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European Democracy in Action

What is the impact of EU interventions at the national level?

How much do European Union (EU) interventions influence national public policies? Does the EU intervene in a “subsidiary” way, as asserted in the Community Treaties, or is it omnipresent and omnipotent as public opinion sometimes claims? For example, is 80% of national legislation of Community origin or, to the contrary, is it a much smaller share? At a time when EU citizens have just elected their representatives in the European Parliament for the next five years, it seems more necessary than ever to try to address these questions which are essential from a policy vantage point, but which have not yet generally given rise to very precise technical responses. The aim of this study is to describe what the EU is trying to achieve by primarily referring to unpublished data and by combining three sets of analyses which show that:

- the impact of EU normative interventions is substantial, yet often incidental or regulatory in scope, and, overall, is not as important as claimed, except in certain specific public policy sectors;
- the impact of EU budgetary interventions is for the most part limited, as is often indicated; however it is quite extensive in some sectors and in some countries;
- the impact of EU non-binding positions is both relatively limited in concrete terms and consequential from a policy and media perspective, in such a way that it undoubtedly helps to reinforce the EU's “illusory” reputation.

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What is the impact of EU interventions at the national level?

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What is the impact of EU interventions at the national level?

By Yves BERTONCINI

For Henri, who lived in the Europe of yesterday.

For Anatolie, who will brighten the Europe of tomorrow.



Yves BERTONCINI

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Abstracts

A smaller normative impact than claimed, except for certain sectors.

- The EU has published close to 2,500 normative acts (regulations and directives) per year during the last 20 years, as compared to some 10,000 normative acts per year (laws, ordinances, decrees and orders of general application) at the French level. Norms of Community origin amounted to less than 15% of the total norms in force in France during the same period (see pages 8 to 16).
- Approximately half of the regulations and directives adopted by the EU concern the Agriculture and Fisheries sectors, even though these two sectors represent only 10% of the national normative production. Excluding Agriculture and Fisheries, the proportion of total norms enforced in France which are Community norms is about 6% (see pages 16 to 24).
- About one-fourth of the directives transposed in France between 2000 and 2008 had legislative implications, while the rest were transposed by regulatory means (decrees and orders). By taking regulations into account, and adopting a mean working hypothesis, it can be estimated that one-third of the laws and ordinances

implemented in France are of Community origin and that the 50% ratio is exceeded only in a few sectors (Agriculture and Fisheries, Economy & Ecology) (see pages 24 to 37).

A limited, yet substantial, budgetary impact in certain sectors and countries

- Community expenditure in 2006 represent slightly less than 1% of the EU's GDP and about 2% of all European public spending (slightly more than 5% if we exclude expenditure related to Debt, Social Protection and Health) (see pages 43 to 46).
- In some sectors, the amount of Community expenditure is substantial: it amounts to more than two-thirds of European public expenditure in the Agriculture, Fisheries and Rural Development sectors, about half of all Regional Cohesion-related expenditure, and to slightly more than one-third of Humanitarian Aid expenditure. Community expenditure is also important in the area of development assistance and R&D, but is very limited in the other sectors (see pages 46 to 51).
- The impact of Community expenditure at the national level varies widely from one country to the next due to their highly disparate wealth and public expenditure levels: this impact is very limited in the Netherlands (less than 0.4% of GDP) but greater in Lithuania (over 3%) (see pages 53 to 57).
- The relative weight of the “allocated” Community expenditure as compared to the total public expenditure incurred at the national level varies from 2% to 17% from one country to the next (excluding Social Protection and Health expenditure). The proportion of Community expenditure in the Agriculture sector exceeds 85% of total public expenditure incurred at the national level in 5 EU countries (see pages 57 to 63).

A multiform, yet diffuse, “political” impact

- The EU has adopted several hundred indicators for monitoring and assessing national policies: the EU Sustainable Development Strategy, for example, has 150 of them (see pages 66 to 74).
- On 1 April 2009, the EU had forwarded some 1,000 recommendations and over 500 opinions to its Member States in an effort to induce them to coordinate their national policies. These EU interventions were the outcome of implementing an open method of coordination in 6 economic and social areas (see pages 74 to 81).
- The EU has adopted more than 700 common positions and joint actions since launching the Common Foreign and Security Policy (CFSP) to promote cooperation between its Member States (see pages 81 to 87).

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Introduction: A trans-sectoral and “hand made” vision of the EU

How much do European Union (EU) interventions influence national public policies? Does the EU intervene in a “subsidiary” way, as asserted in the Community Treaties, or is it omnipresent and omnipotent as public opinion sometimes claims? For example, is 80% of national legislation of Community origin, or, to the contrary, a much smaller share? At a time when EU citizens have just elected their representatives in the European Parliament for the next five years, it seems more necessary than ever to try to address these broad questions which are essential from a policy vantage point, but which have not yet been the subject of a very precise and technical response.

An extensive amount of data on the EU is certainly available, which has never stopped increasing since the 1950s in tandem with the development of European integration and EU-oriented studies and research. In view of the enormous complexity of Community issues, such expertise is, however, often characterized by hyper-specialisation and dryness to such an extent that studies offering a trans-sectoral and popularised perspective of the EU are relatively scarce. This “vagueness” is particularly harmful in that it concerns the impact of EU interven-

tions at the national level, which constitutes a key policy issue, around which all sorts of positions can develop in the absence of sufficiently supported analyses.

These positions can all the more easily become generalized inasmuch as they are not devoid of an ulterior political motive. Thus, very often it is a matter of exaggerating the scope of EU actions, either to acclaim its actual or presumed merits, or, to the contrary, to denounce its excessive interventionism, or ultimately to attempt to shift the blame onto the EU for decisions which are not primarily its responsibility. It can also, albeit less often, be a matter of downgrading the scope of EU interventions so as not to give the latter too much attention and importance. This is harmful from an intellectual and political viewpoint, inasmuch as it prevents calm and effective debate on the EU's actual role and on the ways and means to expand or reduce the latter's impact upon a particular sector.

This study's objective is consequently both broad in its scope and modest in its approach. Broad in its scope, because the aim is to propose a trans-sectoral view of EU interventions by addressing their normative (the EU is primarily a community of law), budgetary (the EU has financial intervention capacities) and "political" dimensions (the EU produces many guidelines, strategies opinions and recommendations which, though not binding, are yet very much a part of public debates). Modest in its approach, because in undertaking such a daunting task, it was necessary to adopt an essentially "hand made" approach, so as to develop an inventory which would normally require a large number of extremely in-depth studies. The aim is to identify, at each stage of this study, the process followed, thereby giving the reader the opportunity to verify whether it was well-founded and, at the same time, to improve upon any particular point, if so desired or if possible.

In this perspective, we have sought to measure the impact of EU interventions on the national level, based upon three sets of analyses which allow us to conclude that:

- the impact of EU normative interventions is substantial, yet often incidental or regulatory in scope and, overall, not as great as claimed, except in certain specific public policy sectors;

- the impact of EU budgetary interventions is by and large limited, as is often indicated; however, it is quite extensive in some sectors and some countries;
- the impact of EU non-binding positions is both relatively limited in concrete terms and consequential from a policy and media perspective, to such a point that it undoubtedly helps to reinforce the EU's "illusory" reputation.

I - EU normative interventions:¹ “People’s prison” or chicken coop?

Public debate on the extent to which EU normative interventions influence national law is characterized by two striking and paradoxical traits:

- This is a key debate, inasmuch as the EU is primarily a “Community of law” which produces countless pieces of normative legislation that superseded national law. It is therefore on the legal plan that its influence on our public lives must first be weighed;
- Yet this debate is also unstructured, in that it gives rise to unclear and totally contradictory evaluations, causing some to conclude that “Brussels governs us,”² and others that EU interventions are of little significance.

The essential as well as inconsistent character of such debate promotes the formulation of diagnostics whose technical foundations are often obscure, even if they sometimes rely upon numerical data. The idea that the Community has produced 80% of national legislation in force has recently gained so much credence that it

¹ I would like to earnestly thank Jean Maia, who produced the ground-breaking analysis cited below, for making himself available and for the advice he gave me while I was completing this study for which I am, of course, solely responsible.

² To use the judicious expression chosen by Jean Quatremer in the title of a paper published in the collective work, *Notre Europe*, N. Gnesotto and M Rocard (Dir.), Robert Laffont, Paris, 2008.

sometimes appears to be a self-evident conclusion for its opponents, as well as many of its supporters, even though, as we shall see, it is grossly exaggerated.

The political vagueness surrounding any accurate appraisal of the impact of Community law on national legislation has inspired assessments that are all the more extreme that they claim to be based upon statements attributed to Jacques Delors, and which are not necessarily being interpreted as they should be (see Text box 1).

It is evident that another reason why such political and legal vagueness has surrounded the impact of Community law on national legislation for such a long time is that it is very difficult to precisely measure it³. In his ground-breaking article on the subject⁴, Jean Maïa clearly pointed out the technical complexity of the task: “How can the complex workings of these two different legal systems be reduced to a percentage? The latter would vary, whether calculated on a law-by-law, or article of law-by-article of law, basis. It would also be necessary to stipulate whether or not the legislative measures required by Community law should be included, or only provisions influenced or inspired by the latter.”

If we have nonetheless strived to address this issue, it is because, as we previously mentioned, this field is already full of political analyses tending to overlook such subtleties. We will attempt to do so in the sole aim of refuting the most blatant misinterpretations on the basis of reasoning presented within each developed theme, in order to measure their orders of magnitude as accurately as possible⁵.

In order to minimize any risk of inaccuracy and make the best use of available data⁶, the scope of this study will be limited to the total number of Community and national normative acts (and not to the number of articles or characters thereof), as well as to the “measures directly pertaining to the Community legal order,” and not just to those inspired and influenced by it:

³ On this subject, see *La norme internationale en droit français* - Study - Council of State - La documentation française (2000).

⁴ Jean Maïa, “La contrainte européenne sur la loi,” *Revue Pouvoirs*, no. 114 (2005).

⁵ See Appendix 1 for additional methodological considerations.

⁶ I would like to thank Carine Soulay and Juliette Clavière for making themselves available, for their advice, as well as for the data which the General Secretariat of European Affairs (SGAE) was kind enough to share with me concerning the legislative or regulatory nature of the Community’s draft normative acts submitted to the Council between 1992 and 2008, and the data concerning the nature of national legislative acts used to transpose Community directives from 2000 to 2008.

- on the Community level, we adopted a policy approach by focusing upon “derived law” (essentially directives and regulations), which is regularly adopted by EU institutions and has direct effects at the national level, excluding EU Court of Justice judgements, which are both jurisdictional and specific in nature.
- on the national level, we set aside the acts adopted after a review of their compatibility with primary or derived Community law led to possible changes: in fact, such acts cannot be deemed to be “of Community origin” when they are, in fact, of national origin and their authors simply verified that they were not contrary to EU law⁷.

TEXT BOX 1 - JACQUES DELORS AND THE IMPACT OF COMMUNITY LAW ON NATIONAL LEGISLATION

SETTING ASIDE THE MANY MISQUOTATIONS ATTRIBUTED TO HIM ON THE SUBJECT, IT WILL BE RECALLED THAT JACQUES DELORS STATED, AT THE UNIVERSITY OF LOUVAIN, BELGIUM, ON 2 FEBRUARY 1987: “THIRTY PERCENT OF BELGIAN LEGISLATION IS OF COMMUNITY ORIGIN AND (...) THIS FIGURE IS EXPECTED TO RISE TO 60% WITHIN THE NEXT 10 YEARS.” In 1988, HE ALSO STATED BEFORE THE BRITISH TRADES UNION CONGRESS (TUC), “BY THE YEAR 2000, 80% OF ECONOMIC—AND PERHAPS EVEN FISCAL AND SOCIAL—LEGISLATION WILL ORIGINATE FROM EUROPEAN INSTITUTIONS.”* THE ROUGH AND LOGICAL CONCLUSIONS THAT CAN BE DRAWN FROM SUCH STATEMENTS ARE QUITE SIMPLE:

- SOME 20 YEARS AGO, JACQUES DELORS ESTIMATED THAT 30% OF THE NATIONAL LAWS IN A COUNTRY SUCH AS BELGIUM WERE OF COMMUNITY ORIGIN;
- ALTHOUGH THE EUROPEAN SINGLE ACT HAD JUST ENTERED INTO FORCE, AND CLOSE TO 300 DIRECTIVES WOULD BECOME NECESSARY TO SET UP THE “SINGLE MARKET” BY 1992, HE PREDICTED (ALSO IN BELGIUM) THAT THIS RATIO WOULD RISE TO 60% TEN YEARS LATER;
- WHILE NOT LIMITED TO A SINGLE EU COUNTRY, THE FORECAST OF 80% OF NATIONAL LAWS OF COMMUNITY ORIGIN DID NOT APPLY TO THE BODY OF LAWS, BUT ONLY TO ECONOMIC, AND MAY BE FISCAL AND SOCIAL, LEGISLATION.

WE CAN CERTAINLY SURMISE, AS DID JEAN MAÏA, THAT THE FORECASTS MADE BY JACQUES DELORS IN THE LATE 1980S CORRESPONDED TO “A PREDICTION OF THE COURSE OF EUROPEAN INTEGRATION WHICH RECENT YEARS HAVE INVALIDATED.”** IT MAY ALSO BE CONCLUDED THAT THEY WERE PERHAPS MORE IN LINE WITH THE FLOWS OF NORMATIVE LEGISLATION OF THE LATE 1990S (IMPLEMENTATION OF THE SINGLE EUROPEAN ACT, ENTRY INTO FORCE OF THE TREATY OF MAASTRICHT) THAN WITH TODAY’S LEGISLATIVE REALITIES. WHAT IS CERTAIN AT THIS STAGE IS THAT, AT THE RISK OF SHOWING DELIBERATE BAD FAITH, IT WOULD BE ILL-ADVISED TO PERCEIVE THESE FORECASTS AS ASSESSMENTS SUPPOSEDLY PERTAINING TO A GIVEN SITUATION WHICH MIGHT CONCERN ALL NATIONAL LAWS.

* CITED BY JEAN MAÏA, *LA CONTRAINTE EUROPÉENNE SUR LA LOI*, OP.CIT.

** IN JEAN MAÏA’S ARTICLE, *IBID.*

⁷ It would also be practically impossible to number the national acts amended after it was found that they were incompatible with Community law (except those rejected by the European Court of justice).

On these grounds, we will attempt to measure as closely as possible the relative importance of Community law and its impact on national legislation based upon data relating to the norms enforced in a country such as France and by combining three complementary approaches:

- first, a comprehensive approach, in order to present some raw data on the number of Community and national normative acts in force or produced during the same period;
- followed by a sectoral approach, in order to distinguish the sectors in which the number of Community normative acts is very high from those in which they are virtually absent;
- lastly, a “material” approach, to indicate whether the normative acts are legislative or regulatory in scope, and to show that the great majority of Community normative acts are non-legislative in scope and thus weigh their relative impact on national laws⁸.

1.1 A relatively low volume of Community norms at the national level

Assessing the quantitative share⁹ of EU interventions—in terms of both the “reserves” of norms in force and of the “flow” of norms adopted each year—calls for a comprehensive inventory to be made of the norms produced by the EU and by one of its Member States (in this case, France).

1.1.1 An inventory of Community and national norms in force

Excluding laws set out under Community Treaties (primary law), an initial overall assessment of acts of law produced by the EU (see Table 1.1) indicates that 28,031 acts of derived law were in force on 1 July 2008, of which 9,685 were directives and regulations—the date of 1 July 2008 being retained here as a reference to facilitate comparison with available data on French national laws.

⁸ A simplified presentation of the following facts may be obtained by consulting “National laws of Community origin: dispelling the 80% Myth” Policy Brief, Notre Europe, May 2009.

⁹ It should be pointed out that the quantitative comparisons made in this study deal with the number of acts, regardless of their respective length (number of articles or characters).

TABLE 1.1 INVENTORY OF COMMUNITY NORMATIVE ACTS IN FORCE ON 1 JULY 2008

TYPE OF ACT	TOTAL ACTS
DIRECTIVES	1,965
REGULATIONS	7,720
DECISIONS	11,837
OTHER ACTS	2,539
INTERNATIONAL AGREEMENTS	3,959
TOTAL	28,031
TOTAL INTERNAL NORMATIVE ACTS (DIRECTIVES AND REGULATIONS)	9,685 **

SOURCES: OJEU/EUR-LEX

• ACTS CONSIDERED TO BE IN FORCE, AS PUBLISHED IN THE OFFICIAL JOURNAL OF THE EUROPEAN UNION (OJEU).

NOTE: INQUIRY SUBMITTED TO EUR-LEX ON 15.04.09 (THESE FIGURES MAY VARY SLIGHTLY FROM DAY-TO-DAY BECAUSE OF CURRENT COMMUNITY LAW REVISION WORK).

** EVEN WHEN THEY PRODUCE NORMATIVE EFFECTS COMPARABLE TO THOSE PRODUCED BY DIRECTIVES, THE FEW FRAMEWORK DECISIONS IN MATTERS RELATING TO JUSTICE AND INTERNAL AFFAIRS (CATEGORIZED AS “OTHER ACTS”) ARE NOT INCLUDED IN THIS TOTAL (THEY ARE MENTIONED IN THE SECOND PART OF THIS STUDY).

We retained the 9,685 directives and regulations as a reference in order to focus upon EU “normative interventions”; i.e., those interventions which concern “binding acts of general application,” presumed to exclude:

- “decisions,” which are binding in scope but non-normative, inasmuch as they concern individuals¹⁰;
- “other acts” (opinions, recommendations, common positions, etc.), the scope of which may be general but which do not have any binding normative implications¹¹;
- lastly, the “international agreements” concluded in part by the European Community but primarily between Member States: although these agreements are binding and sometimes normative, it seems appropriate to deal with them separately (in the “External Relations” category) in a study assessing the impact of derived law on internal law.

¹⁰ The very few “framework decisions” adopted in the area of judicial and police cooperation are an exception (some fifteen framework decisions have been adopted) and are mentioned in the sectoral part of this study.

¹¹ These acts are taken into account in the third part of this Study.

An assessment of the national laws in force in France (see Table 1.2) reveals that 26,777 laws, ordinances and decrees were in force there on 1 July 2008.

**TABLE 1.2 – INVENTORY OF NATIONAL NORMS IN FORCE ON 1 JULY 2008
(EXCLUDING MINISTERIAL ORDERS)**

TYPE OF NORMS	TOTAL NORMS
LAWS*	2,362**
ORDINANCES	532**
DECREES	23,883
TOTAL	26,777

SOURCES: LEGIFRANCE, Y. BERTONCINI'S COMPUTATIONS

* INCLUDING LAWS RATIFYING INTERNATIONAL AGREEMENTS.

** DATA OBTAINED BY ADDING THE INVENTORY OF LAWS AND ORDINANCES ESTIMATED BY LEGIFRANCE TO BE IN FORCE ON 01.07.08 (POSTULATING THAT NO LAW IN FORCE ON 01.07.07 WAS NO LONGER IN FORCE ONE YEAR LATER).

An initial comparison of these quantitative data with the total number of Community directives and regulations in force on the same date shows that the Community normative acts represented:

- 36.2% of the laws, ordinances and decrees (9,685 as opposed to 26,777) in force in France on 1 July 2008;
- 26.6% of the total normative acts in force in France on 1 July 2008, whether of Community or national origin (9,685 out of 36,462).

This first comparison, however, is based upon a total of national norms which does not include ministerial orders of general application and is therefore doubly deficient:

- first, because there is a large quantity of such ministerial orders, particularly those pertaining to laws and ordinances: by way of example, more than 8,000 of them were adopted each year during the 2005-2008 period, amounting to about 80% of the total French flow of normative acts in force during that period;
- secondly, because it is important to include these orders in any comparison of Community and national laws since—as we shall see further on (see § 1.3)—the total number of normative acts adopted by the EU may be (regu-

lations) or are (transposed directives) implemented by means of orders in France.

Due to the lack of precise data on the orders of general application in force in France on 1 July 2008, this study relied instead upon data relating to Community and French flows of normative legislation (whether or not the norms concerned are still in force), on the assumption that the consideration of such data over sufficiently long periods would result in an equally representative inventory.

1.1.2 A current survey of Community and French normative legislation flows

Analysis of the data on the Community's "normative legislation flow," namely the total number of directives and regulations adopted within a given period, shows that the EU has been producing an average of 2,181 (1978-2007 period) to 2,744 (1998-2007 period) directives and regulations per year (see Table 1.3). Moreover, such data reveals that the number of such interventions has soared over the last thirty years, even if that increase has not been confirmed for the most recent period (data for 2005-2007 and 2008)¹².

TABLE 1.3 – COMMUNITY-LEVEL NORMATIVE LEGISLATION FLOWS (AVERAGE OR ANNUAL FIGURES)*

YEAR PUBLISHED IN THE OJEU	REGULATIONS	DIRECTIVES	TOTAL	LEGISLATIVE ACTS/YEAR
2008	2,249	247	2,496	2,496
2005-2007	6,629	579	7,208	2,402.6
1998-2007	25,758	1,688	27,446	2,744.6
1987-2006	46,063	3,003	49,066	2,453.3
1978-2007	61,271	4,162	65,433	2.181.1

SOURCES: EUR-LEX DATA, Y. BERTONCINI'S COMPUTATIONS*

FOR A MORE DETAILED EXPLANATION OF THESE FIGURES, SEE APPENDIX 1.

¹² Perhaps the relative lower production rate of Community normative legislation is due in part to the implementation of the "Better Regulation" Programme, which has notably already led to the rescinding of several dozen draft acts.

An analysis of available data on normative legislation produced in France allows us to identify equally useful orders of magnitude (see Table 1.4) which indicate that the number of normative acts produced yearly in France seems to remain relatively stable, totalling about 9,500 to 10,000.

TABLE 1.4 – NATIONAL-LEVEL NORMATIVE LEGISLATION FLOWS (AVERAGE OR ANNUAL FIGURES)

YEAR PUBLISHED IN THE OJFR	LAWS AND ORDINANCES*	DECREES	MINISTERIAL ORDERS OF GENERAL APPLICATION	LEGISLATIVE ACTS/YEAR
2008	82	1,435.9**	7,771	9,288.9
2005-2007	87.6	1,734.3	8,382.6	10,204.5
1998-2007	69.7	1,435.9	8,229.5***	9,735.1
1987-2006	109.5	1,278.4		9,617.4
1978-2007	64.7	1,284.3		9,578.5

SOURCES: DATA FROM LEGIFRANCE AND OJFR (“DIACHRONIC TABLE” OF 1997-2006); Y. BERTONCINI’S COMPUTATIONS

* EXCLUDING LAWS RATIFYING INTERNATIONAL AGREEMENTS.

** 2008 DATA NOT AVAILABLE, 1998-2007 AVERAGE

*** AVERAGE CALCULATED SOLELY FOR THE 2005-2008 PERIOD.

A comparison of the relative orders of magnitude of Community and French normative legislation flows can be based upon:

- either the 2005-2007 period, which is the only one for which the exact number of laws, ordinances, decrees and orders is available (Option 1);
- or the 1978-2007 period, the longest and therefore the most representative one, provided that the reference used is the average annual total of ministerial orders reported for the years 2005-2008 (Option 2).

If we retain Option 1 (see Table 1.5), it appears that from 2005 to 2007, Community normative acts represented:

- slightly more than 11% of French normative acts (2,402.6 as opposed to 10,204.5 per year);
- approximately 10% of the total normative acts (of national or Community origin) enforced in France during the same period (an average of 12,607.1 per year).

If we retain Option 2, we find that between 1978 and 2007, Community normative acts represented:

- slightly less than 15% of French normative acts (2,181.1, as opposed to 9,578.5 per year);
- slightly less than 13% of the total national or Community normative acts enforced in France during the same period (an average of 11,759.6 per year).

The relatively strong convergence of these diverse data yields an initial, and rather significant, finding (for more specific details, see Appendix 2) concerning the quantitative share of Community norms as compared to French norms, namely that:

- the total number of Community normative acts are estimated to represent about 15% of the total number of normative acts formulated in France within the last 30 years and about 11% of those formulated within the last 10 years;
- about 13% of the normative acts implemented in France over the last 30 years are thought to be of Community origin (about 10% in the last 10 years).

TABLE 1.5 – QUANTITATIVE SHARE OF COMMUNITY NORMS - RAW DATA

As %	IN PROPORTION TO ALL NORMATIVE LEGISLATION FORMULATED IN FRANCE	IN PROPORTION TO ALL NORMATIVE LEGISLATION ENFORCED IN FRANCE
2005-2007 NORMATIVE FLOWS*	11.22%	10.08%
1998-2007 NORMATIVE FLOWS	11.48%	10.3%
1987-2006 NORMATIVE FLOWS	14.53%	12.68%
1978-2007 NORMATIVE FLOWS**	14.59%	12.73%

SOURCES: EUR-LEX DATA, LEGIFRANCE DATA, Y. BERTONCINI COMPUTATIONS

* INCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

** EXCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

NOTE: COMPUTATION OF THE AVERAGE ANNUAL NUMBER OF THE ORDERS OF GENERAL APPLICATION IS BASED UPON THE 2005-2008 PERIOD.

1.1.3 An assessment of the relative impact of the Community's normative legislation: Basis for an in-depth analysis

It should be noted that a more in-depth assessment of the relative impact of EU interventions might also include other relevant data (for further details on this point, see Appendix 2).

The first of these elements concerns how national and Community normative legislation interact: this factor will be integrated into the analysis of the data provided later on in this study. Community regulations and national normative acts interact in a “substitutional” way, in that regulations allow the EU to intervene instead of its Member States in order to regulate or control a particular activity sector, inasmuch as Member States do not, a priori, have to adopt other normative acts¹³. From a quantitative viewpoint, a “communicating vessels” phenomenon thus occurs between national norms and Community norms, in such a way as to enable the share of acts of Community origin to be rather accurately measured (merely by totalling the number of regulations), as well as their relative proportion (by adding them to the national total and determining their share of the grand total).

Community directives and normative acts, on the other hand, have a more complex “transpositional” relationship, since enforcement of the directives at the national level requires Member States to adopt complementary normative acts. It is therefore necessary to try to precisely identify these national acts, not only in order to more clearly determine the share of norms which are “of Community origin,” but also to deduct the latter from the total norms adopted at the national level (thereby isolating the national norms which are not directly of Community origin).

By taking into account all of these factors, the raw data presented above can be slightly refined and more specific assessment data identified (see Table 1.6) which indicate that:

- the total number of Community norms is estimated to represent about 15% of the total norms formulated in France within the last 30 years and about 12% within the last 10 years;

¹³ It should be noted that, in certain rather limited cases, the adoption of Community regulations may be accompanied by the adoption of national normative acts.

- approximately 13% of the norms enforced in France within the last 30 years are thought to be of Community origin (about 10% in the last 10 years).

These orders of magnitude, which will be discussed again in the sectoral part of this study (§ 1.2), vary widely according to the area concerned.

TABLE 1.6 – QUANTITATIVE SHARE OF COMMUNITY NORMS - REFINED DATA

As %	IN PROPORTION TO ALL NORMATIVE LEGISLATION FORMULATED IN FRANCE	IN PROPORTION TO ALL NORMATIVE LEGISLATION IN FORCE IN FRANCE
2005-2007 NORMATIVE FLOWS*	11.66%	10.44%
1998-2007 NORMATIVE FLOWS	11.93%	10.66%
1987-2006 NORMATIVE FLOWS	15.07%	13.09%
1978-2007 NORMATIVE FLOWS**	15.09%	13.11%

SOURCES: EUR-LEX DATA, LEGIFRANCE DATA, Y. BERTONCINI COMPUTATIONS

* INCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

** EXCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

NOTE: COMPUTATION OF THE ANNUAL AVERAGE NUMBER OF ORDERS OF GENERAL APPLICATION IS BASED UPON THE 2005-2008 PERIOD.

The second assessment factor considered deals with the average life cycle of Community and national normative acts. The particularly short life cycle of certain national (such as finance laws) and Community (such as agricultural regulations) normative acts does, indeed, automatically cause their number to rise. Although such an increase obviously underscores the frequency of national or Community normative interventions, it tends to overrate their impact, both on all sectors taken as a whole and on individual sectors.

The third assessment factor which it would be helpful to integrate involves identifying the precise “origin” of all national normative acts, which may be of Community (such as the transposition of a directive) or national origin. If we combine the national acts proceeding from a single normative process (a typical example would be a law and all of its implementation orders), we would undoubtedly obtain an overstated inventory of the relative proportion of the number of acts

“of Community origin.” Conversely, it should be recalled that an accurate identification of the number of national acts “of Community origin” should also lead us to distinguish:

- the national normative acts which are truly of Community origin – such as a law or a decree specifically adopted to transpose a directive;
- the normative acts which would have been adopted regardless, under the impetus of national authorities, and which serve as “vehicles” incorporating provisions aimed at transposing a directive’s content¹⁴ and constitute only a small part of the act concerned.

Although all of these subtleties should call for cautious consideration of the quantitative data presented throughout this study, they do not seem of a sort to challenge the validity of the orders of magnitude thus identified, nor of those which a more in-depth sectoral (§1-2) and material (§1-3) assessment may reveal.

1.2 Community norms are concentrated in specific sectors

Measuring the impact of the Community’s normative interventions on national law also calls for adopting a complementary sectoral approach which would take into account the fact that:

- EU adopts normative acts only in those sectors cited by the Treaties, although it is possible for the EU to intervene very broadly by resorting to non-normative acts (see Part 3 of this study);
- a substantial part of the Community’s normative interventions are concentrated in relatively few activity sectors (Agriculture, for example), in view of the highly economic focus of European integration.

As will be shown later, taking into account these additional sectoral factors leads us to considerably reduce the relative impact of Community normative interventions on national laws in numerous sectors.

¹⁴ This search for national normative “vehicules” is particularly common for acts having legislative implications (a typical example being the finance law); moreover, the reason the transposition is delayed is often because a “vehicle” with the same theme as that of the directive to be transposed is not available in the short term.

1.2.1 A highly sectoral concentration of Community norms

Assessing the number of directives and regulations in each of the 20 sectors identified by the EUR-Lex database directory (see Table 1.7) leads to the conclusion that three of these sectors predominate:

- slightly less than half of the regulations and directives are concentrated in the Agriculture sector alone;
- a large quantity of norms are also found in the Internal Market sector. If we consider only normative acts in force – the latter amounts to 11% of the grand total for the sole item “Industrial Policy and Internal Market,” yet amounts to 20% of this same total if we include normative acts relating to the “Free movement of goods” (9.8%), and even reach nearly one-fourth of the total if we add norms relating to the “Freedom of movement for workers and social policy” and the “Right of establishment and freedom to provide services”;
- nearly 10% of the total number of Community normative acts in force, and more than 13% of the normative acts adopted between 1987 and 2006, are concentrated in the External Relations sector, as well as a large number of technical regulations of an economic and financial nature.

TABLE 1.7 – SECTORIAL BREAKDOWN OF REGULATIONS AND DIRECTIVES

SECTOR	IN FORCE ON 01.07.08		ADOPTED BETWEEN 1987 AND 2006	
	TOTAL	% OF TOTAL	TOTAL	% OF TOTAL
GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS	338	3.0	361	1.3
CUSTOMS UNION AND FREE MOVEMENT OF GOODS	952	8.3	3,962	14.2
FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY	206	1.8	229	0.8
RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES	157	1.4	178	0.6
ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL	148	1.3	162	0.6
INDUSTRIAL POLICY AND INTERNAL MARKET	1,067	9.4	998	3.6
COMPETITION POLICY	60	0.5	109	0.4

LAW RELATING TO UNDERTAKINGS	121	1.1	114	0.4
TAXATION	101	0.9	105	0.4
AGRICULTURE	4,821	42.3	13,581	48.6
FISHERIES ^F	703	6.2	2,378	8.5
TRANSPORT POLICY	382	3.3	423	1.5
ENERGY	55	0.5	69	0.2
REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS	122	1.1	169	0.6
ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION	715	6.3	851	3.0
SCIENCE, INFORMATION, EDUCATION AND CULTURE	76	0.7	76	0.3
EXTERNAL RELATIONS	1,068	9.4	3,815	13.6
COMMON FOREIGN AND SECURITY POLICY (CFSP)	219	1.9	255	0.9
AREA OF FREEDOM, SECURITY AND JUSTICE	85	0.7	107	0.4
PEOPLE'S EUROPE	7	0.1	10	0
TOTAL SECTORS **	11,403	100	27,952	100
UNASSIGNED ACTS ***	24		24,587	
TOTAL, INCLUDING UNASSIGNED ACTS.	11,427		52,539	

SOURCES: EUR-LEX DATA, Y. BERTONCINI'S COMPUTATIONS

* THE TOTAL AMOUNTS RELATING TO THE SECTORAL DATA (11,427 AND 52,539) EXCEED THE GRAND TOTALS MENTIONED IN TABLES 1.1. (9,685) AND 1.3 (49, 066) BECAUSE SOME NORMATIVE ACTS ARE ASSIGNED TO TWO DIFFERENT SECTORS (DUPLICATED). FOR EXAMPLE, A DIRECTIVE LIBERALIZING THE ELECTRICITY MARKET WILL BE TALLIED IN BOTH THE INTERNAL MARKET SECTOR AND IN THE ENERGY SECTOR , ETC.

*** ACTS NOT ASSIGNED TO ANY SECTORS ARE THOSE ACTS WHICH RECTIFY OR AMEND THE CONTENT OF ALREADY-EXISTING ACTS (SEE §1.3).

By contrast, it is striking to note that:

- all of the other sectors listed in the EUR-Lex database generate less than 20% of Community norms (about 15% of the acts in force);
- community normative acts produced in certain sectors such as Taxation, Energy, Science, information, education and culture, represent less than 1% of the total normative acts in force.

Lastly, it should also be pointed out that two sectors in which few Community norms are in force constitute special cases:

- that of Competition, since it is Community primary law (text of the Treaties) which serves as a legal basis in many EU interventions (the great majority of which involve decisions);
- that of the Area of Freedom, Security and Justice, in which normative-type interventions may be the subject of "framework decisions" adopted on the basis of intergovernmental cooperation, yet have legal effects similar to those of the directives.

1.2.2 Very few Community normative interventions, as compared to national interventions, except in a few sectors

The sectoral data on Community norms can be compared to the national data supplied by the "Diachronic Table" developed under the auspices of the French government's "Secrétariat Général": the latter provides a unique and precise inventory of the laws, ordinances and decrees adopted in France between 1987 and 2006, along with a breakdown of the thirteen major fields of activity (the "NOR" nomenclature)¹⁵. Obtaining a comprehensive overview of all all French normative acts produced during this period requires integrating the orders of general application also adopted, which we have done here, once again using an average annual number solely for the years 2005 to 2008, after having broken down these orders according to the 13 "NOR" nomenclature categories (see Appendix 4).

The inventory thus obtained (see Table 1.8) provides some rather useful and representative orders of magnitude inasmuch as they cover a period of 20 years, and which shows that national normative interventions were:

- most numerous in the sectors of Employment and Health on one hand, and of the Economy on the other (about 18% for each sector);
- substantial in the sectors of Agriculture, Transport and Equipment, and Interior and Overseas territories (with an average of close to 10%);
- significant in a series of other sectors (Culture, Defence, Ecology, Justice and Education).

¹⁵ My earnest thanks to Olivier Garnier (Directorate of the "Journaux officiels") and to his team (Pierre Larrède, Louis Martin and Philippe Gibon) for having provided me with these data.

This inventory applies to France and results would naturally be different in other EU countries: there would be fewer national normative interventions in the agricultural sector in countries without, or with a limited, agricultural industry, in the area of defence in neutral countries, in the area of the economy in very liberal countries, etc. However, it seems sufficiently representative to highlight the decidedly atypical nature of the Community's normative interventions as compared to national interventions, which is attributable to the fact that the EU intervenes only in areas in which the Community Treaties have entrusted it with the competence to do so, and which to date are relatively few.

Such a variance points to the likelihood of a significant difference in the number of Community normative interventions according to sector. To measure its extent, the Community norms produced may be compared to the French normative acts adopted during the same period, provided that the two nomenclatures are correlated, which requires identifying the Community acts according to the 13-sector "NOR" nomenclature by breaking down the 20 sectors of the "EUR-Lex Directory" and, as accurately as possible, assigning each category of Community acts to the appropriate sectors (see Appendix 4).

TABLE 1.8 – SECTORAL BEAKDOWN OF FRENCH NORMATIVE LEGISLATION FOR THE PERIOD 1987-2006

SECTOR TYPE OF ACT	LAWS	ORDIN.	DECREES	ORDERS	TOTAL	% TOTAL
AGRICULTURE	1.9	0.95	83.75	935	1,021.60	10.6
CULTURE	2.4	0.25	48.1	347.5	398.25	4.1
DEFENCE	1.75	0.2	63.5	474	539.45	5.6
ECOLOGY	1.1	0.45	31.25	390.4	423.20	4.4
ECONOMY, INDUSTRY, SME & BUDGET	11.15	2.15	275.65	1,447.75	1,736.70	18.1
NATIONAL EDUCATION, YOUTH AND SPORTS	2.25	0.35	108	216.25	326.85	3.4
EMPLOYMENT AND HEALTH	8	2.95	211.4	1,599.25	1,821.60	18.9
CIVIL SERVICE AND GOVERNMENT ORGANIZATION	2.3	0.15	48.95	98.25	149.65	1.6
INTERIOR AND OVERSEAS TERRITORIES	8.85	5.9	112.25	629.5	756.50	7.9
JUSTICE	9.65	1.55	58.4	358.25	427.85	4.4
PRIME MINISTER	0.7		40.2	123.5	164.40	1.7
TRANSPORT & EQUIPMENT	4.1	0.9	86.85	843.3	935.15	9.7
FOREIGN AFFAIRS	39.05	0.05	110.1	191	340.20	3.5
TOTAL	93.2	15.85	1,278.4	8,229.75	9,617.20	100.0

SOURCES: SGG/OJFR DATA, 1987-2008 DIACHRONIC TABLE, Y. BERTONCINI'S COMPUTATIONS

The comparative data thus obtained (see Table 1.9) first confirm that the Community norms' relative global share of the total normative legislation in force in France is less than 20% (it amounts to about 12%). More importantly, they also show that this average share conceals significant sector-to-sector variances inasmuch as the weighted relative proportion of Community norms as compared to the total norms in force in France amounts to:

- slightly less than half in the Agriculture sector;
- about 20% in the Economy sector and in that of Foreign Affairs;
- slightly less than 5% in the area of Ecology;
- levels of less than 2% in the 10 other sectors.

This strong sectoral variation of the Community normative act share of the total acts in force in France called for an inventory which isolates the EU's main sectors of intervention (see Table 1.10). Such an inventory underscores the fact that, excluding the Agriculture and Economy sectors, the Community's normative acts represent slightly more than 2% of all normative acts in force in France.

TABLE 1.9 - RELATIVE PROPORTION OF COMMUNITY AND FRENCH NORMATIVE FLOWS BY SECTOR FOR THE PERIOD 1987-2006

SECTORS	DIRECTIVES AND REGULATIONS	LAWS, ORDINANCES, DECREES & ORDERS	EU AND FRANCE ACTS	EU %/ TOTAL
FOREIGN AFFAIRS	89.6	340.2	429.8	20.8%
AGRICULTURE	798.4	1,021.6	1,820	43.9%
CULTURE	0	397.8	397.8	0%
DEFENCE	0.9	534.4	535.3	0.2%
ECOLOGY	19.75	434.9	454.65	4.3%
ECONOMY	423.65	1,737.1	2,160.75	19.6%
EDUCATION, YOUTH & SPORTS	1.7	827.1	828.8	0.2%
EMPLOYMENT AND HEALTH	14.45	1,821.1	1,835.55	0.8%
INTERIOR AND OVERSEAS TERRITORIES	12.45	1,207.7	1,220.15	1%
JUSTICE	1.05	689.7	690.75	0.2%
TRANSPORT & EQUIPMENT	21.75	1,167.2	1,188.95	1.8%
GRAND TOTAL	1,383.7	10,178.8	11,562.5	12%

SOURCES: SGG (1987-2006 DIACHRONIC TABLE), EUR-LEX DATA, Y. BERTONCINI'S COMPUTATIONS

NOTE: COMPUTATION OF THE AVERAGE ANNUAL NUMBER OF THE ORDERS OF GENERAL APPLICATION IS BASED UPON THE 2005-2008 PERIOD.

* THE REFINED FIGURES PRESENTED HERE TAKE INTO ACCOUNT THE DIRECT LINK BETWEEN EU DIRECTIVES AND THE NATIONAL ACTS USED FOR THEIR TRANSPOSITION (ON AVERAGE 2.75 ACTS DURING THE 2000-2008 PERIOD). FOR MORE SPECIFIC DETAILS, SEE APPENDIX 2.

TABLE 1.10 - NORMATIVE ACTS ADOPTED AT THE COMMUNITY LEVEL AND IN FRANCE, AND THE EU'S RELATIVE SHARE (1987-2006 PERIOD), EXCLUDING ECONOMY AND AGRICULTURE

AVERAGE/YEAR	DIRECTIVES AND REGULATIONS	LAWS, ORDINANCES, DECREES AND ORDERS	EU AND FRANCE ACTS	EU %/ TOTAL
GRAND TOTAL	1,383.7	10,178.8	11,562.5	12%
TOTAL, EXCL. ECONOMY	960.5	8,441.7	9,401.75	10.2%
TOTAL, EXCL. AGRICULTURE	585.3	9,157.2	9,742.5	6%
TOTAL, EXCL. AGRICULTURE AND ECONOMY	161.65	7,419.3	7,580.95	2.1%

SOURCES: SGG-OJFR DATA (1987-2006 DIACHRONIC TABLE), EUR-LEX, Y BERTONCINI'S COMPUTATIONS

1.2.3 The trans-sectoral aspects of certain EU normative interventions

In concluding this sectoral inventory, we will stress that, here too, any interpretation of the quantitative data presented above should be supplemented by more qualitative data which would make it possible to determine a particular norm's concrete impact. Without attempting, in this study, to develop such a complementary analysis, we will simply point out that the assessment of the impact of EU normative interventions should also take into account some of these interventions' trans-sectoral implications.

The liberalization directives adopted within the framework of the Internal Market sector may, for example, concern a number of other sectors (e.g., Energy, Transports, etc.). They may have a general impact upon areas in which the EU does not have direct authority: for example, the implementation of the free movement of capital or of workers greatly influences how Member States set up their direct taxation level, even though such taxation is not subject to EU normative decisions.

EU interventions in matters of trade policy should also be mentioned, since they can have a considerable impact on how a particular economic sector functions. It is evident that protections granted, for example, to European cultural industries

play a decisive role for such industries; however, they are listed in the EUR-Lex database under the heading “External Relations,” even though the sub-heading “Culture” remains empty.

Another example would be the well-known “Stability and Growth Pact” formalized by two regulations applicable to the Economic and Monetary Policy sector, which obviously has a relatively trans-sectoral impact inasmuch as it can influence the level of public expenditure budgeted in all areas of State intervention. It will be recalled, however, that this Pact’s actual legal influence will only be felt in the few Member States which are having difficulties in complying with its rules and also that the States are nonetheless able to retain all of their freedom with respect to the sectoral allocation of their expenditure.

As a whole, trans-sectoral type Community norms do not seem to be of a sort to challenge the data on sectoral orders of magnitude identified above, which may therefore serve as a useful basis of comparison with the national norms produced per sector.

1.3 Community norms in France: A rather incidental material impact

An assessment of the relative impact of the Community’s normative acts on French law should also lead to an analysis of the material influence of such acts by indicating whether they are of a legislative or regulatory nature.

To that end, it might be helpful to compare Community and national norms by distinguishing them according to their author, and by isolating those which are adopted by political authorities commonly deemed to exercise legislative authority: Parliament at the national level, and the European Parliament, acting in a joint decision capacity with the Council at the Community level (see Appendix 3). Such an analysis, however, would not be reliable unless it considered all normative acts adopted by the Council and the European Parliament to be of a legislative nature. As shown below, such is actually not the case: these norms can

also concern secondary areas which would not be the subject of a national law. This calls for a more detailed analysis of the material nature of Community and national normative acts, based upon normative flows recorded over periods sufficiently long to provide worthwhile findings.

To do this, we first based our research on an analysis of available data on the transposition of Community directives in France from 2000 to 2008, which presents both an advantage and a disadvantage: the advantage is that it concerns normative acts adopted not only by the Council and/or Parliament, but also by the European Commission (whose directives must also be transposed), and that, as such, they support a trans-sectoral material analysis; and the disadvantage is that such an analysis does not concern regulations, which are more numerous (more than 80% of the total number of EU acts).

To supplement this initial approach, we will present an analysis of the material nature of the Community’s draft normative acts submitted to the Council of Ministers, and thus to French national authorities from 1992 to 2008: the General Secretariat of European Affairs (SGAE) submitted these draft acts to the Council of State over a fifteen-year period¹⁶ so that the latter could indicate whether they had legislative implications and should therefore be submitted to Parliament for review. The value of such data is that they concern both directives and regulations; their limitation is that they do not concern draft normative acts adopted by the Commission, even though the latter represent more than half of all Community flows¹⁷.

¹⁶ This assessment began on 1 November 1992 (the date on which Article 88.4 of the Constitution entered into force) and was completed on 23 July 2008 (since that date, all of the Community’s draft normative acts must be submitted to Parliament).

¹⁷ I would like to earnestly thank Marie Madelpuech, a student at the École Supérieure de Commerce de Paris (ESCP Europe business school) and at the Faculté de droit de Sceaux for her decisive contribution to the data analysis concerning acts submitted to the Council.

TEXT BOX 2 – AN ASSESSMENT WHICH GREATLY OVERESTIMATES THE PROPORTION OF “LAWS” OF COMMUNITY ORIGIN

A COMPARISON OF COMMUNITY NORMS HAVING LEGISLATIVE IMPLICATIONS AND FRENCH LAWS AND ORDINANCES AUTOMATICALLY CAUSES THE FORMER CATEGORY TO PRODUCE INFLATED RESULTS, FOR THREE REASONS:

- **FIRST, BECAUSE THE MERE PRESENCE OF A LEGISLATIVE COMPONENT SUFFICES TO CLASSIFY THE COMMUNITY ACT CONCERNED (DIRECTIVE OR REGULATION) IN THE LAW CATEGORY, WHEREAS ALL PROVISIONS OF A FRENCH LAW ARE OF A LEGISLATIVE NATURE BY DEFINITION. WE WILL THEREFORE MENTION HEREAFTER COMMUNITY ACTS “HAVING LEGISLATIVE IMPLICATIONS” (AND NOT THOSE OF A LEGISLATIVE NATURE), IN ORDER TO UNEQUIVOCALLY STRESS THE FACT THAT THESE IMPLICATIONS MAY CONCERN ONLY A LIMITED PART OF THEIR CONTENT. IN TAKING THIS BIAS INTO ACCOUNT, WE WILL PRESENT QUANTIFIED DATA BASED UPON TWO HYPOTHESES: A HIGH HYPOTHESIS, ACCORDING TO WHICH ALL COMMUNITY ACT PROVISIONS HAVING LEGISLATIVE IMPLICATIONS ARE LEGISLATIVE IN NATURE, AND A MORE REALISTIC MEDIAN HYPOTHESIS WHICH HOLDS THAT ONLY HALF OF THE PROVISIONS OF COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE LEGISLATIVE IN NATURE (BY DIVIDING BY TWO THE TOTAL NUMBER OF DIRECTIVES IDENTIFIED AS HAVING LEGISLATIVE IMPLICATIONS).**
- **SECONDLY, BECAUSE A REVIEW OF TRANSPOSED DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS SHOWS THAT THEIR QUANTITATIVE SHARE AS COMPARED TO THAT OF NATIONAL LAWS IS DOUBLY LIMITED, EITHER BY THE FACT THAT THEIR PROVISIONS REPRESENT ONLY A PART OF THE NATIONAL LAW USED FOR THE TRANSPOSITION; OR, CONVERSELY, THAT A SPECIFIC LAW ON DIVERSE PROVISIONS FOR THE ADAPTATION TO COMMUNITY LAW IS USED IN ORDER TO ALLOW SEVERAL DIRECTIVES TO BE TRANSPOSED AT THE SAME TIME (SEE APPENDIX 5);**
- **LASTLY, DUE TO THE LACK OF SUPPORTING DATA ON THE SUBJECT, THIS STUDY ADOPTED THE HYPOTHESIS THAT 5% OF THE ACTS PRODUCED BY THE EUROPEAN COMMISSION HAVE LEGISLATIVE IMPLICATIONS. SUCH HYPOTHESIS CORRESPONDS TO THE NUMBER OF ACTS THAT THE LATTER DOES NOT ADOPT BASED UPON A DERIVED LEGISLATION (AND WHICH MAY THEREFORE NOT BE CONSIDERED “IMPLEMENTING ORDERS”). THIS IS IN LINE WITH THE PERCENTAGE OF DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS ADOPTED BY THE COMMISSION AND TRANSPOSED IN FRANCE BETWEEN 2000 AND 2008 (SEE §1.3.1); HOWEVER, IT IS NOT CERTAIN THAT 5% OF THE ACTS ADOPTED BY THE COMMISSION ACTUALLY HAVE LEGISLATIVE IMPLICATIONS.**

USING FRENCH LAWS AS AN EXAMPLE UNDOUBTEDLY HAS THE REVERSE EFFECT OF MINIMIZING THE IMPACT OF EU LEGISLATIVE INTERVENTIONS IN TERMS OF WHAT WOULD BE OBSERVED IN OTHER EU COUNTRIES : THE “SCOPE OF LAW” IS INDEED RESTRICTIVELY DEFINED BY THE CONSTITUTION OF THE FIFTH REPUBLIC (ARTICLE 34), WHICH AT THE SAME TIME DEVOTES PARTICULAR ATTENTION TO THE “REGULATORY AREA” IN WHICH THE FRENCH GOVERNMENT INTERVENES. TAKEN AS A WHOLE, THIS “NATIONAL BIAS” LIMITS ONLY SLIGHTLY THE UPWARD TENDENCY DESCRIBED ABOVE AND DOES NOT HINDER THE PRODUCTION OF QUANTITATIVE RESULTS RELATIVELY IN LINE WITH THOSE OBTAINED IN OTHER COUNTRIES.*

* ON THIS SUBJECT, SEE, FOR EXAMPLE, THE INVENTORIES ESTABLISHED FOR GERMANY (THOMAS KÖNIG AND LARS MÄDER “DAS REGIEREN JENSEITS DES NATIONALSTAATES UND DER MYTHOS EINER 80-PROZENT-EUROPAISIERUNG IN DEUTSCHLAND” IN POLITISCHE VIERTELJAHRESSCHRIFT, VOLUME 49, NUMBER 3 / SEPT. 2008), AND FOR THE UNITED KINGDOM ([HTTP://WWW.PARLIAMENT.UK/COMMONS/LIB/RESEARCH/NOTES/SNIA-02888.PDF](http://www.parliament.uk/commons/lib/research/notes/snia-02888.pdf)).

Before making this dual assessment, it should be pointed out that it is likely to greatly overestimate the impact of Community legislative norms on French laws, in view of the sometimes inaccurate nature of available data on the subject (see Text box 2). Therefore the data presented below should be reviewed with extreme caution, and should at any rate be considered as a high hypothesis in terms of the relative impact of Community legislative interventions on national legislation.

1.3.1 Analysis of the nature of national normative acts used to transpose directives in France: Enlightening findings

Analysis of the data provided by the SGAE on the transposition of directives in French law for the 2000-2008 period show that (see Table 1.11):

- 15.6% (326 out of 2,094) of French normative acts used to transpose such directives were legislative in nature;
- the proportion of directives transposed by means of an act having legislative implications amounted to about one-fourth of the total (26.6% to be exact, since this concerns 202 out of 759 directives)¹⁸.

¹⁸ This figure of 26.6% of directives having legislative implications concerns all of the directives transposed in France between 2000 and 2008: that ratio is 58.2% for directives adopted by the Council alone, 48.1% for directives adopted by the Council and the European Parliament, and 3.55% for directives adopted by the European Commission. For all directives adopted by the Council (with and without the EP), that figure is 51.5%. Analysis of the SGAE-EC data, which only concerns the draft normative acts submitted to the Council during the 1992-2008 period, shows that 67% of the draft directives submitted to the Council included a legislative component, while this ratio was 68% for draft regulations submitted to the Council during this same period.

TABLE 1.11 - NUMBER AND MATERIAL NATURE OF ACTS TRANSPOSING COMMUNITY DIRECTIVES IN FRANCE
FOR THE PERIOD 2000-2008

TYPE OF ACT	LEGISLATIVE ACTS			REGULATORY ACTS			TOTAL
	DDADC*	LAWS	ORDINANCES	DECREES	ORDERS	DIVERSE**	
NUMBER OF ACTS	61	206	59	669	1,066	33	2,094
TOTAL LEGS./REGS.	326			1,768			
AVERAGE NO. OF ACTS PER DIRECTIVE	0.43			2.32			2.75
NUMBER OF DIRECTIVES CONCERNED	202			557			759
NUMBER OF DIRECTIVES CONCERNED/YEAR	22.4			61.9			84.3

SOURCES: SGAE DATA, Y. BERTONCINI'S COMPUTATIONS

* "DDADCs" ("DIVERSES DISPOSITIONS D'ADAPTATION AU DROIT COMMUNAUTAIRE") ARE LAWS ON DIVERSE PROVISIONS FOR THE ADAPTATION TO COMMUNITY LAW (SEE APPENDIX 5).

** "DIVERSE" REGULATORY ACTS INCLUDE, FOR EXAMPLE, DECISIONS MADE BY AN INDEPENDENT PUBLIC SERVICE AUTHORITY.

A more sectoral assessment of the material nature of the acts used in France to transpose Community directives (see Table 1.12) reveals that this overall average conceals major disparities between:

- the Area of Freedom, Security and Justice sector, in which the number of acts having legislative implications amounts to two-thirds of the transposing acts used (including framework decisions);
- two sectors ("Economic and Financial" and "Labour, Employment, Social Affairs and Culture"), in which the number of acts having legislative implications amounts to one-third of the transposing acts used;
- the other sectors, in which the ratio of acts having legislative implications used for the transposition is much lower.¹⁹

¹⁹ Although it should be noted that all of the percentages presented here constitute minimum ceilings, inasmuch as the use of a legislative act to transpose a directive is often accompanied by the adoption of regulatory acts (decrees and orders) whose total number simultaneously increases.

TABLE 1.12 – MATERIAL NATURE OF ACTS TRANSPOSING COMMUNITY DIRECTIVES IN FRANCE
FOR THE PERIOD 2000-2008 (AS % BY SECTOR)

SECTORS*	NUMBER OF DIRECTIVES	NUMBER OF TRANSPOSING ACTS	TRANSPOSING ACTS/DIRECTIVE	LEGISLATIVE ACTS**	REGULATORY ACTS***
"AGRAP"	290	431	1.5	2%	98%
"FIN"	71	241	3.4	38.6%	61.4%
"MICA"	159	589	3.7	6.5%	93.5%
"JUR"	5	8	1.6	75%	25%
"TESC"	37	136	3.7	33.8%	66.2%
"ITEC"	83	400	4.8	16%	84%
"TREG"	70	189	2.7	12.2%	87.8%
"EURATOM"	4	27	6.8	7.4%	92.6%
"RELEX"	1	2	2.0	0%	100%
"JAI"	39	71	1.8	63.4%	36.6%
TOTAL	759	2,094	2.75	15.6%	84.4%

SOURCES: SGAE DATA, Y. BERTONCINI'S COMPUTATIONS

* FOR AN EXACT DESCRIPTION OF EACH SECTOR'S CONTENT, SEE APPENDIX 4.

** LAWS AND ORDINANCES, AS WELL AS LAWS OR ORDINANCES WHICH INCLUDE DIVERSE PROVISIONS FOR THE ADAPTATION TO COMMUNITY LAW.

*** DECREES, ORDERS AND DIVERSE ACTS.

1.3.2 Limited number of Community directives having a legislative impact as compared to French national laws

The analysis of raw data relating to legislation in force in France between 2000 and 2008 (see Table 1.13) shows that, on average:

- 22.4 directives having legislative implications were transposed each year;
- 76.6 national laws and ordinances were adopted each year (excluding laws ratifying international agreements).

Excluding annual variations (of from 9 to 35 per year for directives having legislative implications) and the fact that several directives may sometimes be transposed by a single law or ordinance (see Appendix 5), we find that the average total number of transposed directives having legislative implications amounted to:

- slightly less than one-third (29.3%) of the total number of laws and ordinances adopted during this period (excluding laws ratifying international agreements);
- slightly less than one-fourth (22.6%) of the total number of legislative norms implemented in France during this period (excluding laws ratifying international agreements), and about 12% of this total, if we accept the median hypothesis that only half of the provisions of directives of a legislative nature are, in fact, of a legislative nature.

TABLE 1.13 – AVERAGE ANNUAL NUMBER OF DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS TRANSPOSED, AND OF LEGISLATIVE NORMS ADOPTED, IN FRANCE

YEAR PUBLISHED	TRANSPOSED DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS	LAWS AND ORDINANCES*	% DIRECTIVES/ LAWS AND ORDINANCES	% DIRECTIVES/ TOTAL LEGISLATIVE NORMS (HIGH HYPOTHESIS)	% DIRECTIVES/ TOTAL LEGISLATIVE NORMS (MEDIAN HYPOTHESIS)
2000	14	73	19.2%	16.1%	8.7%
2001	9	59	15.3%	13.2%	7.1%
2002	22	46	47.8%	32.4%	19.3%
2003	35	74	47.3%	32.1%	21.5%
2004	30	93	32.3%	24.4%	13.9%
2005	29	135	21.5%	17.7%	9.7%
2006	26	73	35.6%	26.3%	15.1%
2007	24	55	43.6%	30.4%	17.9%
2008	13	82	15.9%	13.7%	7.3%
TOTAL: 2000-2008	202	690	29.3%	22.6%	12.8%
AVERAGES/ YEAR**	22.4	76.6			

SOURCES: LEGIFRANCE DATA, SGAE/COUNCIL OF STATE DATA, Y. BERTONCINI'S COMPUTATIONS

* EXCLUDING LAWS RATIFYING INTERNATIONAL AGREEMENTS.

** THE AVERAGES ARE COMPUTED FOR THE 2000-2008 PERIOD. NOTE THAT THE AVERAGE ANNUAL NUMBER OF LAWS AND ORDINANCES TOTALLED 70 FOR THE 1986-2006 PERIOD (EXCLUDING LAWS RATIFYING INTERNATIONAL AGREEMENTS, 109.1 OF THEM IF WE INCLUDE SUCH AGREEMENTS), OR AN ORDER OF MAGNITUDE COMPARABLE TO THAT OBSERVED FOR THE 2000-2008 PERIOD.

NOTE: THE "HIGH HYPOTHESIS" CONSIDERS THAT ALL PROVISIONS OF COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE LEGISLATIVE IN NATURE; THE MORE REALISTIC "MEDIAN HYPOTHESIS" CONSIDERS THAT ONLY HALF OF THE PROVISIONS OF COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE LEGISLATIVE IN NATURE.

The figure of 22.4 directives having legislative implications per year in France between 2000 and 2008 can be broken down into various sectors (see Table 1.14):

TABLE 1.14 – NUMBER OF DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS TRANSPOSED IN FRANCE FROM 2000 TO 2008 – SECTORAL BREAKDOWN

SECTOR*	2000-2008 TOTAL	AVERAGE/YEAR
"FIN"	59	6.5
"ITEC"	35	3.9
"JAI"**	32	3.6
"MICA"	24	2.7
"TESC"	21	2.3
"TREG"	19	2.1
"JUR"	5	0.55
"AGRAP"	5	0.55
"EURATOM"	2	0.22
"RELEX"	0	0
TOTAL (ALL SECTORS COMBINED)	202	22.4

SOURCES: SGAE/COUNCIL OF STATE, Y. BERTONCINI'S COMPUTATIONS

* FOR AN EXACT DESCRIPTION OF EACH SECTOR'S CONTENT, SEE APPENDIX 4.

** HERE, WE CONSIDERED THE DIRECTIVES AND FRAMEWORK DECISIONS ADOPTED IN THE SECTOR: AREA OF FREEDOM, SECURITY AND JUSTICE .

In reviewing the composition of the 202 directives concerned, we in fact find that:

- 59 of them (or 29.2% in all) concern the Economic and Financial sector ("FIN");
- 35 (17.3%) belong to the Industry, Technology and Environment sector ("ITEC"), etc.;
- 32 (15.8%) concern the Area of Freedom, Security and Justice ("JAI");
- 24 (11.9%) belong to the Internal Market and Consumers sector ("MICA").

These 4 sectors concentrate an average annual flow of 16.7 directives having legislative implications, while all of the others combined represent only 5.7 directives having legislative implications per year during the 2000-2008 period.

On these new bases, the average annual number of legislative directives transposed in France from 2000 to 2008 can be compared to the number of laws and ordinances adopted in France during a similar period (see Table 1.15). This indicates that the directives having legislative implications represented slightly more than 12% (22.6% using the high hypothesis) of the annual total of all laws and ordinances enforced in France (excluding laws ratifying international agreements). However, those same directives only represented less than 7% (12.9% using the high hypothesis) of this total, if “Economy” and “Ecology” are excluded.

TABLE 1.15 – AVERAGE ANNUAL NUMBER OF DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS TRANSPOSED, AND OF LAWS AND ORDINANCES ADOPTED, IN FRANCE

SECTOR*	DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS/ YEAR**	LAWS AND ORDINANCES/ YEAR ***	EU %/TOTAL - HIGH HYPOTHESIS	EU %/TOTAL- MEDIAN HYPOTHESIS
TOTAL: ALL SECTORS COMBINED	22.4	76.6	22.6%	12.8%
ECONOMY & ECOLOGY	13.65	17.5	43.8%	28.1%
TOTAL, EXCL. ECONOMY & ECOLOGY	8.75	59.1	12.9%	6.9%

SOURCES: SGAE/COUNCIL OF STATE DATA, SGG/OJFR DATA, Y. BERTONCINI'S COMPUTATIONS

* NOR/SGAE CORRELATION: “ECONOMY” AND “ECOLOGY” = “FIN” + “ITEC” + “MICA” + “JUR.”

** REFERENCE PERIOD = 1992-2008 (SEE TABLE 1.25).

*** REFERENCE PERIOD = 2000-2006, EXCEPT FOR THE AVERAGE ANNUAL “ALL SECTOR COMBINED” TOTAL (PERIOD 1987-2006) - DATA EXCLUDING THE LAWS RATIFYING INTERNATIONAL AGREEMENTS.

NOTE: THE “HIGH HYPOTHESIS” CONSIDERS THAT ALL PROVISIONS OF COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE LEGISLATIVE IN NATURE; THE MORE REALISTIC “MEDIAN HYPOTHESIS,” THAT ONLY HALF OF THE PROVISIONS OF COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE LEGISLATIVE IN NATURE.

1.3.3 Analysis of the legislative (or non-legislative) nature of Community draft acts submitted to the Council: Decisive findings

A review of the draft normative acts submitted to the Council of Ministers from 1992 to 2008 led to some other very interesting findings concerning the material nature of Community directives and regulations (see Table 1.16), notably that:

- some two-thirds (68%, or 62.8% excluding external relations) of the draft

normative acts submitted to the Council during this period included at least one legislative provision;

- the remaining one-third could all be classified as regulatory (a similar overall ratio was noted with regard to regulations and directives).

This overall average conceals major sectoral disparities, inasmuch as the proportion of normative acts which include at least one legislative provision is:

- higher than 80% in 5 sectors, including External Relations (RELEX) which represented slightly less than one-fourth of the draft acts submitted to the Council and the Economic and Financial sector (FIN), which represented 16.6% of the draft acts;
- higher than the overall average in the Industry, Transport and Energy (ITEC) and in the Labour, Employment, Science and Culture (TESC) sectors, but below this average in the Internal Market (MICA) and Area of Freedom, Security and Justice (JAI) sectors;
- less than 50% in 2 sectors, including Agriculture, Food and Fisheries (AGRAP), which accounts for 30% of the draft acts submitted to the Council.

**TABLE 1.16 – MATERIAL NATURE OF DRAFT DIRECTIVES AND REGULATIONS SUBMITTED TO THE COUNCIL OF MINISTERS
FROM 1992 TO 2008***

SECTOR**	LEGISLATIVE NATURE		NON-LEGISLATIVE NATURE		
	NO. OF D & R	%	NO. OF D & R	%	TOTAL D & R
“FIN”	252	83.7	49	16.3	301
“MICA”	62	56.9	47	43.1	109
“TESC”	58	77.3	17	22.7	75
“ITEC”	139	72.7	52	27.3	191
“JUR”	40	86.9	6	13.1	46
“RENET”	8	33.3	16	66.6	24
“TREG”	125	66.9	62	33.1	187
“JAI”	44	60.3	29	39.7	73
“EURATOM”	11	73.3	4	26.7	15
“AGRAP”	253	46.2	294	53.8	547
TOTAL INTERNAL (EXCL. RELEX)	867	62.8%	514	37.2%	1,381
“POLEST”	104	80.6	25	19.4	129
“COOP”	74	80.4	18	19.6	92
“RELEX”	187	89	23	11	210
GRAND TOTAL	1,357	68%	642	32%	1,999

SOURCES: SGAE/COUNCIL OF STATE DATA, Y. BERTONCINI'S COMPUTATIONS

* REFERENCE PERIOD EXTENDING FROM 1 NOVEMBER 1992 (DATE WHEN ARTICLE 88.4 OF THE FRENCH CONSTITUTION ENTERED INTO FORCE) TO 23 JULY 2008 (DATE OF THE ENTRY INTO FORCE OF THE RECENT AMENDMENT TO THE FRENCH CONSTITUTION).

** FOR AN EXACT DESCRIPTION OF EACH SECTOR'S CONTENT, SEE APPENDIX 4.

The interpretation of these data should naturally be accompanied by a reminder that the draft normative acts submitted to the Council represent only a limited part of the total number of Community draft normative acts which, for the most part, are adopted by the Commission. We will once again retain the working hypothesis that the normative acts adopted by the Commission are rather of a secondary nature (i.e., regulatory) and that only a very small part of them may include provisions having legislative implications, estimated here at 5%:

- first, because this figure corresponds to the share of normative acts adopted by the Commission for which the legal basis is not an EP or Council regulation or directive (such acts therefore may not be equivalent to a legislative

norm's “implementation orders”²⁰);

- secondly, because this figure is in line with the average share of Commission directives transposed in France between 2000 and 2008 containing a provision of legislative implications (this figure amounted to 3.55%)²¹.

On this basis, it is noteworthy that the share of Community acts which include a legislative provision, all authors combined, drops substantially (see Table 1.17):

- it is now only about 12% of the total, as compared to 68%, solely for normative acts submitted to the Council;
- it is also significantly lower than the data solely pertaining to normative acts submitted to the Council in the other sectors (see the examples below);
- the proportion of acts having legislative implications remained stable at a comparable level only in the Area of Freedom, Security and Justice sector, for which the Council adopted the vast majority of normative acts, initially within the scope of the third intergovernmental pillar and later, within the scope of the Community pillar with respect to certain matters (primarily judicial cooperation on civil matters).

**TABLE 1.17 - PRESUMED MATERIAL NATURE OF DRAFT DIRECTIVES AND REGULATIONS PRODUCED BY THE EU FROM
1992 TO 2008***

SECTOR	COUNCIL (+/- EP)		COMMISSION		EU	
	TOTAL ACTS	LEG. ACTS	TOTAL ACTS	LEG. ACTS*	LEG. ACTS CM + COM	% OF TOTAL LEG
ALL SECTORS COMBINED	1999	1,357	14,984	749.2	2,106.2	12.4%
“AGRAP”	547	253	10,242	512.1	765.1	7.1%
“TREG”	187	125	306	15.3	140.3	28.5%
“JAI”	73	44	19	9.5	53.5	57.5%

SOURCES: SGAE/COUNCIL OF STATE DATA, EUR-LEX DATA, Y. BERTONCINI'S COMPUTATIONS

* REFERENCE PERIOD: 1 NOVEMBER 1992 TO 23 JULY 2008. THE COMMISSION'S ACTS CONSIDERED DURING THIS SAME PERIOD ARE THOSE WHICH WERE ADOPTED AND PUBLISHED,

** THE RETAINED WORKING HYPOTHESIS IS THAT 5% OF THE TOTAL NUMBER OF NORMATIVE ACTS ADOPTED BY THE COMMISSION MAY CONTAIN PROVISIONS HAVING LEGISLATIVE IMPLICATIONS.

NOTE: “AGRAP” (AGRICULTURE) FIGURES EXCLUDE ANIMAL PROTECTION.

20 Such an assessment can be made by consulting the EUR-Lex database using the “Advanced Search” option.

21 This 5% figure constitutes a maximum based upon all sectors combined: for example, it is higher in the Economic and Financial sector and lower in the other sectors.

1.3.4 The share of Community norms having legislative implications, as compared to that of French national laws

By combining all of the orders of magnitude presented above, an overall comparative assessment can be made of the share of Community norms having legislative implications as compared to that of the laws and ordinances produced at the national level for all of the sectors considered (see Table 1.18).

As we have pointed out, although this assessment was made on the basis of quantified hypotheses which greatly overestimated the impact of EU interventions (see Text box 2), it shows that the share of Community norms having legislative implications could not, in any event, exceed:

- slightly more than half (55.1%) of the total normative legislation in force in France, if we retain the high hypothesis, according to which the entire content of Community acts having legislative implications would be legislative in nature;
- slightly more than one-third (38%) of the total normative legislation in force in France, if we consider the more realistic hypothesis that only half of the context of Community acts having legislative implications is legislative in nature.

TABLE 1.18 – AVERAGE ANNUAL NUMBER OF DRAFT REGULATIONS AND DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS, AS COMPARED TO THE TOTAL NUMBER OF FRENCH LEGISLATIVE ACTS

ACTS PER YEAR/ SECTORS	REGULATIONS HAVING LEGISLATIVE IMPLICATIONS PER YEAR*	DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS PER YEAR**	LAWS AND ORDINANCES PER YEAR***	% OF “LEGISLATIVE” NORMS EU/ TOTAL HIGH HYPOTH	% OF “LEGISLATIVE” NORMS EU/ TOTAL -MEDIAN HYPOTH
FOREIGN AFFAIRS AND DEFENCE / “RELEX” (EXCLUDING COMMERCIAL POLICY)	23.6	0	41.05	36.5%	22.3%
AGRICULTURE AND FISHERIES /“AGRAP”	48.2	0.55	2.85	94.5%	89.5%
ECONOMY & ECOLOGY/ “FIN, MICA, ITEC, JUR, EURATOM”	28	13.85	14.85	73.8%	58.5%

EMPLOYMENT, HEALTH, EDUCATION, YOUTH, SPORTS, CULTURE / “TESC”	1.7	2.3	16.2	19.8%	11%
TRANSPORT AND EQUIPMENT / “TREG”	5.3	2.1	5	59.7%	42.5%
JUSTICE AND INTERNAL AFFAIRS “JUD”, “LCP”, “SEC”	1.5	3.6	25.95	16.4%	8.8%
TOTAL, ALL SECTORS COMBINED	108.3	22.4	106.35****	55.1%	38%

SOURCES: SGAE/COUNCIL OF STATE DATA, Y. BERTONCINI’S COMPUTATIONS

* REFERENCE PERIOD FOR THE REGULATIONS = 1992-2008.

** REFERENCE PERIOD FOR THE DIRECTIVES = 2000-2008.

*** THE REFERENCE PERIOD RETAINED FOR NATIONAL LAWS AND ORDINANCES IS THE 1987-2006 PERIOD, BASED UPON THE GLOBAL AND SECTORAL DATA PRESENTED IN THE DIACHRONIC TABLE ALREADY MENTIONED. FOR THE RECORD, THE AVERAGE ANNUAL NUMBER PUBLISHED DURING THE 2000-2006 PERIOD (125.3) IS HIGHER THAN THAT OBSERVED DURING THE 1987-2006 PERIOD (109.05).

**** THIS TOTAL DOES NOT INCLUDE THE LAWS AND ORDINANCES ADOPTED IN THE SECTORS

“CIVIL SERVICE AND GOVERNMENT ORGANIZATION” (2.45 PER YEAR) AND “PRIME MINISTER” (0.7 PER YEAR) – INCLUDING THEM WOULD MAKE THE TOTAL 109.5.

NOTE: THE “HIGH HYPOTHESIS” CONSIDERS THAT ALL PROVISIONS OF THE COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE OF A LEGISLATIVE NATURE; WHILE THE MORE REALISTIC “MEDIAN HYPOTHESIS” CONSIDERS THAT ONLY HALF OF THE PROVISIONS OF COMMUNITY ACTS HAVING LEGISLATIVE IMPLICATIONS ARE OF A LEGISLATIVE NATURE.

Regardless of its potential inaccuracies and flaws, this legislative inventory is essential in that it demonstrates that, from a quantitative viewpoint, the EU is not currently the direct source of the majority of laws and norms in force in a country such as France – nor most likely of those in force in the other EU countries. The analyses presented above show that about 15% of all of the norms in force in a country such as France are of Community origin (13% according to the global approach developed in § 1-1 and 12.8% according to the sectoral approach developed in § 1-2). An analysis focusing solely on the “legislative” norms (see §1.3) increases the probable share of norms of Community origin to about one-third (38%) of the total laws in force in France. Combining the three ratios would make the share of national laws of Community origin closer to 20% than to 80%, even if this average

varies substantially from sector-to-sector, and this figure is much higher in some of these sectors, mainly Agriculture, Fisheries, and Economy & Ecology.

Beyond this inventory's twists and turns, it is striking to note that it is in line with the findings which a reasoned analysis of European integration and of Community Treaties might suggest, and for which the 80% figure might appear rather incongruous. What is more, it would suffice to attempt to distinguish, among the French national laws adopted in recent years, those which are of Community origin to realize that the occasionally suggested figure of 80% cannot stand up to close scrutiny.

That having been said, it should be pointed out that such an inventory is purely quantitative and that it does not reflect the more or less marked impact that a particular norm might have from a qualitative viewpoint. In that respect, two other anticipated findings emerge from this study:

- the first is that the EU deals with matters “the size of chicken coops” (cucumbers, pasta boxes, etc.), meaning that it sometimes produces highly detailed normative legislation which, in France, would fall within the regulatory domain;
- the second is that the EU also occasionally intervenes in global policy issues such as national public deficit control or the supervision of mergers.

One of the contributions made by the preceding detailed analysis is that it discourages the temptation to combine these two findings: although they are valid when considered separately, they become contradictory when merged to support the idea that EU normative interventions deal with both essential and incidental matters. What this study clearly indicates is that Europe cannot be said to concern itself with both “chicken coops” (meaning that it acts purely as an administrative body in some sectors) and also serves as a “people’s prison” which would govern Member States and issue the great majority of legislative norms in force at the national level. For if “Europe (i.e., the Commission, the Council and the European Parliament) governs us” in part, in reality it only does so in some very well-defined sectors, notably those relating to the Economy, Finance and Agriculture, while most of the legislative norms applied in other major sectors (Education, Employment, Security, etc.) are formulated almost entirely at the national – or even regional – level.

Such a “theory” naturally suffers from purely technical substance offered by the analytical syntheses, while a more refined assessment of the impact of Community normative interventions at the national level should necessarily include a more subjective dimension.

From a legal vantage point, this comprehensive study is being offered in the hope that it may be improved upon by means of a more qualitative analysis of the relative impact of Community normative interventions on national law. Such an assessment would notably rely upon more detailed sectoral monographies, as well as on a series of interviews with the political and administrative leaders responsible for formulating national laws, who are undoubtedly best qualified to evaluate the influence exerted by the EU. Perhaps this assessment would make it possible to further refine the numbers presented in this initial quantitative analysis, the key objective of which was to present the orders of magnitude in as useful and enlightening a manner as possible. In confronting the myth according to which “80% of national laws are of Community origin,” the figures offered above merely claim to be the outcome of an analysis based upon reliable public data, using a clearly presented methodology and computations. It is hoped that all those who attempt to assess the relative impact of laws of Community origin will henceforth strive to adopt an approach of the same type, in order to fuel public debate on the basis of broader knowledge.

II – EU budgetary interventions can involve substantial subsidies

In principle, it is much easier to assess the extent of EU budgetary interventions at the national level than that of its legal interventions. As a matter of fact, a direct equivalence can be established between a euro derived from the EU budget and a euro derived from a State budget in such a way that the mere inventory of the expenditure incurred at either level can provide a very enlightening comparison. This comparison is all the more practicable when it is limited to funds derived from the annual budgets approved and executed by the EU and its Member States, which are closely monitored. That is predicated upon leaving aside, as this study has done, other European financial interventions, either because they are exceptional (for example, those which recently induced the EU to come to the aid of member countries affected by the economic crisis), or because they emanate from lending institutions (the EIB for example).

Assessing the impact of EU budgetary interventions is naturally complicated because of their broad diversity: virtually all Community expenditure is incurred in areas of competences “shared” with Member States and which are therefore mixed

in with what is often very substantial national expenditure. Reviewing Community and national expenditure also requires matching similar types of funding, which is easy to do in certain sectors (Agriculture, for example) and more complex in others, in view of the differences in nomenclatures used by the EU and its Member States (see Appendix 1 - Methodological Considerations).

A natural reaction is to state that these few problems are not insurmountable inasmuch as the first step is to make an assessment which is already widely known, even to non-specialists: EU budgetary interventions are very limited in comparison to those carried out by Member States, since their “weight” amounts to only about 1% of the EU’s GDP and 2% of the total expenditure made by all of the European public bodies (primarily the States).

A more in-depth study is necessary, however, to refine this initial global assessment and to point out that Community expenditure may also be substantial for certain countries and in certain sectors. We will conduct it further on, based upon the expenditure actually incurred in 2006 by the EU and its then 25 Member States, in such a way as to use the most recent available data on the latter and outline an inventory²² which will include representative orders of magnitude that expenditure trends since then (particularly at the Community level) have modified only marginally.

2.1 EU budgetary interventions whose overall weight is limited

The EU budget, which has been maintained at a very modest level for the last twenty years, contrasts sharply with both the level of its Member States’ budgets and with that of the central budgets of other federations or confederations (particularly USA, Canada and Switzerland). Any impact assessment of Community budgetary interventions begin with this acknowledged evidence – which does not exclude the possibility of contributing some additional finer points.

²² See in particular the paper by Yves Bertoncini and Amélie Barbier-Gauchard, “Scoreboard of public spending in the EU and its Member states” - Centre d’analyse stratégique, June 2009, which is available at the following website: http://www.strategie.gouv.fr/article.php3?id_article=1053. The following comments are, of course, entirely my own, as is the content of the study.

2.1.1 A very limited level of Community expenditure

The size of the EU budget is deemed to be all the more limited in that the EU is the region of the world in which the public expenditure level is the highest.

Total European public spending (national expenditure + Community expenditure) has increased to about 47.6% of the EU’s GDP, a level distinctly higher than that recorded in the USA (33.3% of GDP), in Japan (33.7% of GDP), in Switzerland (34.5% of GDP) and in Canada (37.8% of GDP). But Community expenditure represented only slightly less than 1% of the GDP in that same year²³, as compared to 46.7% for national public spending. The EU’s total budgetary expenditure (which rose to EUR 107 billion in 2006) thus represented about 1.9% of the total public budgetary interventions realized in the EU (see Table 2.1).

This percentage of total expenditure made at the “central” level is very low compared to the percentage observed that same year:

- in the USA, where public expenditure incurred by the central budget represented 61% of total public spending;
- in Canada, where this ratio is 38.2%;
- in Switzerland, where it is 31.3%.

2.1.2 Stronger overall intervention capabilities than it may appear

To complete this global assessment and to properly measure the relative weight of the EU budget as compared to that of its Member States, it would seem necessary, however, to isolate certain types of expenditure which are actually non-existent or very minimal at the Community level, which leads us to slightly increase the overall weight assigned to EU budgetary interventions (see Table 2.1.).

²³ Relying upon the expenditure commitment ceilings set out by the EU Financial Framework requires assessing the EU budget level at slightly more than 1% of GDP. Taking into account the expenditure actually realised by the EU, on the other hand, results in a figure slightly lower than 1% of the GDP (approximately 0.93% in 2006).

TABLE 2.1 – COMMUNITY SHARE OF EUROPEAN PUBLIC SPENDING

%	COMMUNITY EXPENDITURE	NATIONAL EXPENDITURE	RATIO OF EU/ MEMBER STATES
TOTAL EXPENDITURE	1.9%	98.1%	1/51
EXPENDITURE EXCLUDING DEBT SERVICING	2.1%	97.9%	1/46
EXPENDITURE EXCLUDING SOCIAL PROTECTION & HEALTH	4%	96%	1/24
EXPENDITURE EXCLUDING DEBT SERVICING AND SOCIAL PROTECTION & HEALTH	5.2%	94.8%	1/18

SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

The first necessary step is to compare Community and national budgetary interventions by excluding Social Protection and Health expenditure, which are not funded by the EU budget and are not likely to be—at least not in the foreseeable future. On this basis, it can be observed that:

- the relative weight of national public expenditure as compared to GDP has declined by more than half (to 22%), whereas the weight of Community expenditure remains unchanged (at 0.9% of GDP);
- such Community expenditure thus represented about 4% of public spending, excluding Social Protection and Health, incurred in the EU, as opposed to 96% for national expenditure.

It is also interesting to compare national and EU budgetary interventions by isolating the funds mobilized to reimburse interest arising from public debt. As it happens, the EU does not handle this type of expenditure, as it is prohibited from submitting an unbalanced budget. Conversely, the EU Member States often submit substantial levels of public debt in comparison to their national wealth, thereby resulting in some major spending: for many years now, reimbursement of debt interest has been a part of the three largest expense items in the French State budget, with expenditure in Education and Defence, far higher than in such sectors as Culture, Transport, etc. Such a comparison indicates that EU budgetary interven-

tions in 2006 represented 2.1% of national public spending, excluding expenditure for the reimbursement of debt interest. Reasoning on a premise that takes into account public expenditure which excludes Social Protection and Health as well as Debt Servicing, the level of Community expenditure then amounts to approximately 5.2% of total European public spending.

It should also be mentioned that, if such data were available for all EU Member States, it would be useful to compare Community and national public spending by isolating the expenditure related to staff remuneration, in order to try to measure the scope of “intervention expenditure.” The relative share of staff expenditure in the total budgets is, indeed, much more significant at the Member States’ level than it is within the EU budget (it is equivalent to about 6% of this budget). In France, for example, such expenditure totals approximately 45% of the State budget and 1/4 of the local authorities’ budget; which comes to an overall percentage of staff expenditure equivalent to about 37% of French public spending excluding Social Security administration, taking into account the respective size of the State and the local authorities’ budgets (about 2/3 to 1/3). If we then apply this percentage to the expenditure of all EU Member States combined, the intervention expenditure, strictly speaking, would then be reduced by 1/3, whereas they would be quasi-stable at the Community level. Thus the variance between Community and national intervention expenditure would be about 1/14 (and not 1/51) for a formulary apportionment which would amount to about 6.5% for the EU and 93.5% for Member States. The primary aim of this approximate order of magnitude is to show that, although limited, Community expenditure is not as infinitesimal as the symbolic figure of “1% of GDP” seems to imply, as confirmed by analyses which more accurately measure its impact in certain sectors and for certain countries.

Lastly, it should be recalled for the record that EU budgetary interventions, despite their overall limited level, exert a substantial “leverage effect” at the Member State level, mainly via two types of mechanisms:

- co-financing, which causes the EU to subordinate its budgetary intervention to the raising of additional national or local public funding, usually within the framework of joint programming which allows it to have a say concerning the exact breakdown of all of the funds (structural funds, for example);

- the adoption of “Community programmes” implemented on the basis of EU-defined policy objectives and in accordance with which Community grants are awarded.

2.2 Substantial budgetary interventions in certain sectors

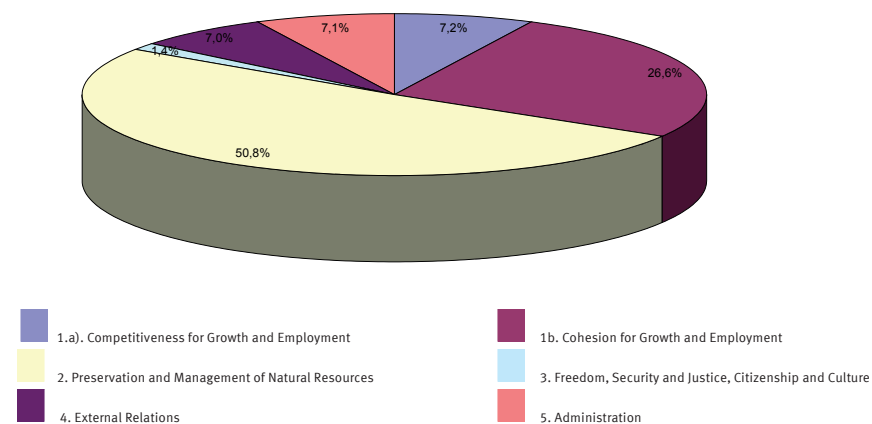
As was the case in the normative area, EU budgetary interventions cannot be correctly assessed without conducting a sector-by-sector analysis, which showed that such interventions can be substantial in some areas.

2.2.1 A very atypical Community expenditure structure

The sectoral allocation of Community expenditure is very different from that of the States' expenditure (see Chart 2.2):

- first, because, as has already been shown, Community expenditure does not cover Social Protection and Health (or Debt Servicing);
- secondly, because, for the most part, such spending occurs in areas related to the Preservation and Management of Natural Resources, including Agriculture (up to 51% in 2006) and Territorial Cohesion (27% in 2006).

CHART 2.2 – BREAKDOWN OF 2006 COMMUNITY EXPENDITURE (AS % OF TOTAL)

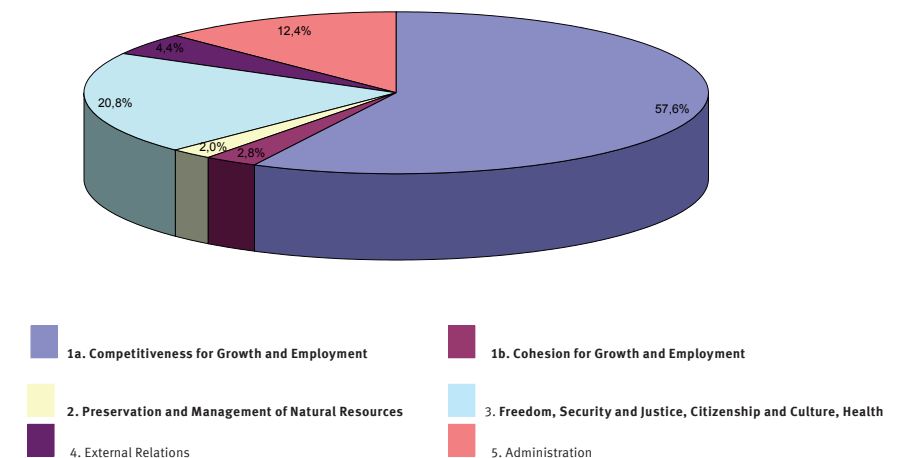


SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

In 2006, EU Member States (see Chart 2.3) allocated some:

- 57.6% of their public expenditure to policies devoted to “Growth and Employment” (including Social Protection);
- 20.8% of their public expenditure to policies related to the areas of security, freedom and justice, citizenship and culture (primarily judicial and police cooperation), and health;
- 4.5% to expenditure on external relations, including defence;
- some 2% to natural resources (including agricultural expenditure).

CHART 2.3 - BREAKDOWN OF 2006 EU MEMBER STATES' EXPENDITURE



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

The outcome of such a situation is that in those sectors in which EU spending is strongly concentrated, EU budgetary interventions can reach a level which is:

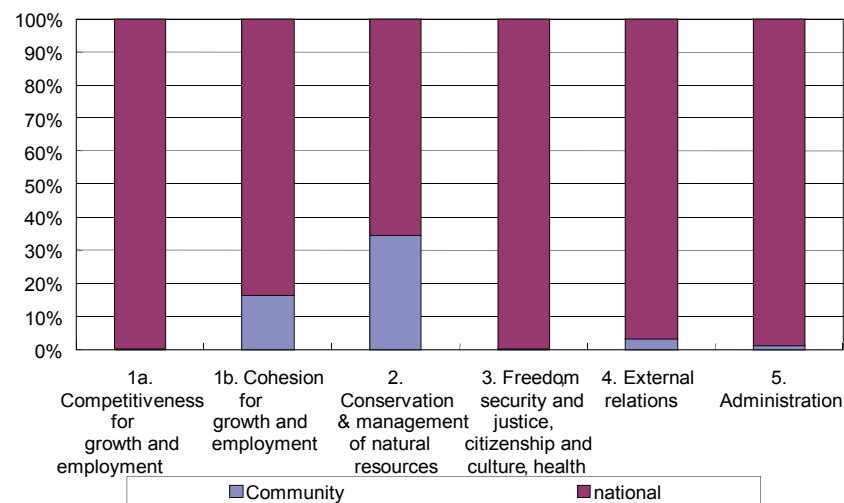
- substantial in comparison to those of all Member States combined;
- even more considerable when compared to those of any State considered individually.

2.2.2 Major Community expenditure in certain headings

A brief review of the 2006 expenditure by the EU and its Member States (see Chart 2.4) indicates that the average share of Community spending as compared to total EU spending is:

- substantial in the area of “Preservation and Management of Natural Resources” (34.5% of the average total expenditure);
- high in the area of “Cohesion” (16.4% of the average total expenditure);
- very low in the area of “Competitiveness” (0.3% including, and 0.9% excluding, Social Protection); and that of “Freedom, Security and Justice,” etc. (0.1% including, and 0.5% excluding, Health).

CHART 2.4 - BREAKDOWN OF 2006 EU PUBLIC SPENDING BY FINANCIAL FRAMEWORK HEADING (AS % OF TOTAL PUBLIC SPENDING)



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

2.2.3 Higher Community expenditure in certain intervention areas

If we focus the analysis on the level of certain major intervention sectors (see Table 2.5), we note that the breakdown of European spending between Community and national levels reveals sharp disparities between some sectors in which this public spending:

- has been extensively incorporated into the Community system: Agriculture (72% of total European spending); Fisheries (71.8%); Rural Development

(67%); Structural and Cohesion Policy (50%) – for more details on these figures, see Appendix 6;

- is massive at the Member State level, with a significant contribution from the EU, such as Research and Development, or External Relations;
- is incurred almost exclusively at the Member State level: Energy and Transport; Education and Training; Competitiveness and Innovation; Housing; Environment; Freedom, Security and Justice; Citizenship and Culture, Health; Foreign Policy and Defence.

TABLE 2.5 – BREAKDOWN OF 2006 TOTAL PUBLIC SPENDING, BY SECTOR (AS % OF TOTAL PUBLIC SPENDING BY SECTOR)

	COMMUNITY	NATIONAL
RESEARCH AND TECHNOLOGICAL DEVELOPMENT	6.9%	93.6%
ENERGY AND TRANSPORT	0.9%	99.1%
EDUCATION AND TRAINING	0.1%	99.9%
COMPETITIVENESS AND INNOVATION	2.7%	97.3%
MANAGEMENT OF SOCIAL CHANGE	0.0%	100.0%
STRUCTURAL AND COHESION POLICY	50.0%	50.0%
HOUSING	0.0%	100.0%
AGRICULTURE	72.0%	28.0%
RURAL DEVELOPMENT	67.0%	33.0%
FISHERIES	71.8%	28.2%
ENVIRONMENT	0.2%	99.8%
FREEDOM, SECURITY AND JUSTICE	0.2%	99.8%
CITIZENSHIP AND CULTURE	0.5%	99.5%
HEALTH	0.1%	99.9%
OFFICIAL DEVELOPMENT ASSISTANCE (ODA)	11.6%	88.4%
HUMANITARIAN AID	36.7%	63.3%
CFSP / DEFENCE	0.0%	100.0%
ADMINISTRATION	1.9%	98.1%
DEBT SERVICING	0.0%	100.0%

SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

After closer examination of the comparison between Community and national expenditure by focusing upon narrower segments of public policies within some of the key sectors identified above, it appears that Community budgetary interventions are actually more substantial in several of those segments.

Public spending in R&D, for example, very closely monitored by the EU: in 2006, the Member States incurred massive expenditure (more than 93% of the total), yet the latter amounted to only about 6.5% at the level of the Research and Development Framework Programme funded by the EU (for approximately EUR 5 billion).

But it should first be pointed out that the EU's relative share of the grand total is slightly higher if we take into account the R&D expenditure financed by structural funds (about EUR 200 million per year for R&D in the 2000-2006 period) and by the new Community "Competitiveness and Innovation" Programme launched in 2007 (which has budgeted some EUR 200 million per year for R&D until 2013).

Most noteworthy is the fact that Community expenditure is more substantial as regards national expenditure if we consider only intervention expenditure earmarked for fund research projects and exclude the funding of research operational costs (notably researcher remunerations). In France, the EU's contribution to per-project research funding thus amounted to about 10% of the 2006 total. An assessment of the data related to researcher mobility funding, also shows that the EU's contribution is greater than that of all of the Member States considered individually (thanks to the "Marie Curie" Community Programme, which devotes a significant part of its budget to such funding).

The example of EU public expenditure in the area of Energy and Transport is equally revealing, in that nearly all such expenditure is incurred by the Member States, the EU's share representing less than 1% of the total. However, it is noteworthy that in 2006 the EU's contribution:

- represented slightly more than 1.6% of the total expenditure, if we consider only the financing of European transport and energy networks;
- exceeded 10% of the total public spending earmarked for the trans-European transport and energy networks given "priority" by the EU (TEN-Transports and TEN-Energy);

- may total as much as 50% of the funding earmarked for studies associated with the implementation of TEN projects.

What is more, according to a recent European Commission estimate²⁴, nearly one-third of the resources invested since 1996 in the financing of TEN-Transports originated from "Community sources"; however, it should be stressed that this estimate takes into account not only the "TEN-T" budget, but also Cohesion and Regional Development Funds, as well as European Investment Bank loans.

Lastly, an in-depth analysis of the expenditure in the "External Relations" sector confirms that the Community budgetary intervention level may be much more substantial than it may have first appeared.

Most of the EU public spending allocated to "External Relations" (which totalled EUR 236 billion in 2006) was incurred by EU Member States and the latter's contribution only amounted to slightly more than 3% of the total expenditure. Although the Community budget's contribution in certain sectors such as Defence is nil or very close to it, that is not the case with matters concerning Foreign Aid:

- EU public expenditure allocated to Official Development Assistance and Humanitarian Aid at the Community level amounted to 12.6% in 2006. If we include the expenditure incurred within the framework of the "European Development Fund," which is managed separately from the Community budget and which provides aid to African, Caribbean and Pacific (ACP) states, the EU's relative share totals 16.2% of the total expenditure;
- An analysis which focuses on EU Humanitarian Aid expenditure shows that more than one-third (36.7%) of such expenditure was incurred by the EU in 2006 – meaning that the EU is by far the world's largest provider of humanitarian aid, if we compare it with its Member States considered individually.

²⁴ See "TEN-T, A Policy Review Towards a Better Integrated Trans-European Transport Network at the Service of the Common Transport Policy," Green Paper - COM (2009) 44 final, February 2009.

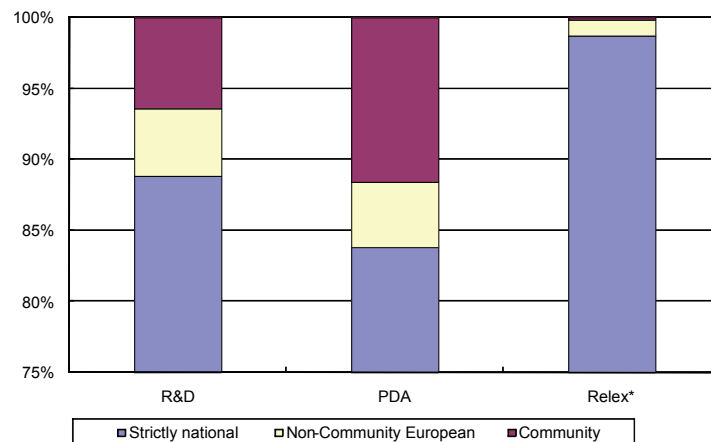
2.2.4 Major non-Community EU expenditure

It should be recalled that, although the “Europeanization” of public spending mainly occurs via the EU budget, some “non-Community EU expenditure”²⁵ has developed separately from the Community budget, particularly in two intervention sectors (see Chart 2.6):

- that of Research and Technological Development such as the European Space Agency (ESA) and the European Centre for Nuclear Research (CERN), in which the total expenditure exceeded EUR 3.8 billion in 2006, which amounted to 3/4 of the Community expenditure in the same sector;
- that of External Relations (for example, the European Development Fund), in which it amounted to EUR 4.6 billion in 2006, or nearly 3/4 of the Community expenditure in the same sector.

In all, taking into account these expenditures leads to a higher share of public spending commitment within a European framework (Community or non-Community) as compared to national expenditure, depending upon the sector concerned.

CHART 2.6 - BREAKDOWN OF 2007 EUROPEAN EXPENDITURE IN CERTAIN SECTORS
(AS % OF THE TOTAL PUBLIC SPENDING IN EACH SECTOR)



R&D = RESEARCH AND DEVELOPMENT / ODA = OFFICIAL DEVELOPMENT ASSISTANCE

* EXTERNAL RELATIONS EXPENDITURE (EXCLUDING DEVELOPMENT AND HUMANITARIAN AID)

SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

²⁵ For more details on this point, see the paper by Y. Bertoncini and A. Barbier-Gauchard, “Non Community European expenditure: a substantial reality” Strategic Newswatch no. 105, Centre d’analyse stratégique, July 2008.

2.3 Equally significant budgetary interventions in some countries

The relative share of EU budgetary interventions can be assessed at the national level by analysing the “allocated” Member State expenditure level (see Text box 3) and comparing it to these States’ public spending and wealth levels.

It is indeed impossible to correctly measure the relative amount of Community budgetary interventions at the EU Member States’ level by relying solely upon the previously mentioned European averages (notably 0.9% of GDP and 1.9% of national public spending). Such amount varies sharply from one EU country to the next, to a certain extent because Community expenditure is allocated in a differentiated manner between Member States, but also, and most importantly, because EU countries are very heterogeneous in terms of their public spending and wealth levels.

TEXT BOX 3 – ALLOCATED COMMUNITY EXPENDITURE

THE “ALLOCATED” COMMUNITY EXPENDITURE BY MEMBER STATE INCLUDES ALL EXPENDITURE INCURRED BY THE EU ON THESE MEMBER STATES’ TERRITORIES. IT DOES NOT INCLUDE EXTERNAL EXPENDITURE INCURRED OUTSIDE OF THE TERRITORY OF THE EU AND OF ITS MEMBER STATES. THESE ALLOCATED EXPENDITURES ARE REGULARLY IDENTIFIED BY THE EUROPEAN COMMISSION, WHICH CAREFULLY SPECIFIES THAT THE ALLOCATION OF COMMUNITY EXPENDITURE TO A PARTICULAR MEMBER STATE IS A FORMAL EXERCISE SUBJECT TO MANY ACCOUNTING RESTRICTIONS (A SUBSIDY GRANTED TO ONE COUNTRY, FOR EXAMPLE, MAY BE USED TO BUY GOODS IN ANOTHER COUNTRY, WHICH WILL THEREFORE ALSO BENEFIT FROM THE TRANSACTION). MOREOVER, THIS PURELY ACCOUNTING-BASED COMPUTATION PROVIDES NO INDICATION AS TO ANY OTHER ADVANTAGES WHICH A COUNTRY MAY DERIVE FROM BEING A MEMBER OF THE EU, PARTICULARLY IN TERMS OF ITS ECONOMY, TRADE AND STABILITY.*

MOST COMMUNITY EXPENDITURE (STRUCTURAL AND AGRICULTURAL EXPENDITURE) IS ALLOCATED EX ANTE, WHEN THE FINANCIAL FRAMEWORK IS NEGOTIATED. THE ALLOCATION OF OTHER EXPENDITURE IS RECORDED EX POST (R&D EXPENDITURE, FOR EXAMPLE) IN ACCORDANCE WITH THE EFFECTIVE USE OF COMMUNITY FUNDS IN A PARTICULAR EU MEMBER COUNTRY.

ALLOCATED COMMUNITY EXPENDITURE IS ESSENTIALLY OPERATIONAL (FINANCIAL FRAMEWORK HEADINGS 1 TO 3). IT ALSO INCLUDES ADMINISTRATIVE EXPENDITURE INCURRED BY THE EU IN COUNTRIES IN WHICH COMMUNITY INSTITUTIONS AND AGENCIES HAVE THEIR HEADQUARTERS. THE BREAKDOWN OF ADMINISTRATIVE EXPENDITURE IS VERY ATYPICAL IN THAT BELGIUM BENEFITS IMMENSELY FROM IT (UP TO ABOUT 1% OF ITS GDP), AS DOES LUXEMBOURG (UP TO ABOUT 3% OF ITS GDP). THEREFORE IT IS MOST HELPFUL TO FOCUS ANALYSIS OF THE COMMUNITY BUDGET’S WEIGHT ON THE BASIS OF ALLOCATED OPERATING EXPENDITURE, AS DONE LATER IN THIS STUDY.

WHEN CONSIDERING ONLY ALLOCATED OPERATING EXPENDITURE AND EXCLUDING ADMINISTRATIVE (0.06% OF GDP) AND EXTERNAL EXPENDITURE (0.06% OF GDP) INCURRED OUTSIDE OF THE EU TERRITORY, THE COMMUNITY BUDGET'S SHARE OF GDP TOTALS 0.8%, AND IS NO LONGER 0.93% OF GDP, AS INDICATED IN THE PRECEDING GRAND TOTALS.

SIMILARLY, TAKING INTO ACCOUNT ONLY ALLOCATED OPERATING EXPENDITURE CHANGES THE RELATIVE SHARE OF COMMUNITY EXPENDITURE AS COMPARED TO TOTAL NATIONAL PUBLIC EXPENDITURE (ALL SECTORS COMBINED):

- THE COMMUNITY EXPENDITURE SHARE OF THE TOTAL EXPENDITURE IS NO LONGER 1.95%, BUT 1.78%, SINCE WE EXCLUDED COMMUNITY EXTERNAL EXPENDITURE (0.09% OF THE EU TOTAL) AND COMMUNITY ADMINISTRATIVE EXPENDITURE (0.08% OF THE EU TOTAL).
- THE EU AVERAGE, EXCLUDING SOCIAL PROTECTION AND HEALTH, IS NO LONGER 4.06%, BUT 3.71%, AFTER DEDUCTING COMMUNITY EXTERNAL EXPENDITURE (0.2% OF THE TOTAL, EXCLUDING SOCIAL PROTECTION AND HEALTH) AND COMMUNITY ADMINISTRATIVE EXPENDITURE (0.15% OF THE TOTAL EXPENDITURE, EXCLUDING SOCIAL PROTECTION AND HEALTH).

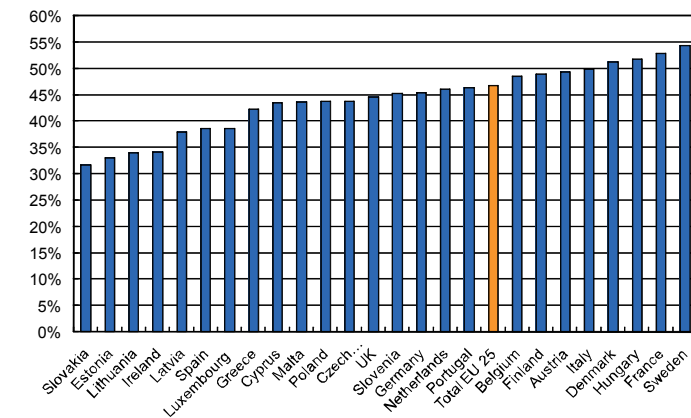
* FOR FURTHER DETAILS ON THIS POINT, SEE JACQUES LE CACHEUX, "EUROPEAN BUDGET: THE POISONOUS BUDGET REBATE," NOTRE EUROPE, DECEMBER 2005.

Given this context, it should be stressed that:

- a euro originating from the Community budget will have a very limited impact if it is spent in a "rich" country with a very high public spending level (typical example: Sweden);
- the same euro, however, will have a much bigger impact if it benefits a "poor" country with a rather low public spending level (typical example: Lithuania).

By taking both types of data into account, we find that Community expenditure can ultimately be considerable when compared to many EU Member States' GDP or national public expenditure.

CHART 2.6A - 2006 TOTAL PUBLIC SPENDING BY MEMBER STATE (AS % OF GDP)



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

2.3.1 The relative impact of Community budgetary interventions varies widely according to each EU country's public spending and wealth levels.

The average public spending level by Member State (excluding Community spending) is relatively inconsistent with the European average (46.7% of GDP at the national level)²⁶, since it varies from 54.3% (Sweden) to 31.7% of GDP (Slovakia) (see Chart 2.6a). In 2006:

- 8 EU countries had a higher public spending level than the European average, including France (nearly 53% of GDP);
- 10 EU countries had a public spending level of between 40 and 46.6% of GDP, including the United Kingdom (44.6%) and Germany (45.4%);
- 7 EU countries had a public spending level of less than 40% of GDP, including Spain (38.6%) and Ireland (34.2%).

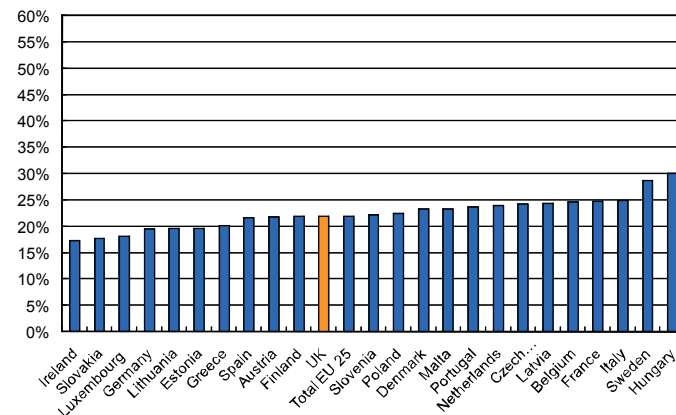
The average public spending level by Member State, excluding Social Protection and Health, is also relatively inconsistent with the European average (22% of GDP at the national level), despite being slightly less heterogeneous (see Chart 2.6.b):

- in 2006, 14 EU countries had a public spending level, excluding Social Protection and Health, which was higher than the European average. It fluctuated from 22% (Slovenia) to 30% (Cyprus) of GDP, with France situated at 24.7%;

²⁶ The European public spending level totalled 47.6% of GDP in 2006: national public spending totalled 46.7% of GDP and Community spending totalled 0.9% of GDP.

- the 11 other EU countries had a public spending level, excluding Social Protection and Health, below the European average and situated between 21.9% (United Kingdom) and 16.7% (Slovakia) of GDP.

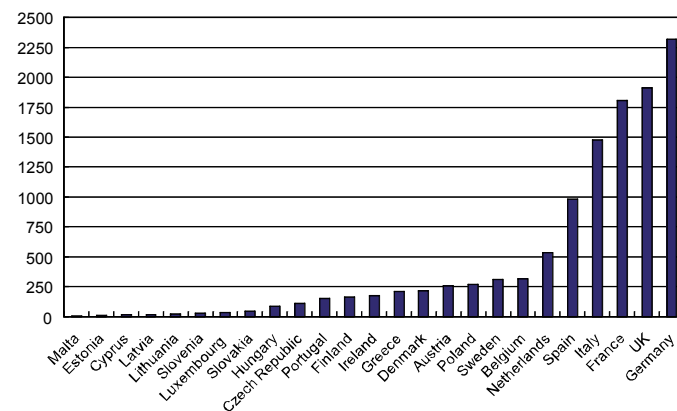
CHART 2.6B - 2006 TOTAL PUBLIC SPENDING BY MEMBER STATE, EXCLUDING SOCIAL PROTECTION AND HEALTH (AS % OF GDP)



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

Based upon 2006 absolute GDP levels (see Chart 2.7a), we find that the latter varied from 1 to 457 within the EU (variance between Malta and Germany).

CHART 2.7A - 2006 GDP BY MEMBER STATE (IN BILLIONS OF EUROS)

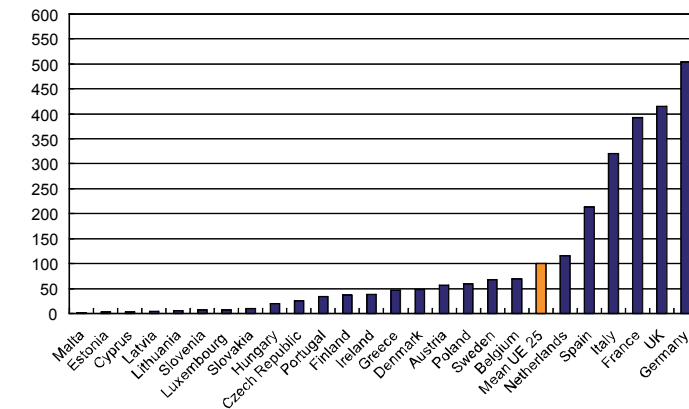


SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

When measuring the relative wealth level of the various EU countries (see Chart 2.7b), we note that in 2006:

- 6 of the EU-25 countries had a GDP level above the Community average, and which could exceed such average by as much as 500% (Germany);
- the 19 other EU countries had a GDP level lower than the Community average, and which could reach 1% of such average (Malta).

CHART 2.7B -- 2006 GDP BY MEMBER STATE (100 BASIS POINTS FOR THE EU-25 AVERAGE)



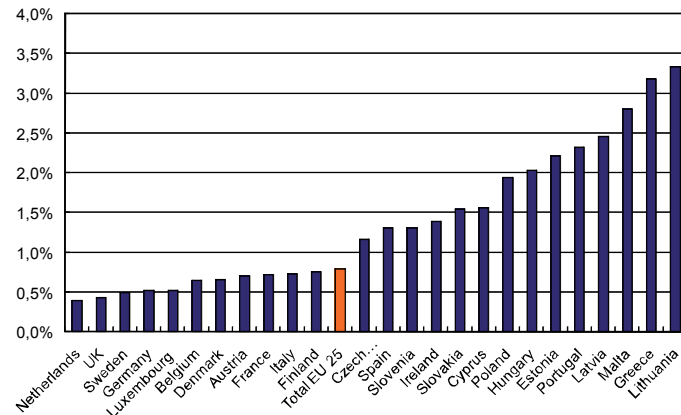
SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

Taking into account these public expenditure and wealth level differentials makes it possible to measure the extremely variable real weight of Community expenditure in a particular country, as shown further on.

2.3.2 Community share of expenditure can be substantial in comparison to certain countries' GDP

Total Community operating expenditure represents 0.79% of the EU's GDP; however, it is allocated very differently according to the Member State concerned, so that the relative share of such expenditure may be 4 times greater than this average in comparison to certain countries' GDP (see Chart 2.8).

CHART 2.8 – BREAKDOWN OF 2006 EU OPERATING EXPENDITURE BY MEMBER STATE (AS % OF EACH MEMBERS STATE'S GDP)



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

Three groups of EU countries have been identified:

- 7 countries benefit from a Community operating expenditure level which is higher than 2% of their GDP. These consist of 3 Baltic countries, Hungary, Greece, Portugal and Malta, with Lithuania obtaining the highest contribution in relation to its GDP (up to 3.33%);
- 7 countries benefit from a Community operating expenditure level which varies from 1.94% (Poland) to 1.16% (Czech Republic) of their GDP, including Ireland, Cyprus, Slovenia and Slovakia;
- the 11 other EU countries benefit from a level of EU operating expenditure that is less than 0.79% of their GDP, which varies from 0.75% (Finland) to 0.4% (Netherlands), with France situated at 0.72% of GDP.

2.3.3 Substantial Community expenditure as compared to certain countries' public expenditure

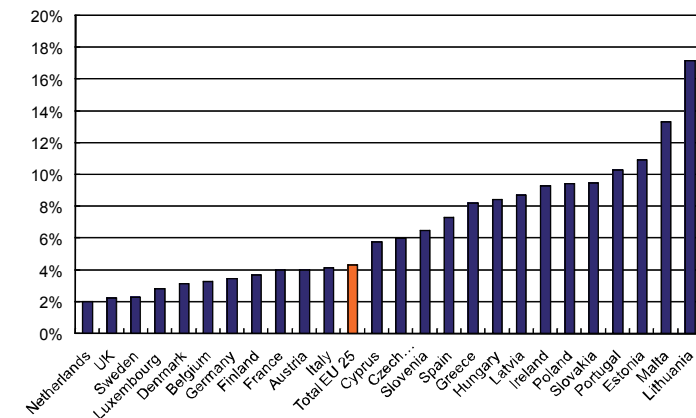
Allocated EU operating expenditure represents, on average, 4.31% of total EU public spending, if we exclude the Social Protection and Health sectors from the total national expenditure (3.71%, if we retain them in the national total). But here, too, this average conceals major disparities between Member States, in that the

relative share of Community expenditure in relation to total expenditure is much higher in some States (see Chart 2.9).

Three groups of countries can be identified with respect to this European average:

- 14 countries benefit from a Community operating expenditure level superior to 4.31% of the total public spending, excluding Social Protection and Health in these countries: the 10 countries of Central and Eastern Europe, Ireland, Spain, Portugal and Greece, with Lithuania obtaining the largest contribution (up to 17.17% of the total public spending);
- 7 other countries benefit from an operating expenditure level below the European average of 4.31%, but higher than 3%, which varies from 4.14% (Italy) to 3.13% (Denmark), and which is 3.99% in France;
- the 4 other EU countries benefit from a lower level of operating expenditure, situated at 3% of these countries' total operating expenditure and which varies from 2.81% (Luxembourg) to 2% (Netherlands).

CHART 2.9 - BREAKDOWN OF 2006 COMMUNITY OPERATING EXPENDITURE BY MEMBER STATE (AS % OF TOTAL EXPENDITURE, EXCLUDING SOCIAL PROTECTION AND HEALTH)



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

Note that these orders of magnitude are considerably different for some countries, when allocated Community operating expenditure is reported under national public spending rather than under total public spending. For Greece, Portugal, Estonia, Malta and even Lithuania, the share of Community expenditure thus varies by more than 11% to 20% in relation to national public spending (excluding Social

Protection and Health), with Lithuania obtaining the highest relative contribution (up to 20.78%).

2.3.4 Community expenditure can be considerable in certain sectors and countries

Considered as a whole, the relative share of Community budgetary interventions can therefore be much higher than the (low) overall average commonly retained by observers:

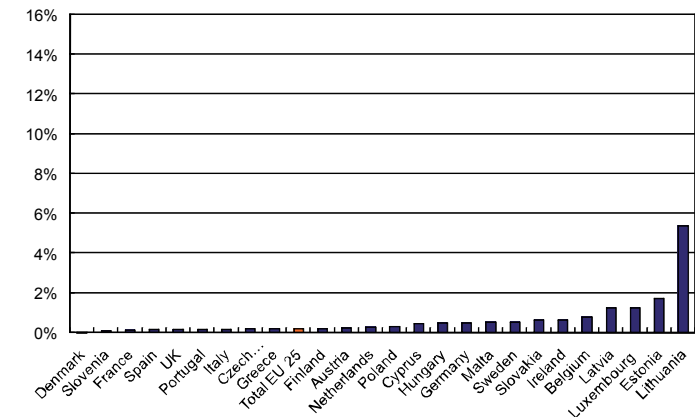
- first, because of the differences in public expenditure and wealth levels between Member States;
- second, because the Community expenditure incurred in a particular sector are differentially allocated between Member States.

In such a context, the three following examples confirm that the relative share of Community expenditure sometimes can be all the more substantial in certain sectors.

The 2006 Financial Framework's "Competitiveness" heading (excluding Social Protection) shows that the portion of Community expenditure allocated to total expenditure (see Chart 2.10) is:

- 0.8% on average;
- below average and therefore particularly small, for 10 Member States, including France;
- yet higher than the European average for the 15 other countries, exceeding 3% of the total expenditure for three of them (amounting to 15% for Lithuania).

CHART 2.10 - SHARE OF COMMUNITY EXPENDITURE ALLOCATED TO EU COUNTRIES' TOTAL PUBLIC SPENDING (AS %) FOR THE HEADING 1A ("COMPETITIVENESS")

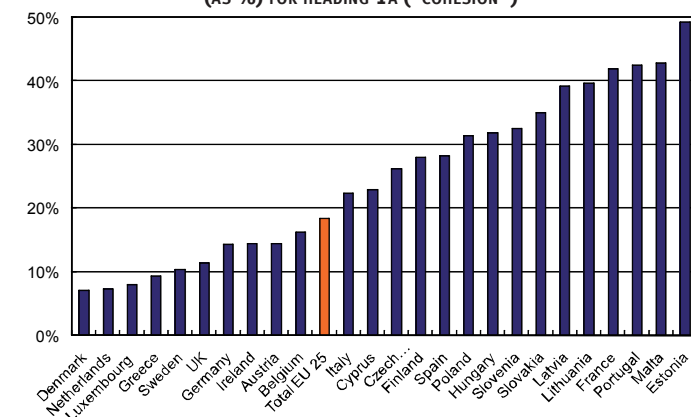


SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

Under the Financial Framework's "Cohesion" heading (excluding Social Protection), it is evident that, in 2006, the share of the allocated Community expenditure (see Chart 2.11) was equivalent to:

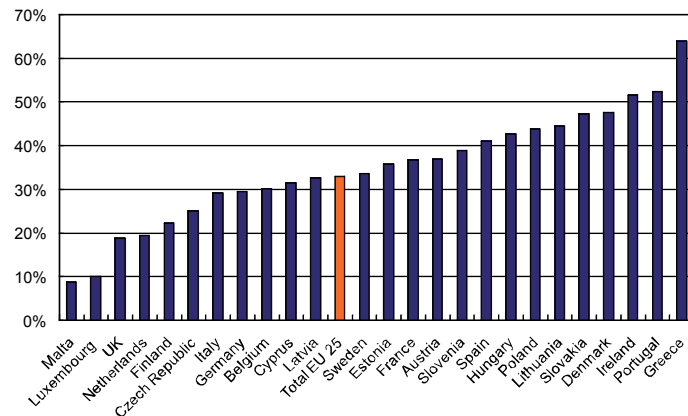
- 18.4% on average of the total expenditure;
- less than this average for 10 Member States;
- a higher-than-average level for 15 other countries including France, and which exceeded 40% of the total expenditure for 4 of those countries (up to 49.3% for Estonia).

CHART 2.11 - SHARE OF COMMUNITY EXPENDITURE ALLOCATED TO EU COUNTRIES' TOTAL PUBLIC EXPENDITURE (AS %) FOR HEADING 1A ("COHESION")



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE — SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

CHART 2.12 – SHARE OF COMMUNITY EXPENDITURE ALLOCATED TO EU COUNTRIES' TOTAL PUBLIC EXPENDITURE (AS % FOR HEADING 2 ("NATURAL RESOURCES"))



SOURCE: CENTRE D'ANALYSE STRATÉGIQUE – SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES

The heading "Preservation and Management of Natural Resources" of the Financial Framework shows that, in 2006, the share of Community expenditure allocated to total expenditure (see Chart 2.12) was:

- 32.9% on average;
- less than this average in the 11 Member States;
- higher than this average in the 14 other countries, to such an extent that 3 of them (Ireland, Portugal and Greece) exceeded the 50% expenditure ceiling and 6 others exceeded the 40% expenditure ceiling.

If we limit the Heading 2 analysis to agricultural expenditure, it appears that the relative share of Community expenditure was much greater than the total sectoral expenditure:

- it totalled 71% on average;
- it was less than this average in 14 of the EU-25 countries;
- it was higher than this average in the 11 other countries and could even exceed 85% of the direct agricultural public expenditure in 5 of these countries (Denmark, Spain, Greece, Portugal, Slovakia).

This brief overview of the breakdown of sectoral public expenditure between the Community level and the national levels points to occasionally substantial EU budgetary interventions, especially in view of the fact that the latter are:

- only two times less than the national expenditure when they reach close to 33% of the total expenditure;
- of a comparable level to that of the national expenditure when they correspond to 50% of the total.

The financial data presented above provide orders of magnitude which help to more accurately evaluate the impact of EU budgetary interventions at the Member States' level. Although recalling the overall low level of such interventions, this brief presentation casts strong doubts upon the widely accepted idea that the Community budget is insignificant: at this level, our findings lead to a totally opposite conclusion than the one generally accepted in normative matters, by considerably increasing the relative weight of EU interventions in relation to that of its Member States.

It should therefore be stressed that Community budget interventions are already strategically significant in certain sectors and for certain countries. Although this reality is no doubt favourably perceived by the stakeholders concerned within the corresponding sectors and countries, it would probably benefit from being better perceived by the general public, so that the latter would have a more objective view of the impact of EU interventions.

III – EU political interventions: An illusory global “soft power”

The legal and budgetary acts referred to above exemplify the EU’s interventions and allow it to endow the various policies which it plans to pursue with concrete content. Yet they do not completely characterize the manner in which the EU intervenes in the public life of its Member States. The latter are co-habiting with a range of different positions aimed at influencing the implementation of policies which remain national and which we will qualify here, for lack of a better term, as “political” interventions.

These political interventions are characterized by three common traits:

- they are taking place in areas in which Member States remain fully or largely competent;
- their goal is to produce a Community added value in terms of national policies, notably based upon the premise that the exchange of information and cooperation between Member States can be beneficial;
- from a legal standpoint, they have no binding effect, and the extent of their impact depends entirely upon the goodwill of the Member State(s) concerned.

It is scarcely surprising that the number of such political interventions should have risen so much in the last 15 years:

- first, because they are often given priority by Community institutions so as to enable the EU to gain a foothold in some sectors in which it has no explicit competence;
- second, because it is meeting somewhat limited resistance from Member States, either because the latter feel that they may be useful, or because they find them much more preferable than binding legal interventions.

The scope of EU political interventions today is so vast that this study cannot endeavour to fully present them. Their impact is certainly significant, but it is so diffuse that we will only briefly mention the corresponding national policies which are much more concrete and substantial. We will therefore only touch upon the EU's key political interventions, dividing them up according to their three characteristic main types:

- first, by mentioning the EU interventions whose aim is to assess EU national policies;
- next, by describing EU interventions whose aim is to coordinate national policies;
- lastly, by presenting the areas in which the EU strives to promote cooperation among Member States.

3.1 Community interventions to assess national policies

The EU's first decisive line of intervention is to assess the policies pursued by its Member States. Such an assessment can either concern situations affecting these various States (such as the unemployment rate, percentage of graduates, etc.), or focus more directly upon the national policies themselves when, for example, the aim is to evaluate the level of public expenditure allocated to a particular priority, or regulation quality.

These EU interventions are based upon the idea that a joint assessment makes it possible to highlight certain States' good results and "good practices," thereby serving as a helpful source of inspiration for the others. The increasing number of

assessments of this type is causing a great many national policies to be implemented under the supervision of the EU, which is wagering that a form of "convergence through knowledge" will ultimately result from it.

Such EU interventions can often be integrated into a broader policy strategy and serve as a basis for a coordination of Member State practices. Yet they remain non-binding and must therefore be clearly distinguished from the monitoring of legal commitments undertaken by the Member States, assured for example by the "Internal Market Scoreboard" (which notably verifies that the directives are properly transposed).

3.1.1 Hundreds of indicators allocated among 6 key categories

A brief consultation of the European Statistics Agency ("Eurostat") Internet website shows that some 450 indicators related to the status of EU countries are now available, which constitute as many potential criteria for assessing the policies pursued by Member States, and bases of comparison for their respective situations.²⁷ Without entering into great detail here with respect to their content, we can state that such indicators can be divided up into 6 key categories (see Table 3.1):

- indicators concerning the "general economic context" (such as the growth rate or productivity level), frequently discussed during spring European Council sessions;
- employment indicators (such as the unemployment rate): in June 2007, the Employment Committee presided over by the Commission, which convenes Member States' representatives, identified 28 "monitoring indicators" and 35 "analysis indicators."
- economic reform indicators (such as telecommunications rates, or the level of State aid relative to GDP);
- "innovation and research" indicators (such as the level of spending on R&D);
- "social cohesion" indicators (such as unequal income distribution): in May 2006, the EU's Social Protection Committee drew up a list of 17 overarching indicators, and the European Commission specified in July 2008 that 12 of them could be considered "European indicators";

²⁷ See http://epp.eurostat.ec.europa.eu/portal/page/portal/structural_indicators/introduction

- lastly, environment-related indicators (such as the quantity of energy derived from renewable energy sources).

TABLE 3.1 – KEY COMMUNITY INDICATORS FOR THE MONITORING OF NATIONAL POLICIES

NUMBER	STRUCTURAL INDICATORS	LISBON STRATEGY	SUSTAINABLE DEVELOPMENT STRATEGY
ECONOMIC CONTEXT	9	14 EUROPEAN COMMISSION INDICATORS 9 EUROPEAN COUNCIL OBJECTIVES	52 LEVEL II INDICATORS 98 LEVEL III INDICATORS
EMPLOYMENT	11		
ECONOMIC REFORM	15		
INNOVATION AND RESEARCH	16		
SOCIAL COHESION	9		
ENVIRONMENT	18		
TOTAL	78	23	150

SOURCES: EUROSTAT DATA, Y. BERTONCINI'S COMPUTATIONS

For each of these 6 categories, the European Commission has identified a series of key “structural” indicators relating to the reforms carried out by the Member States. Yet such indicators do not account for all available indicators, as attested to by those used in matters concerning “Economic Reform.” The 15 structural indicators retained by the Commission are thus part of a much larger set of assessment criteria (see Table 3.2), used notably within the scope of the following exercises and documents:

- as their name suggests, “Price and Cost Competitiveness reports” assess the EU countries’ price and competitiveness levels based upon 6 “lead indicators”;
- the Labour Market Reform database is based upon 37 indicators divided into 8 categories;
- the Consumer Markets Scoreboard consists primarily of 5 lead indicators related to the consumer household environment (lawsuits, price levels, customer satisfaction, change of vendor, safety), which, in turn, are subdivided into a total of 38 indicators;

- lastly, the “European Observatory for SMEs”²⁸ utilizes some thirty indicators to assess the status of SMEs in all EU countries.

TABLE 3.2 – LEAD INDICATORS FOR THE MONITORING OF NATIONAL POLICIES IN MATTERS OF ECONOMIC REFORM

TYPE OF INDICATOR	NUMBER OF INDICATORS
STRUCTURAL INDICATORS	15
PRICE AND COST COMPETITIVENESS REPORT	6
CONSUMER MARKETS SCOREBOARD	38
LABOUR MARKET REFORM DATABASE	37
EUROPEAN OBSERVATORY FOR SMES	30

SOURCES: EUROPEAN COMMISSION DATA, Y. BERTONCINI'S COMPUTATIONS

3.1.2 Trans-sectoral assessment process

The above-mentioned sectoral monitoring indicators can also be used within the framework of trans-sectoral assessments carried out by European institutions, two of which deserve to be pointed out in view of their political importance:

- the first concerns the implementation of the Strategy launched in Lisbon in 2000, which provides for a series of economic, social and environmental structural reforms to be implemented by 2010, and is the subject of annual assessments based upon a shortlist of 14 structural indicators selected by the European Commission. Taking these 14 indicators into account calls for an in-depth annual inventory of each EU country’s status, to serve as the basis for a clearer comparison (see Appendix 7: 2009 Statistical Report for France);
- the second has to do with the monitoring of the implementation of the European Sustainable Development Strategy launched in Gothenburg (Sweden) in 2001: this strategy encompasses 10 economic, social, environmental and institutional themes and provides for an assessment based upon 52 level II indicators (more critical) indicators and 98 level III indicators (which measure level II indicator improvements).

²⁸ Voir http://ec.europa.eu/enterprise/enterprise_policy/analysis/observatory_en.htm

The sectoral criteria mentioned previously can also be used in the framework of trans-sectoral assessments dealing with a specific action area:

- the monitoring indicators adopted in matters of education and training thus belong to the Employment, Innovation and Social Cohesion categories: the Council has identified 16 of them as benchmarks, while the Commission has retained a list of 31 indicators, 5 of which are lead indicators,²⁹ within the framework of its Education and Training 2010 work programme;
- the “Key Facts and Figures” on energy and transport published annually by the European Commission are based upon 26 energy sector indicators, 72 transport indicators and 16 environment indicators: they also cross-reference several of the 6 main categories selected in order to succinctly present the prevailing indicators at the Community level.

3.1.3 More or less important assessment indicators

If the hundreds of Community indicators just mentioned do not constitute all of the criteria used to assess policies carried out by the Member States, their large number and diversity do indicate that the great majority of such policies are now being implemented under the EU’s more or less watchful supervision.

As already pointed out, in virtually all cases, such scrutiny does not give rise to any direct legal recourse, inasmuch as only a few such indicators are backed by a binding monitoring mechanism provided for by the Treaties or secondary legislation (directives or regulations):

- some indicators concern the Member States’ deficit and public debt levels and relate to the general economic context: such indicators are the subject of specific monitoring mechanisms specifically set up under the Stability and Growth Pact and formalized by two Council regulations;
- another example is that of certain internal market indicators in the Economic Reform category: although they can be used as grounds for sanctioning Member States when dealing with the proper transposition of directives, they remain devoid of any legal effect when used to determine the level of

²⁹ The list adopted by the Council includes 4 of the 5 lead indicators identified by the Commission: proportion of young people who have reached the higher education level; proportion of adults participating in lifelong learning; early school leaving rate and reading proficiency level. Solely excluded was the number of graduates with a Master’s in Science and Technology (MST).

State aid in each country (only the equitable nature of such State aid, for example, is subject to Community regulatory control);

- a final example concerns some environmental indicators included among the 10 monitoring indicators adopted within the framework of the Sixth Environment Action Programme and which relate to legal commitments made by EU Member States (particularly those pertaining to the rate of greenhouse gas emissions, fishing quotas and the preservation of natural habitats).

However, these few exceptions merely confirm that the quasi-totality of the Community’s monitoring indicators has no other effect than to make it possible to compare national situations and to induce Member States to improve their relative performance by counting upon the emulation and “peer pressure” ensuing from this simple comparison.

Although they may be freely utilized by the academic community and by all observers with an interest in European Affairs, the political force of the indicators used to monitor the policies pursued by the Member States primarily varies according to the institutional use made of them.

Some of these monitoring indicators are therefore often mentioned by European institutions (notably the Commission) in their official documents and constitute the basis for recurrent assessments. The annual Competitiveness Reports produced by the European Commission, for example, assess the status of each EU country with respect to 24 microeconomic indicators. Similarly, the same applies to the annual assessments which present the EU countries’ status with respect to the 14 Lisbon Strategy monitoring indicators retained by the European Commission (see Appendix 7, as already mentioned)³⁰.

When these Community assessments occur frequently, such as on a quarterly basis (e.g., the Price and Cost Competitiveness Report, or the annual Employment Report), they translate the intensity of the control exercised by the EU, even if the policy impact of such control may also be curtailed by the frequency of EU inter-

³⁰ To consult all country-by-country statistical assessments, see <http://ec.europa.eu/growthandjobs/pdf/euro-pean-dimension-200812-annual-progress-report/stats.pdf>

ventions. When these assessments are, to the contrary, multi-annual (such as the European Observatory for SMEs' Report, or the Cohesion Report, they suggest a much more remote monitoring, the rareness of which is more likely to create the event and strengthen the political impact.

The fact that European institutions may consider some of the very numerous Community indicators as objectives to be reached also vests them with a particular political power, even if being unable to reach them does not expose the States to possible sanctions. This is particularly true of objectives set out by the European Council's conclusions, which have an even greater political impact. Obviously, these so-called "indicators" often have a visible and consensual political dimension: the Heads of State and government officials may, for example, find it useful to emphasize the subsidized child-care accommodation rate objective if they consider it vital in order to promote jobs for women. Conversely, the indicators adopted by the European Commission may be both more technically accurate and less politically consensual. For example, it is easier for the European Commission to emphasize the EU countries' unemployment rate, while States struggling with unemployment will be reluctant to promote this type of assessment (see Table 3.3., the Lisbon Strategy example).

Although devoid of any binding legal effects, all of these national policy-monitoring indicators, and the assessments to which they give rise, are an inexhaustible source of analysis and commentary that is often not strictly limited to the microcosm of experts in European Affairs.

Each time that they are brought up in the media and emerge in public debate – most often when the country concerned is in a disadvantageous situation, they nonetheless lend credence to the idea that national policies are conducted under the scrutiny of the EU: it is thus not certain that the least-informed observers can distinguish between this type of Community intervention and those which benefit from an authentic decision-making power on the part of the EU.

TABLE 3.3 – LISBON STRATEGY OBJECTIVES AND MONITORING INDICATOR TARGETS TO BE REACHED BY 2010

SECTORS	OBJECTIVES SET OUT BY THE EUROPEAN COUNCIL	STRUCTURAL INDICATORS RETAINED BY THE COMMISSION
GENERAL ECONOMIC CONTEXT	GROWTH RATE OF 3%.	GDP LEVEL/INHABITANT RELATIVE TO THE EUROPEAN AVERAGE. PRODUCTIVITY LEVEL RELATIVE TO THE EUROPEAN AVERAGE
EMPLOYMENT	TOTAL EMPLOYMENT RATE ABOVE 70%. FEMALE EMPLOYMENT RATE ABOVE 60%. ACCOMMODATION RATE FOR CHILDREN UNDER 6 YEARS OLD IN SUBSIDIZED CHILD CARE FACILITIES. 50% EMPLOYMENT RATE FOR WORKERS 50 YEARS OR OLDER AVERAGE LABOUR MARKET EXIT AGE.	TOTAL EMPLOYMENT RATE ABOVE 70%. EMPLOYMENT RATE OF OLDER WORKERS ABOVE 50%.
INNOVATION AND RESEARCH	85% OF 20-24 YEAR-OLDS HAVING REACHED AT LEAST THE HIGHER SECONDARY SCHOOL LEVEL. EARLY SCHOOL LEAVING (ESL) RATES OF 18-24 YEAR-OLDS BELOW 10%. DOMESTIC R&D EXPENDITURE MORE THAN, OR EQUAL TO, 3% OF GDP.	85% OF 20-24 YEAR-OLDS HAVING REACHED AT LEAST THE HIGHER SECONDARY SCHOOL LEVEL. DOMESTIC R&D EXPENDITURE MORE THAN, OR EQUAL TO, 3% OF GDP.
ECONOMIC REFORM	PUBLIC DEBT BELOW 60% OF GDP* PUBLIC DEFICIT BELOW 3% OF GDP* STATE AID LEVEL BELOW THAT OF 2001. DEFICIT OF TRANSPOSED DIRECTIVES BELOW 1.5%.	COMPARATIVE PRICE LEVEL RELATIVE TO EUROPEAN AVERAGE. BUSINESS INVESTMENT LEVEL AS % OF GDP.
SOCIAL COHESION	DECREASE IN UNEMPLOYMENT RATE AMONG 18-24 YEAR-OLDS.	AT-RISK-OF-POVERTY RATE AFTER SOCIAL TRANSFERS.LONG-TERM UNEMPLOYMENT RATE. DISPERSION OF REGIONAL EMPLOYMENT RATES.

ENVIRONMENT	8% REDUCTION IN GREENHOUSE GAS EMISSIONS AS COMPARED TO THE 1990 LEVEL.**	8% REDUCTION IN GREENHOUSE GAS EMISSIONS AS COMPARED TO THE 1990 LEVEL. ENERGY INTENSITY OF THE ECONOMY. VOLUME OF FREIGHT TRANSPORT RELATIVE TO GDP.
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SOURCES: EUROPEAN COMMISSION, EUROPEAN COUNCIL, Y. BERTONCINI'S INVENTORY.

* THE EUROPEAN COUNCIL HAS REPEATEDLY STRESSED THE IMPORTANCE OF THESE OBJECTIVES SET OUT BY THE TREATY OF MAASTRICHT AND LATER BY THE STABILITY AND GROWTH PACT, THE SECOND OF WHICH (DEFICIT LEVEL) IS THE SUBJECT OF A COERCIVE MONITORING PROCEDURE.

** THE EUROPEAN COUNCIL HAS SET MORE AMBITIOUS OBJECTIVES FOR THE EU TO REACH BY 2020 (A 20% REDUCTION IN GREENHOUSE GAS EMISSIONS IS CURRENTLY PLANNED).

3.2 Community interventions aimed at coordinating national policies

Monitoring and assessment indicators can be used, in some cases, as a basis for EU interventions aimed at coordinating national policies. Such interventions rely upon the actual or presumed presence of potential “externalities,”³¹ or economies of scale, which justify concerted action to improve the effectiveness of public policies. Although such externalities or economies of scale can sometimes lead to the implementation of common policies (such as the CAP), this study will focus upon cases involving EU efforts to promote coordination between national policies. It should also be recalled that EU interventions can give rise to the production of normative acts, but the aim of the latter cannot be to harmonize national norms, therefore these are neither directives nor regulations, but opinions, recommendations and even common positions³².

3.2.1 Coordination based upon a relatively comprehensive three-fold approach

The EU's efforts to coordinate national policies usually rely upon three types of instruments, which can either co-exist as part of the same approach, or be used individually:

- first, the adoption of common strategies and guidelines;
- second, the assessment of policies of the Member States, who may be invited, in certain cases, to present national “action plans”;
- third, the possible production of opinions and recommendations on national situations or policies.

These three instruments, among others, are present in the national economic policy coordination mechanism implemented at the EU level, and which should be systematically mentioned to illustrate this type of Community intervention. Since 1992, Article 4 of the Treaty Establishing the European Community provided, in fact, that: “the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives.” This coordination, which aims to complete the implementation of a single monetary policy for countries that have adopted the euro, is often referred to as the Economic and Monetary Union's “economic pillar.” It is evidenced by the adoption of the Broad Economic Policy Guidelines (or “the BEPGs” in Community jargon): the latter are divided into macroeconomic guidelines (i.e., to achieve price stability), as well as microeconomic guidelines (such as those related to improving the business environment), which indicate in what direction the Member States would be advised to orient their actions. However, such guidelines are in no way binding for EU Member States, with the sole exception of those concerning budgetary deficits. Set out by the Stability and Growth Pact, these guidelines have in fact been formalized by two Council regulations, one of which provides for sanctions against those States whose public deficit exceeds the familiar ceiling of 3% of GDP.

In addition to economic policies, other national policies are also the subject of a Community-sponsored coordination, notably employment policies, for which the EU has been adopting guidelines since 1997. Since 2005, these 8 Employment Guidelines and “BEPGs” have been combined in the form of 24 Integrated Guidelines for Growth and Jobs, the content of which was recently revised for the 2008-2010 period (see Appendix 8).

A more recent example of guidelines also deserves mention: those concerning an integrated approach to maritime policy, which were the subject of a June 2008

³¹ For example, in economic policy matters, whenever the improvement/deterioration of a country's status has a positive/negative impact on the status of its neighbouring countries, in view of the trade relations binding EU countries.

³² Such acts are listed under the EUR-Lex database heading “Other Acts.”

Commission Communication and which aim at coordinating the policies pursued by EU Member States. However, it should be recalled that such guidelines are purely incitant and must not be confused with those the EU sometimes adopts to explain what methodology it will use in pursuing the policies that fall within its sphere of competence (such as the Competition policy).

Lastly, the adoption of common guidelines under the auspices of the EU can take the form of “Pacts” which formalize the consensus reached among the Member States but, most importantly, assume the status of statements of intention. The scope of such Pacts cannot then be assimilated with that of the previously mentioned Stability and Growth Pact or to the two accompanying Council regulations.

The European Youth Pact adopted by the European Council in March 2005 provides for a very large number of guidelines divided into 3 strands: the first deals with employment and social integration, the second with education, training and mobility; the third with reconciliation of family life and working life. This is also the case with the European Pact on Immigration and Asylum adopted by the European Council in October 2008, which lays the grounds for a common doctrine for the control of illegal immigration and migrant regularization, and legal immigrant asylum, which also covers relations with the countries of origin. Although the “revolutionary” nature of this Community document was justifiably mentioned, at this point it does not include any binding provision regarding national migratory policies, which the Member States remain free to adapt to their own situations and philosophies.

The Member States’ adoption of “action plans which will then be reviewed by the EU, sometimes constitutes the second component of the three-fold Community national policy coordination approach.

A prime example of this can be found in the stability (for States which have adopted the euro) or convergence (for other countries) programmes implemented by all EU countries, which spell out the manner in which they plan to manage their public finances over a period of several years, in the expectation of preserving or attaining a balanced situation (no deficit). The introduction of such programmes is akin to

a non-coercive coordinating approach as long as the euro-zone Member States do not exceed the 3% of public deficit ceiling (in which case sanctions provided for in a Council regulation can be taken).

The National Reform Programmes (NRPs) which the Member States have had to submit since 2005, within the Lisbon Strategy framework, are also prime examples³³. They call for the States to indicate what economic and social reforms they expect to implement in the next three years and are subject to annual assessments by the European Commission, which communicates the content at the European Council’s spring session. Furthermore, each Member State is required to produce an annual monitoring report indicating how it has actually implemented the announced reforms and their outcome.

Other examples of national action plans and programmes may be mentioned, such as those submitted by the States on the fight against social exclusion, or those concerning the measures which they plan to take in order to “better legislate,” particularly by reducing the financial burdens on economic activity. None of these action plans impose on the Member States a “performance obligation”—only an “incitation to use best endeavours.” The latter nonetheless constitutes a sort of “administrative” constraint, in that it allows the EU to exert a certain amount of political pressure by assessing the content and results of the proposed action plans.

The formulation of opinions or recommendations for Member States can be said to constitute the third component of the Community’s three-fold national policy coordination approach.

Two “recommendations” provided for under the Community Treaties are particularly noteworthy: those which pertain to the implementation of the BEPGs by the Member States (Article 99), and those dealing with the implementation of employment guidelines (Article 118). These recommendations are addressed each year by the Council to the Member States on the basis of a proposal formulated by the European Commission. They often provide an in-depth explanation of the States’

³³ Since 2005, the EU has also adopted a Community Lisbon Programme which inventories the measures in which there is Community competence.

strong and weak points and the type of reforms which the latter could carry out during the following quarters.

Many other “recommendations” and opinions presented to the Member States are formulated annually by the Council or the European Commission, which are listed under the “Other Acts” heading of the Official Journal of the European Union, alongside the traditional directives and regulations. These recommendations and opinions are less numerous than the normative acts produced by the EU: for example, some 1,500 of them were in force in April 2009, as compared to more than 2,000 directives (see Table 3.4). They can, however, have an impact on numerous national policies – even if only an intellectual one (i.e., ideas produced) or a political one (by formalizing a certain pressure exerted by the Commission or the other States).

TABLE 3.4 – RECOMMENDATIONS AND OPINIONS FORMULATED BY THE EU (AS OF 10.04.09)

AUTHOR	COUNCIL	COMMISSION	OTHER AUTHORS	TOTAL
RECOMMENDATIONS	229	436	328	993
OPINIONS	177	261	127	565
TOTAL	406	697	455	1,558
DIRECTIVES	1,249*	789	2,038	

SOURCES: EUR-LEX, Y. BERTONCINI'S COMPUTATIONS.

* 408 OF THESE DIRECTIVES WERE ADOPTED BY THE COUNCIL AND THE EUROPEAN PARLIAMENT.

3.2.2 Coordination occasionally strengthened on an “open method” basis

For some fifteen years, the three components of the above-mentioned three-fold approach have been providing the foundations for a new method by which the EU may intervene at the national level, known as the “Open Method of Coordination” (“OMC” in Community jargon). The latter is often described as one of the EU's key methods of intervention, apart from its normative and budgetary interventions.

Occasionally referred to by the EU Treaties, the OMC strives to facilitate the coordination of national policies “in particular initiatives aiming at the establishment of guidelines and indicators, the organization of exchange of best practice, and the

preparation of the necessary elements for periodic monitoring and evaluation.”³⁴ This method relies on a voluntary self-assessment process on the part of the Member States based upon common objectives, and is frequently achieved through the preparation of national action plans, or, in their absence, through the direct assessment of the Member States' situations.

Setting aside the case of economic policy coordination, which is an integral part of the Economic and Monetary Union and involves binding provisions the control of budgetary deficits, it is evident that this open method of coordination is already being applied to key national policies (see Table 3.5).

TABLE 3.5 – THE OPEN METHOD OF COORDINATION'S MAIN SCOPE OF APPLICATION

STIPULATED UNDER THE CURRENT EC TREATY*	ADDED BY THE TREATY OF LISBON (TFEU)
EMPLOYMENT (ARTICLES 128 AND 129)	PUBLIC HEALTH (ARTICLE 168 TFEU)
SOCIAL POLICY (ARTICLES 137.2 AND 140)	SOCIAL POLICY (ARTICLE 156 TFEU): EXPANDED SCOPE
EDUCATION (ARTICLE 149)	INDUSTRY (ARTICLE 173 TFEU)
PROFESSIONAL TRAINING (ARTICLE 150)	R&D (ARTICLE 181 TFEU)
TRANS-EUROPEAN NETWORKS (ARTICLE 155)	

SOURCES: COMMUNITY TREATIES, EUR-LEX DATA, Y. BERTONCINI'S INVENTORY.

* ECONOMIC POLICY COORDINATION IS CONSIDERED TO BE AN EXCEPTION.

Some of the current OMC's main areas of application are:

- employment - which, in 1997, benefited from the first explicit application of a Community-level OMC with the launching of the European Employment Strategy (ESS). The principal aim of the “Employment OMC” has been to organize implementation of the integrated guidelines for employment adopted since then, which have notably resulted in the annual publication of a Commission and Council “Joint Employment Report”;
- social Policy - Since 2000, the OMC has been successively applied to the social inclusion policy, the pension policy and to the health and long-term care policy; these three separate strands were later streamlined into one integrated OMC for Social Protection and Social Inclusion (the “Social OMC”);

³⁴ Phrase commonly used in the text of the Treaty Establishing the European Community

- the Lisbon Strategy, launched in 2000, has become one of the high-profile areas of application of the OMC. The aim of the latter is to induce the Member States to properly implement the 24 integrated guidelines for growth and employment, and, as we pointed out, it calls for the submission of National Reform Programmes, as well as the formulation of annual recommendations in economic and employment policy matters;
- also worth mentioning are the areas of education and youth: the first is the subject of a highly sophisticated OMC aimed at facilitating implementation of the Education and Training 2010 work programme. The second area gave rise to an OMC aimed at formulating part of the European Youth Pact, but does not rely upon quantified objectives as precise as those set out in education-related matters;
- lastly, it should be mentioned that the OMC is also used on an informal basis in the area of research and development, as decided by the European Council in March 2003 with respect to policies related to investment in research and human resources (including researcher mobility). This recourse to OMC occurred after the European Council of Barcelona set out the objective of a domestic R&D expenditure equal to or greater than 3% of GDP, in an effort therefore to induce the States to attain such an objective³⁵. If adopted, the Treaty of Lisbon will provide a formal basis for this “R&D OMC,” while at the same time extending application of the OMC to several other areas (see Table 3.5).

This increased use of the Open Method of Coordination translates the EU’s determination to have an increasingly significant influence on the content of policies carried out by its Member States. Such Community-exerted influence may vary according to the type of OMC applied:

- although the European Commission “recommends” guidelines, the Council has the option of amending them by qualified majority. If the Commission introduces a formal proposal, it can only be amended by unanimity;
- the fact that the Member States are required to submit an “action plan” obliges them to be more accountable. The review of this plan or of national situations is subject to maximum political pressure if it is conducted at the

European Council level, and to less political pressure if brought before the Council or entrusted to the Commission;

- recommendations to the Member States formulated by the EU do not have the same political impact, depending upon whether they originate from the Commission or from the Council. In the latter case, their significance may vary, according to whether the State concerned is, or is not, authorized to take part in the voting on its own situation.

Regardless of the OMC concerned, the latter and all of the coordination mechanisms set out by the EU share the common trait that they are devoid of any legal effects which bind the Member States to which they apply and that their effectiveness mainly depends upon the degree of political pressure which they enable the EU to exercise and upon the Member States’ goodwill. In this regard, it should be stressed that the numerous guidelines, assessments and recommendations on which they are based are very frequently fuelled by EU current affairs, and that they sometimes spread beyond Community circles only to emerge as the focus of national public debate. At that point, they undoubtedly reinforce the opinion that countless national policies are now being pursued under EU supervision. Here, too, it is unlikely that the least-informed observers can clearly distinguish between this type of Community intervention and one which falls within the EU’s exercise of real decision-making power.

3.3 EU interventions aimed at organizing Member State cooperation

Lastly, the aim of certain EU political interventions can be to organize cooperation between its Member States. It is therefore not a matter of coordinating the national-oriented policies pursued by these States, but of actually mobilizing them to take part in Community-oriented actions. The cooperation undertaken in matters of foreign policy and security, as well as in police and judicial matters, are key examples of such political interventions. Moreover, they have different models from traditional Community methods within the intergovernmental framework defined by the 2nd and 3rd “pillars” instituted by the Treaty of Maastricht (and which correspond to Titles V and VI of the existing Treaty on European Union [TEU]).

³⁵ For additional information on “R&D OMC,” see http://ec.europa.eu/invest-in-research/coordination/coordination01_en.htm.

The originality of such intergovernmental cooperation has been progressively relativised, particularly in police and judicial matters: transfer of certain powers to the Community pillar (Schengen Agreements, asylum policy); adoption of framework decisions quite similar to directives; elimination of the “pillar structure” by the Treaty of Lisbon, as well as the merging of the functions of the High Representative for the Common Foreign and Security Policy and those of the Commissioner for External Relations.

Nonetheless, with the notable exception of some 20 framework decisions adopted since the 1990s in police and judicial matters (mentioned in the first part of this study), the intergovernmental cooperation to be described further on rely on the production of “atypical” acts which are not binding for the Member States. Although the latter must comply with a general duty of loyalty in relation to the EU, and are sometimes required to consult their counterparts, nothing legally obliges them to follow the courses set out by such intergovernmental cooperation.

3.3.1 Cooperation organized within the CFSP framework

The aim of the Common Foreign and Security Policy since it was instituted by the Treaty of Maastricht has been to reconcile the national diplomacies’ views, which often remain divergent within the EU.

Its implementation sometimes causes the EU to adopt some normative regulations or to make case-specific decisions, but the latter nearly always concern third parties outside of the EU and are not aimed directly at Member States (who are nonetheless expected to assist in the implementation of such decisions). When it is a question of freezing the assets of a terrorist organization or of a Head of State, for example, the Member States are duty-bound to mobilize their administrations in order to ensure that the financial institutions involved actually carry out such a freeze.

Beyond these few specific cases, implementation of the CFSP mainly relies on three types of tools defined by the Treaties of Maastricht and of Amsterdam, which have been utilized for various purposes even since (see Table 3.6):

- “Joint actions” which call for the mobilization of diverse resources (financial, human, etc.) to attain a concrete objective (such as peace-keeping operations, the nomination of an EU representative, etc.);
- “Common positions,” which define the EU doctrine in relation to certain regions of the world, crisis situations or trans-sectoral issues (such as non-proliferation);
- “Common strategies,” which are adopted in areas in which Member States believe they have common interests.

TABLE 3.6 – JOINT ACTIONS AND COMMON POSITIONS AND STRATEGIES ADOPTED IN THE AREA OF THE CFSP

TYPE OF ACT	TOTAL NUMBER	ACTS IN FORCE ON 10.04.09
JOINT ACTIONS	386	141
COMMON POSITIONS	352	154
COMMON STRATEGIES*	3	0
TOTAL	741	295

SOURCES: EUR-LEX, Y. BERTONCINI’S COMPUTATIONS

* ADOPTED IN 2003 AND REVISED IN 2008, THE EUROPEAN SECURITY STRATEGY IS NOT FORMALLY A PART OF THE COMMON STRATEGIES, WHICH HAVE CONCERNED RUSSIA, THE UKRAINE, AND THE MEDITERRANEAN REGION.

The common trait shared by all of these diplomatic tools is that they are essentially declaratory. As specified in the Treaties, they “commit the Member States in the positions they adopt and in the conduct of their activity.” The Member States which have adopted them will rather have a tendency to abide by their substance and, if not by their form, at least by their spirit. What is more, nothing legally obligates them to do so and they have the option of adjusting their diplomatic choices if they deem it necessary.

Furthermore, if a joint action calls for a peace-keeping intervention (for example in former Yugoslavia, or in Africa), it will naturally have financial and logistic consequences for the Member States, but only those which will have decided, voluntarily, to have their staffs or troops participate in such an operation will actually have to assume part of the costs (which are allocated according to each State’s actual involvement).

The convergence of foreign and defence policies carried out by EU Member States may also be accomplished through the setting of common objectives (for example in matters concerning their level of foreign aid or military capabilities).

The official development assistance example is emblematic of such procedure. A European Consensus on Development was in fact formalized by the Commission, the Council and the European Parliament in the spring of 2005, which states that the EU should amply contribute to any efforts to achieve the Millennium Development Goals set by the UN. To that end, some of the European Council's conclusions adopted in May 2005 call for EU Member States to raise their development assistance to a level equal to 0.7% of their GDP by 2015 (a 0.33% of GDP ceiling having been set for the States which joined the EU after 2002). However, nothing requires the States to actually attain such a level, which the current economic crisis may have rendered inaccessible for many of them.

Lastly, national foreign and defence policy convergence is to be facilitated by the creation of agencies set up on the basis of "joint actions" in which leaders and experts from numerous member countries can work together:

- this is the case with the European Union Institute for Security Studies, whose aim is to help create a common European security culture, by producing data analysis and recommendations promoting the implementation of the CFSP;
- this also applies to the European Union Satellite Centre (EUSC), dedicated to the exploitation and production of information deriving from the analysis of earth observation space imagery, and whose aim is to support EU decisions concerning the CFSP;
- lastly, this is also the case with the European Defence Agency, whose key missions are to define and meet the needs of the European Security and Defence Policy and to promote cooperative actions between the EU Member States in the area of defence equipment.

It is also this commitment to promote the rapprochement of the Member States' and the EU's analyses and positions which prevailed while planning the creation of the European External Action Service called for by the European Constitutional Treaty and the Treaty of Lisbon (Article 27 of the TEU). Reporting to the High Representative for the Common Foreign and Security Policy, this service will bring

together officials from the Commission's and the Council's External Relations Directorates, as well as diplomats seconded from the EU Member States, in the hope that their joint efforts will promote the emergence of a common political culture and the convergence of national foreign policies.

It is on the basis of all such mechanisms that the EU's Common Foreign and Security Policy is expected to materialize: in view of their piecemeal, scattered and non-binding nature, it is easy to understand why sometimes very diverse national foreign policies can continue to co-exist within the EU. On this point, we can also understand why an observer as well-informed as Jacques Delors, when the Treaty of Maastricht was being formulated, warned against the use of the expression "common foreign and security policy" – objecting that it would promise much more than the EU could ever deliver. His suggestion to mention only "joint foreign policy actions" having been rejected, today we can acknowledge that instituting the CFSP has had a dual political effect: first, to imply that the EU's ultimate goal is to guide, or even lead, the Member States' diplomacy, and second, to enable many observers to continue arguing that its lack of action and limited influence on the external scene conflict with its proclaimed ambitions.

3.3.2 The intergovernmental scope of judicial and police cooperation

The judicial and police cooperation established within the framework of the EU's third pillar does not display the same apparent political limitations as the CFSP:

- first, because, as its name indicates, its aim is to induce all of the Member States to work together, without claiming to institute a common European policy in lieu of national policies;
- second, because it managed to rely upon legal tools having the same non-binding effects as directives (the framework decisions);
- lastly, because part of the areas covered by this cooperation (notably judicial cooperation in civil matters) has been progressively transferred to the Community pillar.

By limiting this analysis to the purely intergovernmental aspects of such a cooperation, as will be done later in this study, it will be evident that they do not include a legally binding component for the Member States.

As for judicial cooperation in criminal matters, the mission of the Eurojust agency is to promote cooperation between Member States in initiating investigations and proceedings. Although its activities could portend the establishment of a genuine “European public prosecutor’s office” whose initial scope of intervention would no doubt be restricted, they would be in keeping with a strong effort to induce Member States to cooperate.

The area of police cooperation is also the theatre of EU interventions aimed at reconciling the policies carried out by Member States in a non-binding framework. This cooperation involves all of the Member States’ competent authorities, including police and customs services, as well as other law enforcement services specialized in the areas of prevention or detection of criminal offences and related inquiries. It can also call upon agencies in which many member countries’ decision-makers and experts collaborate:

- one example is the European Police Office, or “Europol,” whose mission is to help the EU Member States co-operate more closely in preventing and combating organized international crime (drug trafficking, illicit immigration networks, vehicle trafficking, terrorism, etc.), by facilitating the exchange of information between countries, by providing operational analysis and by supporting the operations carried out by these same States;
- another example is the European Police College, which brings together senior police officers across Europe for the purpose of encouraging cross-border cooperation in the fight against crime and of maintaining public security and order;
- yet another example is the Frontex agency, which is responsible for the coordination of Member States’ actions in the implementation of Community measures relating to the management of the external borders, and which also assists Member States in the training of national border guards, carries out risk analyses and provides Member States with the necessary support in organizing joint return operations.

Regardless of how helpful all of these EU interventions may be in the field of inter-governmental cooperation in judicial and police matters, none of them have any binding effect upon EU Member States, which legally remain free to act as they deem appropriate and in accordance with their specific interests.

3.3.3 Other types of EU-promoted cooperation between Member States

As a brief reminder, we will recall that the aim of some EU interventions is also to promote cooperation between Member States in a number of other areas—here, too, on a purely incitant basis:

- in development assistance or humanitarian aid matters, and in addition to its own funds committed for that purpose, the EU strives to direct Member State funding towards projects of common interest;
- as part of the “support and coordination competences” which may be granted to it by existing and forthcoming treaties (Treaty of Lisbon), the EU regularly calls upon Member States to engage in common initiatives (involving civil protection, for example);
- lastly, many of the Community agencies set up within the “first pillar” framework have as their implicit or explicit objective to reconcile Member States’ analyses and practices, for example by allowing them to have access to comparable data (through the European Centre for the Development of Vocational Training, or the European Union Agency for Fundamental Rights for example).

Whether their purpose is the assessment, coordination or cooperation of national policies, the “political” interventions mentioned above now play a vital role within the Community institutional system and in the public debates fostered by the EU. The impact of these various interventions is probably quite significant. Even if they produce neither a legal constraint nor a budgetary incentive, they rely on a combined form of emulation and peer pressure which can, in many cases, result in an increased consensus of Member States’ positions and practices and improve the effectiveness of the policies they pursue. The influence thus exerted by the EU is, however, very diffuse: it can never be measured as accurately as the impact of a directive to be transposed or an awarded funding, so it can give rise to exaggerated interpretations just as likely to maximize, or to minimize, the impact of Community interventions.

Would it be unreasonable to point out that the role of such “political” interventions is out of proportion to their concrete effects? At the very least, it is obvious that

this role depends upon the level of priority and visibility granted to such interventions and that the latter seems particularly high in relation to their actual impact on policies carried out by Member States. Such “overexposure” seems to derive from both:

- the wording of Community treaties which vest the EU with a series of nominal competencies (“employment,” “social policy,” the “CFSP,” etc.) that in reality remain very broadly exercised by the Member States;
- the positions adopted by Community authorities, which may sometimes give priority to issues and policies that are still, to a great extent, the Member States’ responsibility: the Lisbon Strategy—at least since its relaunching in 2005 is a good example of such a situation.

Given the context, it is natural that many analysts should deplore the confusion fuelled by these political interventions in terms of the concrete added value which the EU brings to its Member States, while stressing the risk of eviction to which its normative and budgetary interventions may be exposed. Or that they should point out that such interventions indirectly portray the EU as an organization which controls all but a few national public action areas, even when its powers often amount to little more than describing and observing Member States’ activities and decisions, so that these political interventions undoubtedly help to strengthen the image of a very intrusive Brussels’ power – yet one whose concrete productions and achievements remain rather difficult to identify – a form of “soft power” both omnipresent and illusory, and whose multiple manifestations firmly maintain the vagueness surrounding the actual or presumed impact of EU interventions at the national level.

Conclusion: European Union Interventions: Getting beyond the Myths

In bringing to a close this legal, budgetary and political inventory, it might be natural to conclude that its key findings hold few surprises:

- the EU Member States are part of a “Community of law” which determines a substantial (though minority) portion of the normative provisions applied on their territory (20% rather than 80%), which only have a major impact on a few sectors (mainly agriculture, fisheries and economic and financial matters);
- community subsidies are very limited overall (1% of the EU’s GDP), yet they are quite substantial in comparison to national expenditure in some sectors (Agriculture, Fisheries, and Cohesion) and in a few countries (particularly the poorest in terms of GDP/inhabitant);
- the positions adopted by the EU are innumerable, yet they have no binding effects and allow the EU to intervene in areas over which the Member States plan to collectively maintain control.

Overall, this cursory assessment of the impact of EU interventions at the national level generally confirms the findings that would emerge from a reasoned analysis

of Community history and Treaties. If we were to focus upon its sectoral aspects, we would observe that the EU manages economic policies and its internal market on the one hand, and agriculture and fisheries on the other, and lastly its cohesion, and a very limited share of all of the other policies, which essentially remain national (or even regional in a number of Member States). This, too, is in line with the history of European construction and the strength displayed by Nation-States.

However, it is not certain that this study – regardless of its merits and limitations – will help to entirely dissipate the vagueness surrounding the actual impact of EU interventions at the national level. As a matter of fact, assessing the impact of EU interventions is not just another piece of technical data; to the contrary, it seems to be hampered by a deeply rooted projectionist logic which is helping to promote political myths, making them difficult to defuse.

This accounts for the existence of theories aimed at projecting onto the EU what people want it to be, or conversely, not to be. On this issue, we will quote Jean-Louis Bourlanges, who underlined the a priori paradoxical convergence which has emerged between federalists and “anti-Europeans” on what they view a bigger EU and consider it having much more responsibilities than it has in reality “Contrary to a tenacious myth, 90% of policies and 98% of funding remain national. Whether the matter is education and research, labour laws and social protection, territories’ administrative organization, the judicial system or the police, defence and foreign policy, and even – despite Maastricht – budgetary and fiscal policies, the bulk of the power remains in the States. In these areas, Europe is pretending – pretending to be seen as a solution by its promoters and conversely, as a threat by its adversaries, who abusively blame it for all of the economic, financial, social and cultural upheavals resulting from globalization.”³⁶ Inasmuch as the political forces advocating for increased European integration and those vigorously opposed to it are the most active participants in public debates on Europe, it is inevitable that their overestimation of the impact of EU interventions should leave a lasting impression.

Moreover, these ideological projection mechanisms co-exist with responsibility transfer mechanisms which are also far from being the prerogatives of just the opponents of European construction. They are also prospering from a certain

³⁶ Jean-Louis Bourlanges in an interview by Le Monde – 2 December, 2007

confusion maintained by both EU and national policymakers. The former has a known tendency to shift blame onto so-called “Brussels’ constraints” which are often real but frequently illusory, and very convenient in winning support for unpopular decisions. It should also be pointed out that, in an effort to strengthen their legitimacy and reputation by showing that they are taking action “in concrete ways in the field and for the daily lives of citizens,” EU authorities are often quick to “blow their own horn” by claiming to exercise political influence that has a substantial impact only within certain sectors (competition being a typical example), but which is limited, or even very limited, within most of the others³⁷.

We will conclude this trans-sectoral inventory in the hope that it may be as enlightening and useful as possible and, above all, in the hope that it may be completed, elucidated and refined by more qualitative and sectoral studies, particularly in the legal area. Determining in a clear and disciplined manner what impact Community interventions have on citizens’ lives at the national and local levels is not only a wholesome public and intellectual endeavour, nor is it merely a way to fuel the debate on the rising communitisation of certain national policies, or on the ultimate “renationalisation” of some European policies. Its most important goal is to provide the framework for rational thought and discussion about the future of the EU, keeping in mind that, like the most beautiful woman in the world, the EU can only give what it already has – without, of course, excluding the possibility that it may be able to give much more in the future.

³⁷ The tendency to send former senior political leaders to Brussels – notably former Prime Ministers – is no doubt helping to maintain such confusion.

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Appendix 1 - Methodological Considerations

I – Analysis of normative data (Part 1)

A – Data sources used

The normative part of this study is based upon numerous Community and national data, some of which had not been exploited yet, and obtainable from various sources:

1 - The data relating to Community normative acts were obtained via the consultation of the EUR-Lex database (see <http://eur-lex.europa.eu/fr/index.htm>), established and updated by the services of the Official Journal of the European Union (OJEU). This consultation was facilitated by the advices given to me by Michael Duero and Brigitte Delville, whom I would like to thank.

2 - The data concerning national normative acts were obtained thanks to the invaluable advice given to me by Jean Maia (General Secretariat of the French Government), and via contacts established with the Direction des Journaux officiels, where I was received by Olivier Garnier and his team (Pierre Larrède, Louis Martin, Philippe Gibon), whom I take this opportunity to thank. The data from the Direction des journaux officiels” were supplied to me in two forms:

- first, by means of a “Diachronic Table” compiled in August 2007, which is an inventory of the numbered laws, ordinances and decrees published in the OJFR since 1987 (the so-called “NOR Table of laws, ordinances and decrees numbered by year of publication in the JO from 1987 to 2006”), broken down by activity sector (see Appendix 4, “NOR Nomenclature”);
- second, by means of an inventory of ministerial orders of general application produced in France from 2005 to 2008, broken down by activity sector.

Consulting the Legifrance website (www.legifrance.gouv.fr) enabled us to supplement the data collected.

3 - The data on the processing of Community normative acts by national governments was provided by the General Secretariat of European Affairs (service of the French Prime Minister), thanks to Carine Soulay and Juliette Clavière, whose availability and cooperation I very much appreciated.

- a first set of data made it possible to identify the acts (laws, ordinances, decrees, orders, etc.) used to transpose Community directives in France between 2000 and 2008, broken down by activity sector (see Appendix 4, “SGAE Nomenclature”);
- a second set of data made it possible to identify the material nature (legislative or regulatory) of the draft normative acts (directives or regulations) submitted to the Council (and thus to French authorities) between 1 November 1992 and 23 July 2008. The start of this reference period corresponds to the entry into force of Article 88.4 of the French Constitution, which called for the government to submit all draft acts of a legislative nature to Parliament for a review and opinion. The end of this period corresponds to the entry into force of a new version of the article 88.4 following the Constitutional revision of July 2008, which provided that all Community draft acts should from then on be submitted to Parliament (hence the futility of analysing their material nature since then). These data are the outcome of an analysis made by the Council of State’s staff, and are also classified according to SGAE nomenclature. I would like to earnestly thank Marie Madelpuech, a student at the ESCP Europe Business School and at the Faculté de droit of Sceaux for her decisive contribution to this data analysis.

B – Comments on the reliability of the data presented

The normative data used to develop this study originated from French government and European Union offices, and may be considered as extremely reliable and trustworthy. The few difficulties which arose during the analysis of these data have in no way altered that reliability, but they do call for the following comments:

1 - The first comment which should be made concerning the Community data used in this study is that numerous normative acts which are accounted for in the Community normative flow totals, no longer are when these acts are broken down by sector (they are then entered under the heading “nu”). The reason for this is that these are actually amending or remedial acts in the form of norms already in force (notably “jurislinguist” corrections). Such acts are particularly numerous over the long term. For example, between 1987 and 2006, they represented half of the normative acts accounted for in the EUR-Lex database (see Table 1). This study excluded such informal normative acts from the Community data which it analysed, making it possible to obtain an adequate basis of comparison with national normative flows.

TABLE 1- SECTORAL BREAKDOWN OF NORMATIVE ACTS ADOPTED BY THE EU FROM 1987 TO 2006

	REGULATIONS	DIRECTIVES	TOTAL
GRAND TOTAL	46,063	3,003	49,066
SECTORAL TOTAL	49,057	3,482	52,539
ACTS NOT BROKEN DOWN BY SECTOR (1)	23,588	999	24,587
TOTAL FOR THE 20 SECTORS	25,469	2,483	27,952

SOURCES: EUR-LEX DATA, Y. BERTONCINI’S COMPUTATIONS

2– The second comment on the Community data used in this study is that there is a “double count” whenever a sectoral breakdown of normative acts is done. For example, a directive liberalizing the energy market is accounted for under both the Energy sector and the Internal Market sector. The various sectoral headings’ total

is therefore slightly higher than the total obtained when consulting the EUR-Lex database on a general basis, without distinguishing by sector. This shortcoming is limited in the sense that the comparisons between Community and national norms were made either on an overall basis, or on a sectoral basis, with the data corresponding to these two approaches.

3- A third comment involves the national data used in this study: it has to do with the data relating to the ministerial orders of general application (or non nominative – the latter being excluded from the scope of this study) obtained from the Direction des Journaux officiels and concerns two points:

- first, it should be stressed that these data are available only for the years 2005 to 2008, while those pertaining to laws, ordinances and decrees cover at least the 1987 to 2006 period, and some of them even earlier and later years. In view of the more limited and recent nature of this reference period, the annual averages calculated for these orders may therefore turn out to be less representative than those established for the other French normative acts.
- second, the ministerial orders' sectoral classification conforms to the delimitation of the ministerial departments concerned. This is a shifting delimitation (Ministries change names, services can be transferred to another Ministry, etc); it does not entirely correspond to those of the NOR nomenclature's activity sectors (see Appendix 4). It was therefore necessary to make some adjustments in order to properly identify the average proportion of orders of general application to be added to the laws, ordinances and decrees allocated to a particular sector.

4 - A fourth comment has to do with the data supplied by the SGAE concerning the national normative acts used to transpose directives in France from 2000 to 2008.

It should first be mentioned that such data relates to 864 directives, 759 of which (87.8% of the total) were able to be fully exploited, but also that, of the 105 remaining directives:

- about half were not transposed, because French law was already consistent with the provisions of the directive concerned;
- and the other half of the data supplied by the SGAE are not available or

usable (there was no mention of how the transposition occurred). This margin of uncertainty involves slightly less than 6% of the total directives examined and does not appear to be of a sort to challenge the findings presented in this study.

In addition, it should be stated that, regarding the 759 fully usable directives, the description of the transposition measures adopted is sometimes lengthy and somewhat confusing: for example, an internal meeting's minutes may indicate that 7 decrees are needed for a given transposition, then minutes from a meeting held six months later may indicate that 3 decrees have been adopted and that 2 are still unaccounted for. In the few cases in which a doubt surfaced, it is the most recent written commentary which was taken into account.

5- A final comment deals with the time periods retained for making comparisons between Community norms and national norms:

- since the data supplied by French government were available for a given period, it was possible to make a comparison each time by consulting the EUR-Lex database on the Community normative acts produced during the same period;
- as for the data on legislative acts in force, some slight time lags may occur due to the publication and posting on-line time applicable at the Community level. Also, the fact that the same request is being submitted to the EUR-Lex database at a one-week interval confirms that two very slightly different responses may be obtained because of the time lag needed to post the data on line;
- although the data on the transposition of the directives correspond to the years 2000 to 2008, it should be stressed that the directives concerned may have been adopted at different times: a directive adopted in 2000 may have been transposed in early 2001 or 2002, or in 2004 or 2005.

In view of these time differences, efforts were made to base this study upon the longest possible reference periods so as to obtain the most reliable and representative annual averages.

C – Notes on the correlation of national and Community data

Assessing the relative impact of Community norms led to comparisons being made with the corresponding national norms, based upon the following modes of reasoning and arbitrations:

1 – First, it was necessary to take into account the special relationship between Community and national norms (for more details on this point, see Appendix 2):

- since Community regulations have to be substituted for national norms, it was determined that the adoption of a regulation could replace the adoption of a national act, and it therefore became necessary to assess the proportion of regulations by comparing them to the total norms implemented at the national level;
- since Community directives have to be transposed at the national level, we took into account the fact that certain national normative acts were directly related to such transposition (2.75 national normative acts, on average, were needed to ensure the transposition of a directive in France between 2000 to 2008). In order to consider the special nature of such acts, the relative proportion of the directives (and of all of the Community normative acts) was also computed on a refined basis and limited to national acts not concerned by transpositions.

2 - Comparing Community and national norms on a sectoral basis also led to converging the nomenclatures used by the EUR-Lex database, the Direction des Journaux officiels and the SGAE so as to attain the most satisfactory correlation possible (for more details on this point, see Appendix 4). Since the EUR-Lex database was the easiest to consult, we attempted each time to match Community data with available national data. Of course, it cannot be ruled out that the arbitrations retained to establish such correlation may have resulted in some mismatches between the number of acts attributed to a particular sector at the national and at the Community level, but they should not be of a sort to challenge the orders of magnitude identified by this study.

II – Analysis of Budgetary Data (Part 2)

Most of the data used in the budgetary part of this study are derived from a much more extensive research conducted within the framework of my professional activities at the Centre d'analyse stratégique³⁸, in close collaboration with Amélie Barbier-Gauchard, whom I heartily thank for her contribution. Analysis of these data calls for the following additional comment:

A – Nature of the public spending studied

1 - In this entire study, the term “European” public spending refers to both Community and national expenditure.

2 - National public spending covers central and local government agency expenditure and that of the Social Security agencies.

B - Data sources

The budgetary data used in this study concern the year 2006 – the most recent year for which data relating to all of the EU Member States were available when this study was undertaken. These data were collected from the following sources:

1- Community data: Unless otherwise indicated, the Community data used were derived from OJEU L71 of 14 March 2008, which lists the expenditure incurred within the “General Budget of the European Union,” a document which shows, for each financial year, all of the revenue and expenditure of the European Community and of the European Atomic Energy Community (Euratom).

³⁸ See in particular the paper by Yves Bertoncini and Amélie Barbier-Gauchard, “Scoreboard of public spending in the EU and its Member states” Centre d'analyse stratégique, June 2009, which is available at the following website: http://www.strategie.gouv.fr/article.php3?id_article=1053. The comments are, of course, entirely my own, as is the content of the study.

2- National data: Unless otherwise indicated, the national data concern the year 2006 and were derived from the data of the COFOG (Classification of the Functions of Government), which were transmitted to Eurostat by the EU Member States' statistical authorities. The COFOG's data correspond to the annual data on the general government sector (central government, State government, local government and Social Security funds) as defined in SEC 95 (the European System of National Accounts), which provides a common accounting framework for EU countries and allows for an in-depth harmonization of their national accounts.

Some budgetary data relating to more specific sectors than those retained by the COFOG were obtained from the following sources:

- in the Research and Technological Development sector: Eurostat data (Public Budgetary Allocations for R&D).
- in the Energy and Transport sector: European Commission data - DG Transport and Energy;
- in the Education and Training sector: OECD data ("Education at a Glance 2008") for national public spending in the area of higher education;
- in the Competitiveness and Innovation sector: European Commission data - DG Competition: State aid to SMEs (horizontal objective), State aid for business investment (horizontal obj.), State aid to promote trade, export and internationalisation (horizontal obj.), State aid for job creations (horizontal obj.), State aid for training (horizontal obj.);
- in the Management of Social Change sector: OECD data (Active Labour Market Policies - OECD/SOCX for public spending relating to active labour market policies;
- in the Structural and Cohesion policy sector: European Commission data - DG Regio;
- in the Agriculture sector: European Commission data - DG Competition (State aid for Agriculture) and OECD data (OECD, "Agricultural Policies in OECD Countries: At a Glance - 2008 Edition");
- in the Rural Development sector: European Commission data - DG Agriculture ("Rural Development in the European Union - Statistical and Economic Information - Report 2007");
- in the Fisheries sector: European Commission data - DG Competition (State aid for fisheries);

- in the Official Development Assistance sector: OECD data ("DAC Members' Net Official Development Assistance in 2006");
- in the Humanitarian Aid sector: European Commission data - DG Humanitarian Aid;
- in the Defence sector: NATO data (NATO, "Statistical data concerning the defence effort of the NATO countries," 2008) for the itemized breakdown of Defence-related expenditure;
- in the Debt Servicing sector: European Commission data - DG Economic and Financial Affairs.

3 - Data on the GDP and exchange rates: Data concerning GDPs were collected from Eurostat.

When it was necessary to convert, the data derived from the parity in euros of various national currencies was obtained from the ECB.

C – Notes on the correlation of national and Community data

1 – In order to be able to simultaneously consider national and Community expenditure within the same frame of analysis and to conduct worthwhile comparisons, Financial Framework 2007-2013³⁹ headings were broken down into various "sectors" (see Table 2).

³⁹ Financial Framework 2007-2013 was officially adopted on 17 May 2006 in the Interinstitutional Agreement on budgetary discipline and sound financial management and published in OJEU no. C 139 of 14 June 2006

TABLE 2 – EU FINANCIAL FRAMEWORK NOMENCLATURES

AAGENDA 2000” HEADINGS	FINANCIAL FRAMEWORK 2007-2013 HEADINGS
1 - AGRICULTURE	1- SUSTAINABLE DEVELOPMENT
2 - STRUCTURAL OPERATIONS	1A - COMPETITIVENESS FOR GROWTH AND EMPLOYMENT
3 - INTERNAL POLICIES	1B - COHESION FOR GROWTH AND EMPLOYMENT
4 - EXTERNAL ACTION	2 - PRESERVATION AND MANAGEMENT OF NATURAL RESOURCES
5 - ADMINISTRATIVE EXPENDITURE	3 - CITIZENSHIP, FREEDOM, SECURITY AND JUSTICE
6 - RESERVES	3A - FREEDOM, SECURITY AND JUSTICE
7 - PRE-ACCESSION AID	3B - CITIZENSHIP
8 - COMPENSATION	4 - THE EU AS A GLOBAL PARTNER
	5 - TOTAL ADMINISTRATIVE EXPENDITURE
	6 - COMPENSATIONS

2 – Correlation of Community nomenclatures: In order to precisely identify Community expenditure for the year 2006, it was also necessary to take into account the Community budgetary nomenclature change which occurred between Financial Framework 2000-2006 and that of 2007-2013 (see Table 3), in order to establish the required correlation.

TABLE 3 – FINANCIAL FRAMEWORK 2007-2013 HEADINGS

HEADINGS		KEY SECTORS CONCERNED
SUSTAINABLE DEVELOPMENT	1A. COMPETITIVENESS FOR GROWTH AND EMPLOYMENT	RESEARCH AND TECHNOLOGICAL DEVELOPMENT ENERGY AND TRANSPORT EDUCATION AND TRAINING THE COMPETITIVENESS AND INNOVATION FRAMEWORK PROGRAMME (CIP) MANAGEMENT OF SOCIAL CHANGE (INCLUDING SOCIAL PROTECTION)*
	1B. COHESION FOR GROWTH AND EMPLOYMENT	STRUCTURAL FUNDS AND COHESION HOUSING FUND

2. PRESERVATION AND MANAGEMENT OF NATURAL RESOURCES		AGRICULTURE RURAL DEVELOPMENT FISHERIES ENVIRONMENT ANIMAL HEALTH AND PLANT PROTECTION
3. CITIZENSHIP, FREEDOM, SECURITY AND JUSTICE	3A. FREEDOM, SECURITY AND JUSTICE	SOLIDARITY AND MANAGEMENT OF MIGRATION FLOWS SAFEGUARDING LIBERTIES FUNDAMENTAL RIGHTS AND JUSTICE
	3B. CITIZENSHIP	PUBLIC HEALTH AND CONSUMER PROTECTION** CULTURE / MEDIA INFORMATION AND COMMUNICATION ACTIVITIES EMERGENCY PREPAREDNESS AND RESPONSE
4. THE EU AS A GLOBAL PARTNER		EXTERNAL PUBLIC AID, INCLUDING OFFICIAL DEVELOPMENT ASSISTANCE HUMANITARIAN AID %ACROECONOMIC ASSISTANCE COMMON FOREIGN AND SECURITY POLICY (CFSP)
5. ADMINISTRATION		COMMISSION OTHER INSTITUTIONS
6. COMPENSATIONS		

* AT THE COMMUNITY LEVEL, THE “MANAGEMENT OF SOCIAL CHANGE” HEADING INCLUDES THE “AGENDA FOR SOCIAL POLICY” (EXCLUDING THE GLOBALISATION ADJUSTMENT FUND SET UP IN 2007), AND, AT THE NATIONAL LEVEL, IT INCLUDES THE ACTIVE LABOUR MARKET POLICY AND SOCIAL PROTECTION EXPENDITURE (UNEMPLOYMENT, SICKNESS AND DISABILITY, FAMILY, OLD AGE, SURVIVORS, HOUSING, SOCIAL EXCLUSION) L.

** THE “HEALTH” HEADING INCLUDES PUBLIC HEALTH AND CONSUMER PROTECTION EXPENDITURE AT THE COMMUNITY LEVEL AND EXPENDITURE FOR HOSPITAL SERVICES AND PUBLIC HEALTH SERVICES, ETC. AT THE NATIONAL LEVEL.

Appendix 2 – Assessment of the relative impact of Community norms: Additional considerations

A more in-depth assessment of the relative impact of EU interventions should take into account the following factors.

1 – Mode of interaction of Community and national norms

Measuring the relative share of Community normative acts in relation to national normative acts should integrate data on the type of influence the two components exert upon each other, which will differ according to whether the acts concerned are regulations (directly enforced) or directives (the enforcement of which necessitates adopting national normative acts). It is also by taking these factors into account that we were able to weigh the raw data presented in the study and better measure (this time by making an upward adjustment) the overall weight of Community normative interventions.

There is some interchangeability between Community regulations and national normative acts: the regulations do allow the EU to intervene in place of its Member States to regulate a particular activity sector, since the Member States do not,

a priori, have to adopt other normative acts⁴⁰. From a quantitative viewpoint, a “communicating vessels” phenomenon is thus established between national and community norms, in such a way that the share of acts of Community origin can be clearly measured (it suffices to account for the number of regulations), as well as their relative share (by adding them to the national total and determining their proportion of the grand total).

Community directives and normative acts, on the other hand, have a more complex “transpositional” relationship, since enforcement of the directives at the national level requires Member States to adopt complementary normative acts. It is therefore necessary to try to specifically identify these national acts:

- first, in order to more clearly determine the proportion of norms “of Community origin” (even if quite a limited number of such norms may have been adopted outside of any transposition, for which they constitute only a “vehicle”);
- second, to deduct such norms from the total norms adopted at the national level (thereby isolating the national norms which are not directly “of Community origin.”).

Carrying out such identification work is not easy, however, since it cannot be based upon the simple equation of 1 directive = 1 national normative act:

- first, it is extremely rare for a directive to be transposed through a single act of national law, and much more common for it to give rise to the adoption of a law or ordinance, and particularly to decrees or orders, or even all of such acts, sometimes in a very high number⁴¹.
- second, because a national normative act, to the contrary, can allow several Community directives to be transposed: such is the case with French laws and ordinances which concern “various provisions for the adaptation to Community law” (see Appendix 5). This “grouped transposition” technique can also be used at the decree level (for example, in the Internal Market sector) or with orders (e.g., agricultural matters).

⁴⁰ It should be recalled that, in somewhat limited cases, the adoption of Community regulations can be accompanied by the adoption of national normative acts.

⁴¹ The transposition of certain complex or trans-sectoral directives may necessitate the adoption of dozens of national acts (such as the “Directive on Professional Qualifications” or the “Directive on services in the Internal Market”).

This study was based upon the raw data supplied by the General Secretariat of European Affairs (SGAE) on national acts used to ensure the transposition of Community directives in France for the years 2000 to 2008. Analysis of these data showed that 2.75 national normative acts had been used, on average, to ensure the transposition of one directive in France during this period (a number which varies widely according to sector). Since the exploited data covered a total of 759 directives, we can therefore conclude that 2,087 (759 x 2.75) national normative acts adopted during this same period were of direct Community origin.

Integrating these data with the assessment of the relative proportion of Community norms in relation to national norms allowed us to adopt the following computation formula:

$$\begin{aligned} \text{Weighted mean of relative proportion of Community norms} = \\ \text{Community acts} / \\ (\text{National acts} - \text{Community directives} \times 2.75) \\ + \text{Community acts} \end{aligned}$$

Applying this formula to the available data produces assessment results (see Table 1) which differ somewhat from those obtained from the raw data (see Table 2), and which slightly revalue the relative proportion of Community norms:

TABLE 1 – QUANTITATIVE SHARE OF COMMUNITY NORMS - RAW DATA

As %	IN PROPORTION TO ALL NORMATIVE LEGISLATION FORMULATED IN FRANCE	IN PROPORTION TO ALL NORMATIVE LEGISLATION IN FORCE IN FRANCE
2005-2007 NORMATIVE FLOWS*	11.22%	10.08%
1998-2007 NORMATIVE FLOWS	11.48%	10.3%
1987-2006 NORMATIVE FLOWS	14.53%	12.68%
1978-2007 NORMATIVE FLOWS**	14.59%	12.73%

SOURCE EUR-LEX DATA, LEGIFRANCE DATA, Y. BERTONCINI’S COMPUTATIONS

* INCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

** EXCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

NOTE: COMPUTATION OF THE ANNUAL AVERAGE NUMBER OF ORDERS OF GENERAL APPLICATION IS BASED UPON THE 2005-2008 PERIOD.

TABLE 2: QUANTITATIVE SHARE OF COMMUNITY NORMS - REFINED DATA

As %	IN PROPORTION TO ALL NORMATIVE LEGISLATION FORMULATED IN FRANCE	IN PROPORTION TO ALL NORMATIVE LEGISLATION IN FORCE IN FRANCE
2005-2007 NORMATIVE FLOWS*	11.66%	10.44%
1998-2007 NORMATIVE FLOWS	11.93%	10.66%
1987-2006 NORMATIVE FLOWS	15.07%	13.09%
1978-2007		
NORMATIVE FLOWS **	15.09%	13.11%

SOURCES: EURLEX DATA, LEGIFRANCE DATA, Y. BERTONCINI'S COMPUTATIONS

* INCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

** EXCLUDING NATIONAL LAWS RATIFYING INTERNATIONAL AGREEMENTS

NOTE: COMPUTATION OF THE ANNUAL AVERAGE NUMBER OF ORDERS OF GENERAL APPLICATION IS BASED UPON THE 2005-2008 PERIOD.

2 - Average life cycle of Community and national legislative acts

The particularly short life cycle of certain national normative acts (such as finance laws) and Community normative acts (e.g. agricultural regulations) systematically leads to a proliferation of them. Although such proliferation is unquestionably highly indicative of the frequency of national or Community normative interventions, it tends to inflate their impact from an overall perspective and in certain sectors.

It should be pointed out that a number of Community acts have a relatively short life cycle:

- of the 42,501 Community regulations adopted between 1951 and mid-2008, only 9,003 (or 21%) were still in force on 1 July 2008;
- of the 4,048 Community directives adopted between 1951 and mid-2008, 2,400 (or 59.3%) were still in force on 1 July 2008.

This very short life cycle of Community normative acts is particularly evident in four key EU intervention sectors (see § 1-2): the proportion of acts adopted since 1951 and still in force on 1 July 2008, for example, was: 11.4% in the Customs Union

sector, 21.9% in the Agriculture sector, 21.9% in the Fisheries sector and 16.1% in the External Relations sector.

Taking into account these data relating to the life cycle of normative acts would have allowed us to properly weight the data on normative flows in order to attain a more accurate (and thus lower) measurement of the quantitative share of Community norms as compared to national norms. To successfully make such a comparison, it would, however, be necessary to have comparable data on national normative acts, which, to our knowledge, are only partially available at this time.

3 – Data relating to the origin of national normative acts

For good measure, we should also point out that an additional upward adjustment in the number of acts “of Community origin” might also occur if we combined the national acts arising from a single normative impetus (typical example: a law and all of its implementing orders).

Conversely, it should be recalled that an accurate identification of the number of national acts of Community origin would make it possible to distinguish:

- the national normative acts which are truly of Community origin, for example a law or a decree specifically adopted to transpose a directive; and
- the normative acts which would have been adopted regardless under the impetus of national authorities, and which serve as “vehicles”⁴² carrying provisions aimed at transposing a directive’s content and constitute only a small part of the act concerned.

Although all of these subtleties should induce us to cautiously consider the quantitative data presented throughout this study, they do not seem of a sort to challenge the validity of the relative volumes thus identified, nor those which may be determined on the basis of a more in-depth sectoral and material assessment.

⁴² This search for national normative “vehicules” is particularly common for acts having legislative implications (a typical example being the finance law); moreover, the reason the transposition is delayed is often because a “vehicle” with the same theme as that of the directive to be transposed is not available in the short term.

Appendix 3 - Distinguishing between normative acts by author: An incomplete and misleading perspective

At first glance, it might seem useful to compare Community and national norms by classifying them according to author, and by isolating those which are adopted by political authorities commonly presumed to exercise legislative power.

The situation is clear at the national level: it is Parliament's task to adopt laws, but the Government can also do so when specifically empowered by Parliament to legislate by ordinance.

At the Community level, it is possible to distinguish the norms adopted by the Council in cooperation with the European Parliament from those adopted by the Commission, on the working hypothesis that the first would be "presumed to be legislative" and the latter more incidental. Such a postulate seems to be confirmed by the data supplied by the EUR-Lex database, which indicate that almost 95% of the normative acts adopted by the Commission are based on preceding regulation- or directive-implementing acts (on the model of French decrees).

On this basis, interesting findings emerge at the Community level (see Table 1), notably that:

- the acts adopted by the Council and the European Union represent between

2.3% (1978-2007) and 9.8% (2005-2007) of Community normative acts according to the reference period considered – thus confirming the strong increase in the European Parliament’s normative powers;

- if we consider only acts in force, the proportion of acts adopted by the Council and the European Parliament is 6.2%.

TABLE 1- COMMUNITY NORMATIVE ACTS (DIRECTIVES AND REGULATIONS) BY AUTHOR

YEAR PUBLISHED IN THE OJEU	COUNCIL	COUNCIL & EP	COUNCIL + COUNCIL & EP	COMMISSION AND VARIOUS**	TOTAL
2005-2007	832	336	1,168	2,267	3,435
1998-2007	2,655	866	3,521	7,660	11,181
1987-2006	8,081	845	8,926	19,026	27,952
1978-2007	13,693	971	14,664	27,269	41,933
NORMS IN FORCE ON 01.07.08*	2,650	601	3,251	6,434	9,685

SOURCES: EUR-LEX DATA, Y. BERTONCINI’S COMPUTATIONS

• ACTS CONSIDERED TO BE IN FORCE BECAUSE PUBLISHED IN THE OJEU

** SOME REGULATIONS AND DIRECTIVES MAY HAVE BEEN ADOPTED BY THE EUROPEAN CENTRAL BANK.

NOTE: EVEN IF THEY PRODUCE NORMATIVE EFFECTS COMPARABLE TO THOSE OF DIRECTIVES, THE FEW FRAMEWORK DECISIONS ADOPTED IN THE AREA OF JUSTICE AND INTERNAL AFFAIRS ARE NOT INCLUDED IN THIS TOTAL (THEY ARE MENTIONED IN THE SECTORAL PART OF THIS STUDY).

A comparison of these Community data with those relating to the laws and ordinances adopted in France shows (see Table 2) that the norms adopted by the Council and the European Parliament represented approximately:

- one-half of the norms presumed to be legislative enforced in France during the period 1998-2007;
- one-third of all norms presumed to be legislative enforced in France during the period 1978-2007;
- one-fifth of the norms presumed to be legislative in force in France on 01.07.08.

TABLE 2 – COMPARISON OF COMMUNITY NORMS ADOPTED BY THE COUNCIL AND THE EUROPEAN PARLIAMENT TO LEGISLATIVE NORMS ADOPTED IN FRANCE

AVERAGE/YEAR	NORMS ADOPTED BY THE COUNCIL & THE EP	LAWS AND ORDINANCES*	% OF EU NORMS ADOPTED BY THE CM & EP/TOTAL NORMS
2005-2007	112	87.6	56.1%
1998-2007	86.6	69.7	55.4%
1987-2006	42.25	69.95	37.6%
1978-2007	32.3	64.7	33.3%
NORMS IN FORCE ON 01.07.08	601	2,833	21.2%

SOURCES: LEGIFRANCE AND EUR-LEX DATA, Y. BERTONCINI’S COMPUTATIONS

* EXCLUDING LAWS RATIFYING INTERNATIONAL AGREEMENTS.

Such data initially seem to be in line with the assertion that a large proportion of national laws (excluding laws ratifying international agreements) are of Community origin. Yet such an interpretation could only be reliable if all of the norms adopted by the Council and the European Parliament were legislative in nature. However, this is not the case, as many of these norms can also concern secondary areas, which some analyses based upon more precise data would confirm.

Appendix 4 - Sectoral classification of normative acts by the EUR-Lex database (OJEU), the NOR nomenclature (OJFR) and the General Secretariat of European Affairs (“SGAE”)

I – Basic nomenclature

EURLEX - OJEU (COMMUNITY NORMATIVE ACTS)

1. GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS
2. CUSTOMS UNION AND FREE MOVEMENT OF GOODS
3. AGRICULTURE
4. FISHERIES
5. FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY
6. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES
7. TRANSPORT POLICY
8. COMPETITION POLICY
9. TAXATION
10. ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL
11. EXTERNAL RELATIONS
12. ENERGY
13. INDUSTRIAL POLICY AND INTERNAL MARKET
14. REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS
15. ENVIRONMENT, CONSUMERS AND HEALTH PROTECTION
16. SCIENCE, INFORMATION, EDUCATION AND CULTURE
17. LAW RELATING TO UNDERTAKINGS
18. COMMON FOREIGN AND SECURITY POLICY (CFSP)
19. AREA OF FREEDOM, SECURITY AND JUSTICE
20. PEOPLE’S EUROPE

NOR NOMENCLATURE - OJFR (FRENCH NORMATIVE ACTS*)

1. FOREIGN AFFAIRS
2. AGRICULTURE
3. CULTURE
4. DEFENCE
5. ECOLOGY
6. ECONOMY, INDUSTRY, SME & BUDGET
7. NATIONAL EDUCATION, YOUTH AND SPORTS
8. EMPLOYMENT AND HEALTH
9. CIVIL SERVICE AND GOVERNMENT ORGANIZATION
10. INTERIOR AND OVERSEAS TERRITORIES
11. JUSTICE
12. PRIME MINISTER
13. TRANSPORT AND EQUIPMENT

* SINCE THE DATA ON THE ORDERS WERE CLASSIFIED BY THE MINISTERIAL DEPARTMENT, THEY WERE BROKEN DOWN ACCORDING TO THE **13** SECTORS OF THE NOR NOMENCLATURE.

THE SGAE NOMENCLATURE (COMMUNITY NORMATIVE ACTS SUBMITTED TO THE FRENCH AUTHORITIES)

ACTIVITY SECTORS	AREAS MONITORED
1 – AGRAP	AGRICULTURE, FOOD INDUSTRY, FISHERIES
2- EURATOM	EUROPEAN ATOMIC ENERGY COMMUNITY
3- FIN	ECONOMIC AND FINANCIAL MATTERS
4 – ITEC	INDUSTRY, TELECOMMUNICATIONS, POSTAL SERVICES, INFORMATION SOCIETY, ENVIRONMENT, ENERGY, COMPETITION, RESEARCH
5- JAI FOLLOWED BY JUD: LCP: SEC:	JUSTICE AND INTERNAL AFFAIRS, FOLLOWED BY 3 SECTORS: <ul style="list-style-type: none"> • EUROPEAN JUDICIAL AREA • FREE MOVEMENT OF PERSONS • SECURITY OF THE EUROPEAN AREA
6-JUR	JUDICIAL MATTERS AND INTELLECTUAL PROPERTY
7-MICA (+EXRENET)	INTERNAL MARKET, CONSUMERS, COMPETITION, STATE AID, ARMAMENTS
8 - RELEX (+ Po LEST + Coop)	EUU EXTERNAL RELATIONS, TRADE POLICY, ENLARGEMENT, WESTERN BALKANS, NEIGHBORHOOD POLICY, DEVELOPMENT COOPERATION, FRENCH OVERSEAS DEPARTMENTS AND TERRITORIES + COMMUNITY PROGRAMME FOR COOPERATION WITH NON-EU COUNTRIES
9 –TESC	LABOUR, EMPLOYMENT, SOCIAL POLICY, HEALTH, EDUCATION, CULTURE, AUDIOVISUAL AND SPORTS
10 – TREG	TRANSPORT, REGIONAL POLICY
PIF	PRESENCE AND INFLUENCE OF FRANCE IN EUROPEAN INSTITUTIONS
PARLS	EUROPEAN PARLIAMENT - NATIONAL PARLIAMENT

* THIS NOMENCLATURE CORRESPONDS TO THE SGAE'S CURRENT ORGANIZATION CHART (THE PROCESSING OF THE DATA TAKES INTO ACCOUNT THE CHANGES WHICH HAVE OCCURRED IN THE PRECEDING YEARS).

II – Correlation of nomenclatures**NOMENCLATURE CORRELATION BY SECTOR: SGAE/EUR-LEX CORRELATION**

SGAE NOMENCLATURE	EUR-LEX NOMENCLATURE
FIN	09. TAXATION 10. ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL 11.60. COMMERCIAL POLICY 17. LAW RELATED TO UNDERTAKINGS 19.30.30. CUSTOMS COOPERATION
MICA (+RENET+JUR)	02. CUSTOMS UNION AND FREE MOVEMENT OF GOODS 06. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES 08. COMPETITION POLICY 13.30. INTERNAL MARKET: APPROXIMATION OF LAWS 13.40. INTERNAL MARKET POLICY RELATING TO UNDERTAKINGS 15.20. CONSUMERS 15.60 TRANS-EUROPEAN NETWORKS
ITEC (+ EURATOM)	12. ENERGY 13.10. INDUSTRIAL POLICY: GENERAL, PROGRAMMES, STATISTICS AND RESEARCH 13.20. INDUSTRIAL POLICY: SECTORAL OPERATIONS 16.10 SCIENCE 15.10. ENVIRONMENT
TREG	07. TRANSPORT POLICY 14. REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS
AGRAP	03. AGRICULTURE 04. FISHERIES 15.40 PROTECTION OF ANIMALS
TESC	05. FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY 15.30. HEALTH PROTECTION 16.30 EDUCATION AND TRAINING 16.40 CULTURE
JAI	19.10. FREE MOVEMENT OF PERSONS (= FMP) 19.30.10. POLICE COOPERATION (= SEC) 19.20. JUDICIAL COOPERATION IN CIVIL MATTERS + 19.30.20. JUDICIAL COOPERATION IN CRIMINAL MATTERS (= JUD)

“RELEX” (+ c00p +p0lest)	11. EXTERNAL RELATIONS (EXCLUDING 11.60. COMMERCIAL POLICY) 18. COMMON FOREIGN AND SECURITY POLICY (CFSP)
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INSTITUTIONAL DATA ON THE TWO NOMENCLATURES WERE BROKEN DOWN INTO:

- **SGAE NOMENCLATURE:** “PIF” AND “PARLS” HEADINGS;
- **EUR-LEX NOMENCLATURE:** HEADINGS 01. GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS, AND HEADING 20. PEOPLE’S EUROPE.

CORRELATION BETWEEN THE EUR-LEX (OJEU) AND NOR (OJFR) NOMENCLATURES

NOR NOMENCLATURE	EUR-LEX NOMENCLATURE
FOREIGN AFFAIRS	11. EXTERNAL RELATIONS (EXCEPT FOR 11.60. COMMERCIAL POLICY) 18. COMMON FOREIGN AND SECURITY POLICY (EXCLUDING DEFENCE ASPECTS*)
AGRICULTURE	03. AGRICULTURE 04. FISHERIES 15.40. PROTECTION OF ANIMALS
CULTURE	16.40 CULTURE
DEFENCE	18. FOREIGN AND SECURITY POLICY (DEFENCE ASPECTS*)
ECOLOGY	15.10. ENVIRONMENT
ECONOMY, INDUSTRY, SME & BUDGET	01. GENERAL, FINANCIAL AND INSTITUTIONAL MATTER (FINANCIAL ASPECTS) 02. CUSTOMS UNION AND FREE MOVEMENT OF GOODS 06. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES 08. COMPETITION POLICY 09. TAXATION 10. ECONOMIC AND MONETARY POLICY AND FREE MOVEMENT OF CAPITAL 11.60. COMMERCIAL POLICY 12. ENERGY 13. INDUSTRIAL POLICY AND INTERNAL MARKET 15.20. CONSUMERS 17. LAW RELATING TO UNDERTAKINGS 19.30.30. CUSTOMS COOPERATION
NATIONAL EDUCATION, YOUTH AND SPORTS	16.10. SCIENCE 16.30. EDUCATION AND TRAINING

EMPLOYMENT AND HEALTH	05. FREEDOM OF MOVEMENT FOR WORKERS AND SOCIAL POLICY 15.30. HEALTH PROTECTION
INTERIOR & OVERSEAS TERRITORIES	14. REGIONAL POLICY AND COORDINATION OF STRUCTURAL INSTRUMENTS 19.10. FREE MOVEMENT OF PERSONS 19.10. FREE MOVEMENT OF PERSONS
JUSTICE	19.20. JUDICIAL COOPERATION IN CIVIL MATTERS 19.30.20. JUDICIAL COOPERATION IN CRIMINAL MATTERS
TRANSPORT AND EQUIPMENT	07. TRANSPORT POLICY

* HERE, COMMUNITY ACTS ARE ASSIGNED TO THE “DEFENCE” SECTOR, SUCH AS ACTS UNDER THE HEADING “CFSP” WHICH INCLUDE THE TERMS “ESDP,” “DEFENCE,” “MILITARY,” “WEAPONS,” “PROLIFERATION,” “NUCLEAR” OR “TERRORISM” / “TERRORIST(S).”

NOTE: FOUR SECTORS WERE NOT TAKEN INTO ACCOUNT IN THIS CORRELATION BECAUSE OF THEIR ESSENTIALLY “INTERNAL” AND NON-COMPARABLE NATURE:

- **NOR NOMENCLATURE:** THE SECTORS “CIVIL SERVICE AND GOVERNMENT ORGANIZATION” AND “PRIME MINISTER”;
- **EUR-LEX NOMENCLATURE:** 01. GENERAL, FINANCIAL AND INSTITUTIONAL MATTERS” (EXCLUDING FINANCIAL ASPECTS) AND 20. PEOPLE’S EUROPE.

Appendix 5 - “Grouped” Transposition of Directives in France

The quantitative data presented in this study could be further refined in light of the methods for transposing directives according to French law; i.e., by accounting for instances in which several directives were transposed by a single law or ordinance⁴³. Such cases are all the more frequent in France since national authorities have resorted to using laws or ordinances containing “various provisions for adaptation to Community law” (hereinafter referred to as “DDADCs”) and which concerned some 60 directives between 2000 and 2008 (or a total of some 20 “DDADCs,” if we bear in mind that each made it possible, on average, to transpose 3 directives). It is interesting to isolate such directives, both because their transposition is the direct “source” of national normative acts and because the content of such legislative acts deals entirely with provisions originating from Community law.

Taking into account the “DDADCs” means subtracting the relative proportion of directives having legislative implications from the total number of French laws (see Table 1), since:

⁴³ Conversely, it is much rarer for the transposition of a directive to give rise to the adoption of several laws or ordinances (even though such transposition very often results in the adoption of numerous decrees and/or orders).

- 6.8 directives having legislative implications must be subtracted from the yearly average presented above;
- the average yearly number of laws and ordinances excluding DDADCs is thus established at 74.3 for the period;
- in all, the relative proportion of directives having legislative implications in the total number of laws adopted in France is brought down to 17.3% for the period (versus 22.6%, had the DDADCs been excluded).

TABLE 1 - AVERAGE ANNUAL NUMBER OF DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS TRANSPOSED BY LAWS AND ORDINANCES DEALING WITH VARIOUS PROVISIONS FOR ADAPTATION TO COMMUNITY LAW

SECTORS	LAWS AND ORDINANCES / YEAR***	DIRECTIVES HAVING LEGISLATIVE IMPLICATIONS**/ YEAR
TOTAL, INCLUDING DDADCS	76.6	22.4
FIN SECTOR DDADCS*	0.59	1.77
MICA SECTOR DDADCS*	0.44	1.33
ITEC SECTOR DDADCS*	0.19	0.55
TESC SECTOR DDADCS*	0.63	1.88
TREG SECTOR DDADCS*	0.22	0.66
JAI SECTOR DDADCS*	0.19	0.55
TOTAL DDADCS*	2.26	6.8
TOTAL, EXCLUDING DDADCS	74.3	15.6

SOURCES: LEGIFRANCE DATA, SGAE DATA, Y. BERTONCINI'S COMPUTATIONS

* THE WORKING HYPOTHESIS RETAINED HERE IS THAT A LAW OR ORDINANCE WHICH DEALS WITH VARIOUS PROVISIONS FOR ADAPTATION TO COMMUNITY LAW MAKES IT POSSIBLE TO TRANSPOSE 3 DIRECTIVES.

** REFERENCE PERIOD: 2000-2008 (SGAE DATA)

*** REFERENCE PERIOD: 2000-2006 (FRENCH GOVERNMENT GENERAL SECRETARIAT]-OJFR DATA), EXCLUDING LAWS RATIFYING INTERNATIONAL AGREEMENTS.

Appendix 6 - Share of Community expenditure in the areas of regional and agricultural cohesion: Precision based upon the case of France

An analysis of expenditure incurred by France in the areas of cohesion and agriculture means adjusting slightly downward the relative weight given to EU budgetary interventions in the overall assessment.

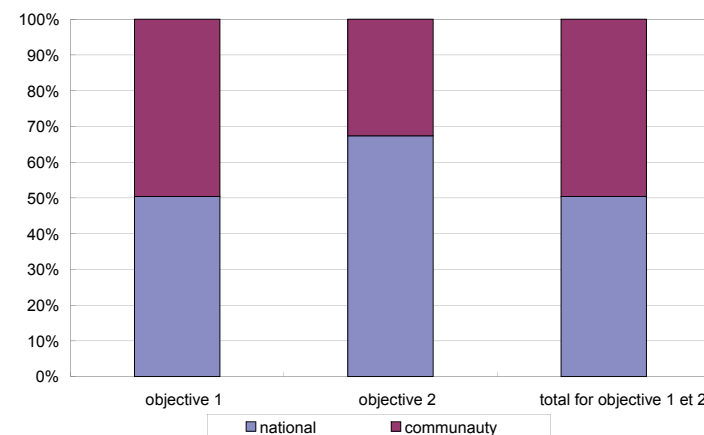
1 - The impact of Community expenditure on regional cohesion

Although the average co-financing rate of 50% practiced by the European Union in the Regional Cohesion sector is in line with the manner in which national and regional programming documents actually assess Community budgetary interventions, the national public counterpart of Community funding does not constitute all national public spending with respect to territorial cohesion.

A review of the sources of funding for territorial cohesion expenditure in France for the period 2000-2006 (see Table 1) shows that:

- for Objective 1 expenditure, the financing scale between the EU and national public contributors is approximately 50/50 (of a total of some EUR 8.6 billion);
- for Objective 2 expenditure, the financing scale between the EU and national public contributors is 32% for the EU and 68% for national public contributors (of a total of some EUR 22 billion);
- for the combined expenditure corresponding to Objectives 1 and 2 of the European Structural Funds, the EU's contribution amounts to some 36% of the total, as opposed to 64% for national public contributors (of a total of some EUR 30 billion).

TABLE 1 – 2006 EUROPEAN AND NATIONAL PUBLIC SPENDING ON REGIONAL COHESION IN FRANCE
(AS % OF TOTAL PUBLIC SPENDING)



SOURCE: SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES CENTRE D'ANALYSE STRATÉGIQUE.

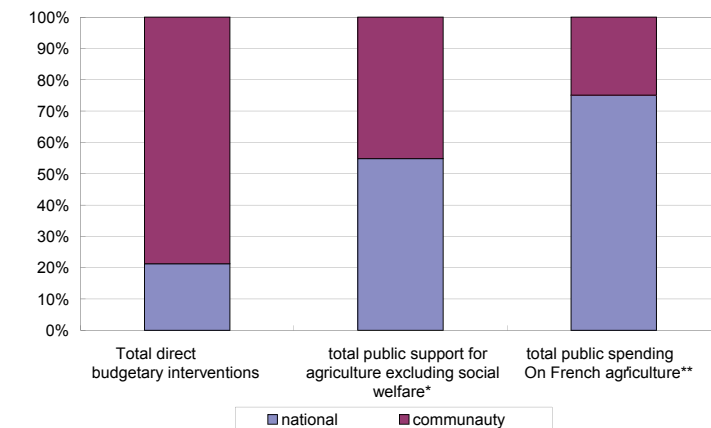
2 – The share of Community expenditure allocated to agriculture

It should also be stressed that taking into account all of the expenses allocated to agriculture at the Community and national level means adjusting downward the average share of 72% attributed to the EU, since this portion concerns only budgetary interventions allocated directly.

In a country such as France, the Community funding contribution to the 2006 Total National Expenditure thus amounted to (see Table 2):

- close to 78%, when taking into account only direct budgetary interventions benefiting agriculture (slightly above the Community average);
- 45%, when including all direct and indirect expenditure on agricultural aid, notably the administrations' operating expenditure, as well as the area of teaching and research (more than EUR 3.5 billion in 2006) and tax expenditure (some EUR 3 billion in 2006);
- 25%, when including expenditure on social protection in agriculture, which totalled EUR 16 billion in 2006 (but which, admittedly, is not operating expenditure).

TABLE 2 – 2006 EUROPEAN AND NATIONAL PUBLIC EXPENDITURE ON AGRICULTURE IN FRANCE
(EXCLUDING RURAL DEVELOPMENT) AS % OF TOTAL PUBLIC SPENDING



* INCLUDING INDIRECT BUDGETARY INTERVENTIONS, I.E. OTHER NATIONAL FINANCIAL CONTRIBUTIONS: 8.4 BILLION EUROS FOR GSS.

** INCLUDING PUBLIC COMPETITIONS FOR AGRICULTURAL SOCIAL SECURITY SCHEMES.

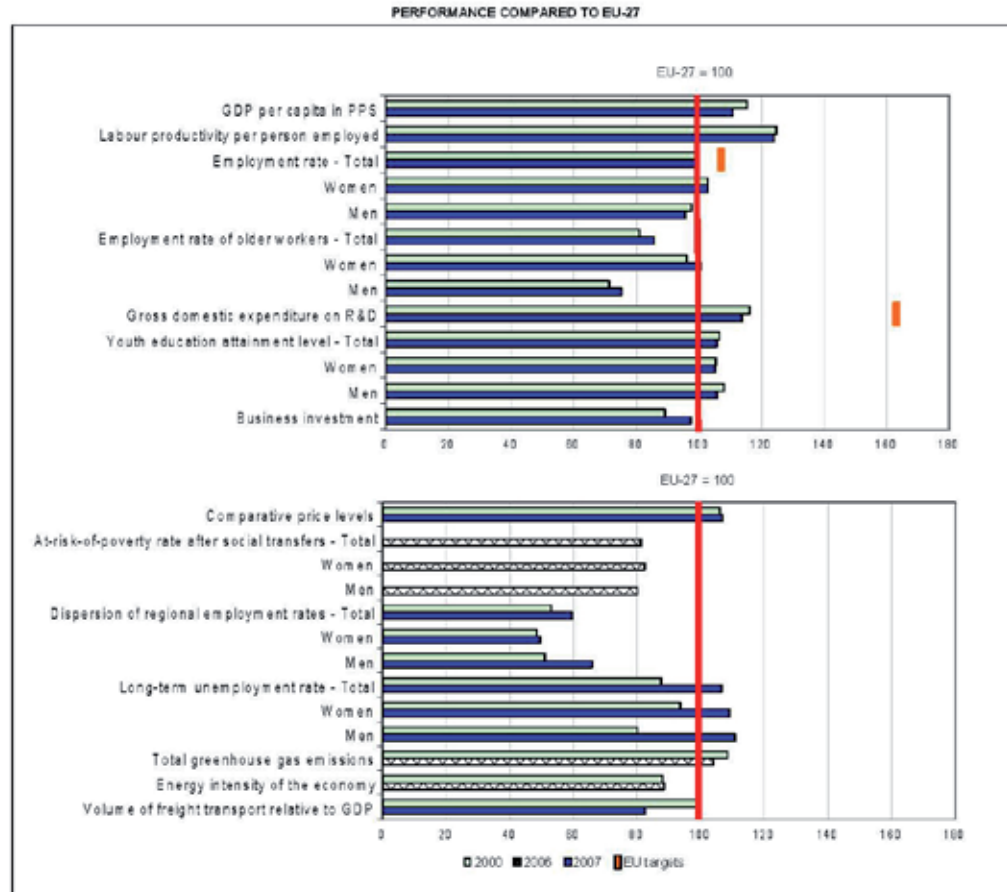
SOURCE: SCOREBOARD OF PUBLIC SPENDING IN THE EU AND ITS MEMBER STATES CENTRE D'ANALYSE STRATÉGIQUE.

Appendix 7 – The Lisbon Strategy: The 2009 EU Assessment of France

	FR							EU-27			
	2000	2004	2005		2006	2007	2010 NATIONAL TARGET	2000	2006	2007	2010 EU TARGET
GDP PER CAPITA IN PPS	115.3	110.1_B	112.0		111.4	110.9		100.0	100.0	100.0	70.0
LABOUR PRODUCTIVITY PER PERSON EMPLOYED	124.8	120.5_B	123.4		123.7	123.9					
EMPLOYMENT RATE	TOTAL	62.1	63.7	63.9	63.8	64.6		62.2	64.5	65.4	
	WOMEN	55.2	58.2	58.5	58.8	60.0		53.7	57.3	58.3	
	MEN	69.2	69.4	69.3	69.0	69.3		70.8	71.7	72.5	
EMPLOYMENT RATE	TOTAL	29.9	37.6	38.7	38.3	38.1		36.9	43.5	44.7	
	WOMEN	26.3	34.0	36.0	35.9	36.2		27.4	34.9	36.0	
	MEN	33.6	41.4	41.6	40.5	40.5		47.1	52.7	53.9	
GROSS DOMESTIC EXPENDITURE ON R&D		2.15_B	2.15_B	2.1	2.1_P	2.08_P	3.0	1.85_E	1.84_E	1.83_E	3.0
		81.6	81.7	83.4	83.2	82.4		76.6	77.9	78.1	
YOUTH EDUCATION ATTAINMENT LEVEL	TOTAL	83.5	83.3	85.4	85.0	85.0		79.3	80.8	80.8	
	WOMEN	79.6	80.1	81.3	81.4	79.8		73.8	75.0	75.5	
COMPARATIVE PRICE LEVELS		105.9	109.9_B	107.4	107.3	106.7		100	100	100	
BUSINESS INVESTMENT		16.4	16.2	16.7	17.6	18.2		18.4	18.2	18.7	

AT-RISK-OF-POVERTY RATE AFTER SOCIAL TRANSFERS	TOTAL	16	13 ^B	13	13			16 ^E		
	WOMEN	16	14 ^B	14	14			17 ^E		
	MEN	15	13 ^B	12	12			15 ^E		
DISPERSION OF REGIONAL EMPLOYMENT RATES	TOTAL	6.9	7.1	7.2	7.4	6.6		13.0	11.4	11.1
	WOMEN	9.7	9.0	9.3	8.9	7.8		20.0	16.1	15.8
	MEN	4.9	5.8	5.8	6.4	5.8		9.6	9.4	8.8
LONG-TERM EMPLOYMENT RATE	TOTAL	3.5	3.8	3.8	3.9	3.3		4.0	3.7	3.1
	WOMEN	4.3	4.2	4.3	4.2	3.6		4.6	4.0	3.3
	MEN	2.8	3.4	3.3	3.6	3.1		3.5	3.5	2.8
TOTAL GREENHOUSE GAS EMISSION		98.5	97.9	98.4	96.0			90.9	92.3	
ENERGY INTENSITY OF THE ECONOMY		188.2	187.40	184.88	179.06			213.9	202.45	
VOLUME OF FREIGHT TRANSPORT RELATIVE TO GDP		100.0	92.8	87.4	87.8 ^E	88.4 ^E		100.0	107.5 ^E	107.1 ^E

Performance Compared to EU-27



Appendix 8

INTEGRATED GUIDELINES FOR GROWTH AND JOBS (2008-2010)

MACROECONOMIC GUIDELINES

- (1) TO SECURE ECONOMIC STABILITY FOR SUSTAINABLE GROWTH.
- (2) TO SAFEGUARD ECONOMIC AND FINANCIAL SUSTAINABILITY AS A BASIS FOR INCREASED EMPLOYMENT.
- (3) TO PROMOTE A GROWTH AND EMPLOYMENT ORIENTATED EFFICIENT ALLOCATION OF RESOURCES.
- (4) TO ENSURE THAT WAGE DEVELOPMENTS CONTRIBUTE TO MACROECONOMIC STABILITY AND GROWTH.
- (5) TO PROMOTE GREATER COHERENCE BETWEEN MACROECONOMIC, STRUCTURAL AND EMPLOYMENT POLICIES.
- (6) TO CONTRIBUTE TO A DYNAMIC AND WELL-FUNCTIONING EMU.

MICROECONOMIC GUIDELINES

- (7) TO INCREASE AND IMPROVE INVESTMENT IN R&D, IN PARTICULAR BY PRIVATE BUSINESS.
- (8) TO FACILITATE ALL FORMS OF INNOVATION.
- (9) TO FACILITATE THE SPREAD AND EFFECTIVE USE OF ICT AND BUILD A FULLY INCLUSIVE INFORMATION SOCIETY.
- (10) TO STRENGTHEN THE COMPETITIVE ADVANTAGES OF ITS INDUSTRIAL BASE.
- (11) TO ENCOURAGE THE SUSTAINABLE USE OF RESOURCES AND STRENGTHEN THE SYNERGIES BETWEEN ENVIRONMENTAL PROTECTION AND GROWTH.
- (12) TO EXTEND AND DEEPEN THE INTERNAL MARKET.
- (13) TO ENSURE OPEN AND COMPETITIVE MARKETS INSIDE AND OUTSIDE EUROPE AND TO REAP THE BENEFITS OF GLOBALIZATION.

- (14) TO CREATE A MORE COMPETITIVE BUSINESS ENVIRONMENT AND ENCOURAGE PRIVATE INITIATIVE THROUGH BETTER REGULATION.
- (15) TO PROMOTE A MORE ENTREPRENEURIAL CULTURE AND CREATE A SUPPORTIVE ENVIRONMENT FOR SMES.
- (16) TO EXPAND, IMPROVE AND LINK UP EUROPEAN INFRASTRUCTURE AND COMPLETE PRIORITY CROSS-BORDER PROJECTS.

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