and the social conditions of "cultural workers".

Indeed, almost any intellectual or creative effort produces a product which, in turn, falls within the framework of some Treaty provisions; while any "cultural worker" is either a potential migrant worker, a resident, or a service-rendering person. To fully integrate cultural products and persons into the Treaty schemes of rights and duties is still a far from accomplished task. As was explained earlier, the completion of the internal market has an impact on the cultural aspect of the integration process.

- the acknowledgement of the existence of a broad context of initiatives and programmes. The Commission should act as a catalyst for issues that have been confirmed as a priority within its field of competence (i.e. audio-visual policy), as a mobiliser for issues that may stimulate the mutual understanding amongst the citizens of Europe without forming an integrated system (e.g. education, language, architectural heritage, support to the arts), or even as a vector for East-West communications in Europe, which have become of utmost importance with the recent developments in Eastern Europe. The possible and desirable policy framework for action should, however, not be limited to the institutional framework of the Europe of the Twelve.

The juridical and political bases of Community action in the cultural sector remain in the conflicting area between the

good intentions of solemn declarations, which refer to the process of continuous integration and consequently to a European Union, and the specific EC actions in the cultural sector, which refer to the process of economic integration and consequently, to the realisation of the internal market and the cultural policy objectives at national and regional level. Any attempt at further European integration which ignores Europe's cultural dynamism and diversity as the crucial elements in its process will ultimately fail to respond to the challenges of the 21st century.



Table 1 Community Budget in the Cultural Sector (1976-1981)  
(in ECU)

	1976	1977	1978	1979	1980	1981
Article 393 Cultural Action						
3930 Cultural Action Expenditures	-	-	-	240.000	330.000	330.000
3931 Financial contributions for cultural events of European interest	-	-	-	75.000	140.000	140.000
3932 Participation in the financing of the preservation of the architectural heritage	-	-	-	-	100.000	310.000
Total	26.700	100.000	180.000	315.000	570.000	780.000

Source: D.J. of the E.C.

Table 2 Community Budget in the Cultural Sector (1982-1986)  
(in ECU)

	1982	1983	1984	1985	1986
Article 670					
Cultural action and events (1)					
6700					
Cultural action expenditures	350.000	400.000	460.000	500.000	690.000
6701					
Financial contributions for cultural events of European interest	210.000	235.000	280.000	280.000	500.000
6702					
* Contribution for the financing of the conservation of the architectural heritage	-	100.000	120.000	-	-
* Youth Orchestra European Music Year 1985	-	-	-	100.000	-
6703					
Contribution preparation and organisation of European Music Year 1985	26.500	30.000	60.000	500.000	-
6704					
European funding for historical sites and monuments	-	P.M.	400.000	500.000	700.000
6706					
Financing of restauration and conservation projects for the Parthenon and Acropolis	-	500.000	500.000	500.000	600.000
Total 670	686.500	1.285.000	1.700.000	2.380.000	2.490.000



Article 671  
Promotion  
of the  
cultural sector  
(2)

P.M.	300.000	340.000	150.000	360.000
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Article 676  
European  
Foundation (3)

P.M.	200.000	100.000	100.000	100.000
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Total

Chapter 67	686.500	1.785.000	2.140.000	2.630.000	3.550.000
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Notes

(1) Through the awarding of grants, these finances should allow for the continuation of cultural action in the following two areas: - the conservation of the architectural heritage and the growth of cultural exchange.

(2) This article foresees the financing of operations and various pilot projects with the intent of widening the audience for varied forms of cultural experience and to counter widespread unemployment among cultural workers.

(3) This article is meant to cover possible financial assistance for the Foundation, on behalf of the European Community.

Source: O.J. of the E.C.

Table 3 Community Budget in the Cultural Sector (1987-1989)  
(in ECU)

	1987	1988	1989 (commitments)
Article 670			
Events in the cultural sector			
6700			
Participation in recurrent measures and events in the cultural sector (1)	1.090.000	1.200.000	
6701			
Support measures for the architectural heritage (2)	3.000.000	4.000.000	
6702			
Specific promotional measures in the cultural sector (3)	575.000	670.000	
Total 670	4.665.000	5.870.000	6.300.000
Article 671			
Measures to encourage the development of the audio-visual industry (4)	986.678	5.500.000	7.000.000
Article 672			
European Foundation (5)	690.675	p.m.	-
Article 673			
Support for sports, including events for the handicapped (6)	100.000	100.000	100.000
Article 674			
European Foundation for the freedom of expression (7)	-	p.m.	200.000
Total Chapter 67	6.442.353	11.470.000	13.400.000



## Notes

(1) This appropriation is intended to cover a contribution to the financing of various cultural events of interest to the Community, such as concerts by the European Community Youth Orchestra, the European Baroque Orchestra and Jazz Orchestra, the Poetry Festival etc.

(2) EEC Treaty (Articles 117, 118 and 128)

- Resolution of the Ministers responsible for cultural affairs meeting within the Council of 13 June 1985, concerning the annual event "European City of Culture".
- Resolution of the Ministers responsible for cultural affairs meeting within the Council of 13 November 1986 on the protection of Europe's cultural heritage.
- Resolution of the Ministers responsible for cultural affairs meeting within the Council of 13 November 1986 on the conservation of works of art and artefacts.

(3) This appropriation is intended to provide a financial contribution to pilot schemes covering various measures for widening the audience for different forms of cultural expression and to counter widespread unemployment among cultural workers.

(4) This appropriation is intended to cover studies, pilot projects and other forms of positive action to provide support and stimulus, as part of the Media programme (measures to encourage the development of the audio-visual industry) to take account of the new dimensions of the European market.

(5) Agreement of the representatives of the Governments of the Member States meeting within the Council of 29 March 1982 setting up the European Foundation.

(6) This article is meant to support European sports associations and in particular, sports events for the handicapped.

(7) New item

European Parliament resolution of 17 June 1987 on the implementation of the Helsinki Agreement and the role of the European Parliament in the CSCE process.

This appropriation is intended to be used to promote the right to freedom of expression and human rights in the countries of Central and Eastern Europe and to support organisations pursuing the same aims.







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