Completing the New Approach through a European Product Safety Policy[+]

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Introduction

Central to all the analysis in the foregoing chapters was the question of how the connections between the Community's efforts to establish a common market, with their inevitable influence on product safety law, would affect integration. So far, the answers to this question have been anything but encouraging. Although "traditional" harmonization policy has succeeded, at any rate in individual sectors, in exploiting the interests of Member States in the free movement of goods to create uniform safety criteria, the legislative tasks involved in continuing with such a policy exceed the legislative capacity of the Community, if only on account of their scale and the need to bring European rules into line with technical progress.[1] This realization explains the move towards a legal approximation policy that relieves the burden on Community legislators and delegates technical questions relating to safety law to the standards organizations. However, analysis of the "new approach to technical harmonization and standards"[2] has shown that a retreat by Community legislators to fixing just "essential safety requirements" involves considerable difficulties. It is above all safety policy considerations that have led to ambivalent and unclear points in the program of the model Directive,[3] putting at risk the realization of its internal market objectives.[4] Thus, the theme of the following arguments should already be apparent: if the Community is forced to deal with the effects of its new harmonization policy on product safety law in the Member States, it has to supplement the new approach. For the moment, however, this statement describes merely a need for action, without defining the objectives and instruments with which the Community can counter the danger of internal-market policy being frustrated by product safety policy.

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[1] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 2.7. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[2] OJ C 136, 4 June 1985, p. 1. See further *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[3] *Cf.* in particular *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[4] *Cf. Joerges, C./Micklitz, H.*, The need to supplement the new approach to technical harmonization and standards by a coherent European product safety policy, Hanse Law Review (HanseLR) 2010, 351, 3.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art06.pdf.

I. Product safety policy and product safety law in Member States

The need for coordination of internal-market and product safety policy is ultimately the consequence of safety matters being taken up in the respective legislations of the Member States. The General Program of 28 May 1969 for eliminating technical barriers to trade regarding the movement of goods[5] was an early response to the "discovery" that the achievement of a common market is hindered not only by tariffs and quantitative restrictions but also by differences in laws and administrative provisions in the Member States - not covered by the prohibition of Article 30 of the EEC Treaty. The differential application and limitation of the program as a result of the provisions for optional harmonization and the introduction of safeguard clauses were also concessions to the safety policy interests of Member States.[6] A further aim of these instruments, together with the introduction of the regulative and administrative committee procedure under Article 155, fourth indent,[7] was to relieve the burden on the Community's legislative process. The new harmonization policy, which confines itself to setting essential safety requirements, represents a continuation of these efforts. The reasoning behind the model Directive does not, however, call into question in principle the legitimacy of government provisions for product safety,[8] but rather presupposes that the new harmonization policy should be compatible with the safety interests of Member States.

1. Convergences

The comparative survey of the law in the economically most important Member States of the Community and the USA reveals an astonishing convergence of regulatory approaches, which will contribute towards acceptance of the new harmonization policy. An essentially positive attitude was to be expected from the Federal Republic of Germany, because cooperation between government bodies and self-governing industrial organizations in the field of technical safety law has been part of German legal tradition since the 19th century,[9] and because the Federal Republic also played a major part in implementing the "model" for the model Directive, i.e. the low-voltage Directive of 1973.[10] However, for the United Kingdom and France, the adoption of a regulatory system for product safety law based on the method of reference to standards is anything but obvious. With the CPA 1961, safety legislation in the United Kingdom opted for a government-administered approach to

[5] OJ C 76, 17 June 1969, p.1; cf. *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[6] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 2.3. and 2.5. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[7] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 2.6. and 2.7. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[8] *Cf.* the principles in part A of the outline directive (fn. 2).

[9] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[10] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

regulation. This approach was already modified by the 1978 Consumer Safety Act.[11] But it was not until 1984 that the White Paper "The safety of goods"[12] made the first move toward a rapprochement with German law, with its proposal for a general product safety obligation to be defined with reference to "sound modern standards of safety". This convergence is even more obvious in the efforts to strengthen the British standards organizations and ensure their formal recognition by government.[13] In France the development is less clear, if only because standardization is closely linked, legally speaking as well, with the government administration and because product standardization and the protection of safety interests are regarded as two separate government functions.[14] Furthermore, the Consumer Safety Law of 21 July 1983[15] and its new instruments are as yet virtually untested in practice[16]. The argument that developments in France are moving towards the legislative approach of the model Directive thus rests on the assumption that in France too the preventive protection of safety interests is increasingly being approached through cooperation between government administration and AFNOR, whereby the administrative controls provided for in the 1983 Consumer Safety Law are not being fully exploited to regulate the development of safety law. The Commission can be confident that this convergence of developments in the economically most important Member States will influence the Community as a whole, and it can point to the fact that important non-member countries are also increasingly favouring the use of voluntary standards in their product safety policies.[17]

2. Divergences

However, the trend towards encouraging voluntary standards does not in itself guarantee the smooth harmonization of their function as regard safety policy. The stable cooperation between government and standards organizations in Germany, which has led to the wide acceptance of the reference method as a means of safety regulation, is the outcome of a long historical process. This process cannot simply be copied, and the role of government administration in cooperation with standards organizations will continue to vary from country to country.[18] In particular, the concrete results of standardization will in all

[11] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 2.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[12] Cmnd. 9302, HMSO, London, July 1984.
[13] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 2.4 and 2.6.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[14] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 1.1, 1.4 and 1.7. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[15] JO 115 No. 168, 2261, 22 July 1983.
[16] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 1.2. - 1.5. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[17] *Cf.* e.g. the USA, *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf, and the OECD Report "Development and Implementation of Product Safety Measures", Paris 1986 (as yet unpublished), *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[18] The example of the shift from compulsory to voluntary standards as the primary means of regulation in the USA is instructive; the functions of the Consumer Product Safety Commission in monitoring or participating in standardization projects appear to extend considerably beyond the influence exerted by government on the DIN

probability differ. Before the House of Lords Select Committee on European Community consumer policy, the BSI representative emphasized that, particularly where safety standards were concerned, differing national conditions played a considerable role and, moreover, there were substantial differences in the standard of safety within the Community.[19]

In addition, there are significant differences in national standardization procedures, particularly with regard to the participation of consumer organizations,[20] the coverage of standards work and the actual use of standards in industrial production. Finally, it remains to be seen whether the national standards organizations can develop a common "safety philosophy", and what effect differences in their general attitude to safety policy will have, for example in their assessment of the functions of accident information systems.[21] It goes without saying that all these difficulties in ensuring an equal standard of safety in the Community are compounded when the countries "below the olive line"[22] and their industrial and administrative infrastructures are taken into account.[23] Accordingly, the importance of the parallels between the traditions of German technical safety law and the strengthening of the standards organizations in the United Kingdom and France should not be exaggerated. The convergences observed are – like the Community's new harmonization policy – essentially motivated by industrial policy. The linking of standardization and safety policy could once again be called into question in changed political circumstances.

It would be hazardous to assume that the German approach to product safety will automatically provide a model for others, if only because product safety issues repeatedly attract public attention in all Member States in cycles that are difficult to predict, and then prompt widely differing reactions.[24] Individual Member States are therefore always likely to resort to special measures to counter certain product risks, to question the appropriateness of the reference method as far as safety law is concerned (or at least to wish to strengthen their control over private standards organizations) and to augment their range

institute (cf. above *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf).

[19] House of Lords, Select Committee on the European Communities, Consumer Policy (Session 1985-85, 15th Report, HL 192), London 1986, p. 158 et seq.

[20] On the position in France see *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 1.7.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf; on the UK *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 2.2.1., 2.3.2. and 2.6.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf; for the German Law, see *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.4.5. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[21] The decidedly positive attitude of the BSI to the HASS System (loc. cit., fn. 19, p. 160) corresponds to the recognition accorded to NEISS in the USA (see above, *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.4.2., fn. 125. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf). DIN evidently thinks differently.

[22] This formulation was used by a representative of the UK National Consumer Council, loc. cit. (fn. 19), p. 60; all interest groups are agreed on this point (cf. for the assessment of the BSI, loc. cit., p. 159).

[23] It is doubtful whether experience with the low-voltage directive will permit opposite conclusions to be drawn because (a) international standardization is particularly well developed in the field of electrical engineering and (b) there are no empirical surveys of the standard of safety even in the electrical appliances sector (for an anecdotal example of the differences between Italy and the United Kingdom, cf. the hearings of the Select Committee, loc. cit., fn. 19, p. 96 et seq.)

[24] *Cf.* Joerges, C., Product Safety, Product Safety Policy and Product Safety Law, Hanse Law Review (HanseLR) 2010, 117, before 1 and 4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

of instruments for product safety policy. Finally, the different situations of "manufacturing" and "importing" countries should also be recalled.[25] Since "importing countries" have no influence on the fixing of national standards and can be bypassed at European level as regards both standardization and the recognition procedure,[26] and as they need to weigh up only price effects and safety interests when deciding on the level of product safety, they would not necessarily be committed to either the forms or the result of the new regulatory method.[27]

Consequently, the Community must assume that product safety policy will remain a critical issue within Member States, that the search for appropriate regulatory instruments will continue and that not the issue of legal protection as such, but at most the forms this will take, will be subject to political negotiation. If this diagnosis is correct, there is no real alternative for the Community either but to carry on with *both* elements of its integration policy – internal-market policy *and* product safety policy.

II. Integration policy options

The finding that the integrative force of the new regulatory system in the model Directive will hardly suffice to overcome impediments to the free movement of goods due to differing product safety requirements simply means that the Community has to exert even stronger influence on legal controversies as to the content and form of product safety law than it has already done with its new approach to technical harmonization and standards.

However, this still leaves open the form to be taken by such influence: the Community can either seek to reduce national powers of intervention, or extend its attempts to move towards a "positive" integration of product safety policy.

1. Internal market policy as a deregulation strategy

The results of the Community's endeavours to implement its consumer policy programmes have been modest.[28] This suggests that a Community strategy for the "deregulation" of product safety law in the Member States will have more chance of success than a fresh attempt at "positive" integration. The new harmonization policy has hence been interpreted as heralding such a deregulation strategy.

Probably the most prominent advocate of such an interpretation, or at any rate the most forceful, is the Wissenschaftlicher Beirat (Scientific Advisory Council) of the German Federal Ministry of Economic Affairs.[29] It bases its interpretation of the New Approach on

[25] *Cf.* the remarks on the attitude of Canada in the OECD report cited in fn. 17.

[26] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.3-3.6. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[27] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 1.2.1, fn. 19 et seq. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[28] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[29] Stellungnahme zum Weißbuch der EG-Kommission über den Binnenmarkt, Bonn 1986; see also *Joerges*, 1988, III 3 a.

the statement contained in the Cassis de Dijon judgment,[30] and taken up by the Commission in its communication of 3 October 1980,[31] to the effect that any product lawfully produced and marketed in one Member State must be admitted to the market of any other Member State.[32] In the view of the Beirat, the mutual recognition of safety standards is the consequence of this principle, so the harmonization of safety requirements is not necessary for the establishment of the internal market except in exceptional cases.[33] However, the Beirat bases its thesis not only on the text of the Commission's White Paper but also on independent arguments relating to the competition-policy and regulative functions of the principle of the free movement of goods: in principle (it argues) it is up to the European consumer (not the individual Member State) to decide the standard of quality and safety of products. Therefore it concludes that where governments cannot agree on the harmonization of product standards, competition between products manufactured to different standards is reasonable and, in the long term, the price-performance ratio (or range of products) that best meets consumer demand will prevail.[34]

However, this is not a valid interpretation of the Commission's White Paper or the case law of the European Court of Justice. The statement quoted by the Beirat from the White Paper is based, as is apparent from the context, on the – albeit problematical[35] – assumption that provisions in Member States governing safety are generally equivalent; neither in its Cassis decision nor in any subsequent judgments has the European Court suspended safety requirements in the Member States pursuant to Article 30 of the EEC Treaty regarding imports;[36] an obligation as to "mutual recognition" of safety measures taken by the Member States presupposes the harmonization of the preconditions for recognition.[37]

The position of the Beirat is, however, questionable not just in exegetic and legal terms but also – and especially – in terms of legal policy and integration policy. The first point at issue is the initial normative premise that the decision as to the standard of protection provided by product regulations is in principle to be left to the end-user, whose protection is to be ensured primarily by means of information, obligatory labelling and "strict producer liability".[38] The Beirat does not attempt to justify its regulatory principles vis-à-vis alternative views of product safety policy. If it had done so, it would have become clear first of all that influencing of the safety practice of consumers "in line with market principles" – the only approach envisaged by the Beirat – and obligatory or semi-

[30] Case 120/78, Judgment of 20 February 1979, ECR [1979] 649, (§ 14).
[31] OJ C 256, 3 October 1980, p. 2.
[32] Loc. cit. (fn. 29), § 3.
[33] Loc. cit., §§ 4 and 3.
[34] Loc. cit., § 4.
[35] "Completing the internal market", White Paper from the Commission to the European Council, COM (85) 310, 14 June 1985, § 58: if safety regulations share the same objectives but differ in the means employed, this may well lead to real differences in the standard of safety.
[36] *Cf.* above *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 1.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.
[37] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 1.1., fn. 11. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf, *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.3.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.
[38] Loc. cit. (fn. 29), § 4.

governmental product regulation, which are the main targets of the removal of technical barriers to trade, have widely differing objectives and cannot simply be subsumed together as functionally equivalent measures.[39] The distinction between "market", "interventionist" and "self-regulating" regulatory instruments also shows that the standpoint of the Beirat on integration policy has no normative justification and is scarcely feasible in positive terms.

The demand that the Community should at all times enforce the principle of the free movement of goods and promote "intra-Community competition between standards", even where harmonization of product regulations cannot be achieved, in fact means that enterprises in the "safety countries" will be forced to accept cost disadvantages in competition with enterprises in "risk countries".[40] The disadvantaged enterprises may respond to these distortions of competition by exerting political pressure to ease domestic safety regulations or shifting their production to "risk countries" – whatever happens, the "safety countries" would be under pressure to adopt a deregulation policy. Such consequences pose a threat to regulatory measures that are justified in themselves, and are unacceptable, amongst other things because they remove the decision for or against safety regulations from the political decision-making process and place it at the mercy of the strategic calculations of individual countries and enterprises.

The views of the Beirat on integration policy moreover ignore an option that suggests itself, at any rate as a "normative" approach, particularly where there are differences in product regulation, an opinion that is furthermore constantly emphasized in the economic theory of federalism:[41] the performance or coordination of regulatory functions at European level may secure administrative cost benefits and also be "beneficial" where the positive "external effects" of a government measure cannot be confined to a single area of jurisdiction.

However, an integration policy strategy that uses the principle of the free movement of goods as an instrument to deregulate product safety law in the Member States would be not only dubious as a "normative" approach but also scarcely feasible in positive terms. Any lowering of the standard of product safety does not *a priori* meet a genuine interest of "the" European economy.

On the contrary, enterprises in Member States with high standards may even secure competitive advantages from a general raising of the standard of safety. Furthermore, in view of the political sensitivity of safety issues, the Member States cannot call into question their own product regulations just like that. The history of the Single European Act[42] and also the discussion to date on the New Approach point in the same direction. It was not the "risk countries" which insisted on the proviso of Article 100 (a) (4),[43] nor does agreement

[39] *Cf. Joerges, C.*, Product Safety, Product Safety Policy and Product Safety Law, Hanse Law Review (HanseLR) 2010, 117, 3 for details. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[40] For terminology cf. *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 1.2.1, fn. 20. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[41] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 1.2.1, fn. 14. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[42] EC Bull., Annex 2/86.

[43] *Cf.* analysis by H.J. Glaesner, L'acte unique européen, Revue du Marché Commun 1986, p. 307 et seq., p. 313 et seq.

to the "reference method" of the New Approach indicate that the "safety countries" are prepared to accept a reduction in the level of safety provided by their standards.[44]

2. Positive integration as an alternative

The "traditional" alternative to the deregulation of safety law in Member States has been the sectoral (vertical) harmonization of their product regulations. This policy has failed because it both overtaxes the legislative capacity of the Community[45] and blocks the emergence of a coherent European safety policy.[46] However, the acceptance of these objections to the traditional policy of legal approximation itself raises the question of whether the New Approach in its present form does in fact inaugurate a new epoch in market integration. This skepticism ultimately derives from the fact that the new harmonization policy does not eliminate all the causes of the difficulties in reaching agreement at European level, but simply adopts a new procedure for tackling them: for example, the economic conflicts of interest between Member States remain in spite of the delegation of technical harmonization to the standards organizations.

Although the involvement of technical experts and the majority-voting rules of the standards organizations may make it easier to reach decisions, the Member States can assert their interest when deciding on the implementation of individual directives, defining safety objectives and, in particular, making subsequent use of the safeguard procedures – experience with the low-voltage Directive also shows that provisions for follow-up control are in fact exploited as preventive measures.[47]

In addition, in view of the vagueness and non-binding nature of the provisions of the model irective concerning safety law,[48] there are likely to be great problems identifying and preventing self-interested policies motivated by protectionism in negotiations on the implementation of new directives. In addition to economic conflicts of interest, political conflicts in the area of product safety policy continue to be disruptive factors. Because of its one-sided bias towards the free movement of goods and its neglect of the safety policy dimension of the integration process, the new standardization policy will not be able to prevent Member States from continuing to develop instruments for product safety law independently and applying them in different ways.[49]

[44] *Cf.* opinion of the BSI in the hearings of the Select Committee, loc. cit. (fn. 19), p. 146 et seq., p. 157 et seq.

[45] For details *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 2.7. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[46] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 1.2.1, 2.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[47] *Cf.* above *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 2.3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[48] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[49] *Cf.* in particular *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

III. Towards augmenting the New Approach in terms of safety law

Internal-market policy and consumer policy are handled by different Directorates-General; the original programmes in both policy areas have developed independently in terms of both content and timing.
This applies to the General Programme of 1969 for eliminating technical barriers to trade and the New Approach of 1985, and likewise to the consumer policy programmes of 1975 and 1981. The safety issue links both areas, but in terms of internal-market policy it has been seen primarily as a "barrier to trade", while in the context of consumer policy it has been proclaimed as a goal in itself, as the "right to the protection of health and safety". The Commission document "A new impetus for consumer protection policy"[50] is the clearest expression so far of the endeavour to overcome the separation of internal-market policy and consumer policy. The perspectives set out in this document accord with the results of our analyses: because the new harmonization policy would not be viable as a mere deregulation strategy, because a return to "traditional" legal approximation policy is ruled out, the Community does indeed require a "comprehensive product safety policy".[51] Coordination of internal-market and consumer policies does not necessarily mean that their specific priorities will be ignored, yet it can improve the chances of success for both areas. With internal-market policy, the aim is to counter any threat posed to the free movement of goods by divergent product safety policies in the Member States; consumer policy can take up this interest and hence at the same time meet the objections to the legitimacy of the Europeanization of product safety law.

1. Coordination mechanisms

The coordination of internal market and product safety policies requires both internal synchronization within the Commission and ongoing cooperation with the Member States. The analysis of the effects of the New Approach on product safety law has already produced concrete proposals for internal coordination at Community level. The main tasks are the development of safety objectives and the preparation of corresponding standards. With its "demonstration project" for accident information system,[52] the Community has an instrument at its disposal for recording and analysing product hazards. All countries that have set up similar systems make use of the results for their product safety policies and for standardization,[53] and the Community's demonstration project also has these objectives.[54]

[50] Communication from the Commission to the Council, 23 July 1985, COM (85) 314 final, in particular § 19 et seq.; see also the Communication from the Commission to the Council on "The integration of consumer policy in the other common policies", 24 October 1986, COM (86) 540 final, § 6 et seq.
[51] COM (85) 314 final, § 19.
[52] OJ L 109, 26 April 1986, p. 23; cf. *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf and V, 2.
[53] For the USA cf. *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.2. and 4.4.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf, for the United Kingdom cf. *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 2.5. and 2.8.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf, for the Netherlands, cf. *Rogmans, W.H.J.*, Surveillance of Home and Leisure Accidents in the Netherlands, in: European Symposium on Product Safety in the European Community, Amsterdam 1985, 73 et seq.
[54] Loc. cit. (fn. 52), Article 1 (2).

Although it can hardly be expected that new harmonization efforts will be oriented solely towards safety policy priorities dictated by the accident information system, the findings of the latter should be taken into account in decisions on the recognition of standards and attestation of conformity, in safeguard procedures and in the preparation of European standards. Conversely, the accident information system can help to settle doubts and controversies concerning the administration of the new standardization policy, by concentrating resources for in-depth studies of accident risks on those areas in which Community decisions are pending and standardization work has started.

Also worth recalling is the possibility of underpinning harmonization policy by means of a systematic evaluation of product liability procedures in Member States.[55]

With regard to the Member States, the task is to monitor implementation of the reference method, while taking safety policy requirements into account and endeavouring to ensure that safety law develops along lines compatible with the freedom of movement of goods. The information Directive of 28 March 1983[56] already ensures that the Commission is provided with extensive information on relevant plans in Member States. However, the chances of exerting influence via the "standstill" arrangements in Articles 7 and 9 are limited and do not cover urgent measures motivated by safety policy (Article 9 (3)).[57] As the new harmonization policy is implemented, the information available to the Community will improve, given the recognition and safeguard procedures and as a result of cooperation with certification bodies in Member States. On the other hand, the concomitant decision-making tasks will become more complicated. These tasks can be approached only through a long-term process of exerting influence to coordinate national developments.[58]

The solution that suggests itself is to establish a *Standing Committee on product safety law* for these tasks, to ensure the ongoing involvement of national bodies responsible for product safety in the Community policy-making process, covering the entire activities of the Community in the field of product safety policy – following the example of the Standing Committee set up under the 1983 information Directive. This Committee could also contribute to the internal synchronization referred to above between internal-market policy and product safety policy, and coordinate the work of bodies charged by the Community with specific tasks in the field of product safety policy.[59] These tasks are described in more detail below. The decisive point is that Member States be represented on the proposed new committee by representatives and experts responsible nationally for the administration of product safety law. This would lead to the following general division of functions:

[55] *Cf. Joerges, C./Micklitz, H.*, The need to supplement the new approach to technical harmonization and standards by a coherent European product safety policy, Hanse Law Review (HanseLR) 2010, 351, 5. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art06.pdf.

[56] OJ L 109, 26 April 1983, p. 8.

[57] For the functioning of the information directive, see *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[58] *Cf. Joerges, C./Micklitz, H.*, The need to supplement the new approach to technical harmonization and standards by a coherent European product safety policy, Hanse Law Review (HanseLR) 2010, 351, 4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art06.pdf.

[59] *Cf.* 3.4.4.1 below for details.

Table 1: Division of functions between the Standing Committee on Technical Standards and Regulations and a Standing Committee on product safety.

Standing Committee on technical standards and regulations (information Directive of 1983 and outline Directive of 1985)	***Standing Committee on product safety (future product safety directive)***
Cooperation with Member States	Long-term coordination of product safety policy in Member States
Participation in decision-making by the Commission	Participation in decision-making
Legal status: regulatory and/or administrative committee[60]	Legal status: advisory committee[61]

Cooperation between the two Standing Committees should be provided for in a future product safety Directive, with the details to be regulated by their rules of procedure.

2. Standardization procedures and consumer participation

A method of regulation such as reference to standards cannot be introduced in isolation. It requires adaptation on the part of the institutions concerned and furthermore a framework to meet objections to the legitimacy of this form of regulation. This has already become apparent from the need to ensure equivalence in the working of national certification bodies by means of Community rules.[62] However, this also applies to the legislative conditions required for the reference method itself. Significantly, the convergence in standardization policies in the Federal Republic of Germany, the United Kingdom, France and at Community level already extends to standardization procedures. In these Member States, government influence on standardization has been secured by agreements with the standards organizations, while consumer organizations have been given the opportunity to participate in the preparation of safety standards for consumer goods.[63]
The Guidelines agreed between the Commission and CEN/CENELEC on 13 November 1984 are analogous arrangements. The main principles of Community standardization policy are thus: government influence on standardization projects, consumer participation and legal control of standardization results. All these principles still need to be worked out in detail and established as binding rules.

[60] For reasons, cf. *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.6 and 5.3 above. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.
[61] *Cf.* also 3.4.4.1 below.
[62] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.3.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf
[63] See refs. in fn. 20, and for the legal justification *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 5.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

a. Rights of participation

Particularly urgent with regard to enhancing the status of European standardization[64] is clarification of the role of consumer participation.[65] The Community's standardization policy takes a long-term approach. Under Article 6 of the information Directive of 28 March 1983,[66] the Commission consults with the Standing Committee on technical standards and regulations on the working of the Directive and on standardization priorities. In accordance with Article 6 (7) of the Directive, these discussions are confidential. However, this does not rule out consultation of experts, and the General Guidelines of 13 November 1984 for cooperation between the Commission and CEN/CENELEC[67] indicate that participation by the European standardization organizations is desirable at this early stage. Such early cooperation is useful in order to ensure mutual coordination of working programs. The same applies to consumer participation, given that the establishment of priorities requires a trade-off between internal-market and safety policy interests. Consumer participation is particularly essential where the granting of standardization mandates is concerned. In accordance with Annex II of the Council Decision of 7 May 1985,[68] these mandates are intended to ensure the "quality of harmonized standards". They thus interpret and work out in detail the safety objectives of new directives and hence form an integral part of standardization work, in which consumer participation is provided for by Section B (V) (4) of the model directive. However, the main work involved in preparing safety standards will be carried out by the technical committees of CEN/CENELEC. The most important part of consumer participation is hence sitting on these committees.

One of the functions of consumer involvement is to represent safety interests independently of the interests of enterprises, as the parties directly addressed by standards. The performance of this function requires not only participation in standardization work but also access to information relevant to safety policy. The main source of information – the data from the demonstration project on accident information systems – is not public, pursuant to Article 7 (1) of the Council Decision of 22 April 1986.[69] The exchange of information on hazards arising from the use of consumer goods is also confined by the Council Decision of 2 March 1984 to communication between competent authorities.[70] These restrictions are not compatible with the requirements of meaningful consumer participation.

[64] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.5. and 5. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf

[65] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 6. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[66] OJ L 109, 26 April 1983, p. 8.

[67] Reprinted in DIN-Mitteilungen 64 (1985), p. 48.

[68] OJ C 136, 4 June 1985, p. 3; it should now be added that Article 1 (1) of the Commission's proposal for amending the information directive explicitly provides for involvement of the Standing Committee in preparing standardization mandates (OJ C 71, 19 March 1987, 12; see also *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.1, fn. 144 and 3.6, fn 240. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf).

[69] Fn. 52 above; in contrast, Article 7 of the Commission proposal for a Community accident information system (COM (84) 735, 7 January 1985) provided for a publicly accessible documentation and information centre.

[70] OJ L 70, 13 March 1984, p. 16.

b. Organizational structures

Consumer participation at all stages of standardization work stems from the realization that informed involvement requires continuous collaboration throughout the standardization process. Also essential for informed participation, however, is the establishment of suitable infrastructures. To this end, a forum should first of all be created for European consumers – a Consumers' Consultative Committee on Standardization. The task of this committee would be to ensure that consumers have a say in negotiating standardization mandates in the Standing Committee and to organize the input from the consumer side to CEN/CENELEC. This dual function requires political and technical expertise. In addition to the four member organizations of the Consumers' Consultative Committee (CCC), competent experts from national consumer testing institutes and scientific research establishments therefore need to be involved. The running of the Consumers' Consultative Committee on Standardization should be in the hands of a secretariat, as heretofore. The exact division of tasks between the Committee and the secretariat would need to be set out in rules of procedure. It would be advisable to leave the secretariat in the hands of the BEUC (Bureau Européen des Unions des Consommateurs), as it already has a well-established network of information and contacts with national member organizations. The only legal basis required is for the existence of such a committee, its composition and the establishment of a secretariat.
This means that the scheme outlined above needs to be extended as follows:

Table 2: Involvement of private parties in the Standing Committees on Technical Standards and Regulations and on Product Safety

Commission:	Standing Committee on Technical Standards	Standing Committee on Product Safety and Regulations
Private parties:	CEN/CENELEC	Consumers' Consultative Committee

The General Guidelines of 13 November 1984 provide in principle for access by such a Consumers' Consultative Committee on Standardization to the work of CEN/CENELEC. The revision of CEN/CENELEC rules of procedure to this end could take national models as examples. The rules of procedure of the Standing Committee on Technical Standards and Regulations should provide opportunities for participation.

3. General product safety obligation

The coordination of product safety law in Member States and the elimination of resistance motivated by safety policy considerations to implementation of the new harmonization policy are aims that do not necessarily require the establishment of detailed safety requirements – they are more likely to succeed through a broader form of influence on product safety law in Community Member States. A step in this direction – and one that can be put into effect immediately – has already been announced as part of the "New Impetus" for consumer policy: the introduction of a general product safety obligation.[71] A

[71] Loc. cit. (fn. 50), § 23. More recently, see in detail the Commission Communication on safety of consumers in relation to consumer products, 8 May 1987, COM (87) 209 final.

product safety obligation laid down in Community law would have limited but varied functions. Initially, it would contribute towards the cohesion of product safety and standardization policy by establishing a universally binding fundamental principle.

The model directive, which implicitly presupposes a general product safety policy, is unable to perform this function, if only because it is formulated too vaguely and is not even legally binding.[72] By imposing a general product safety obligation, the Community would secure the harmonization of existing product safety laws and planned legislation in Member States. However, such an obligation would in particular have an immediate practical impact in all those countries that do not yet have general product safety laws. In such cases, it would provide the competent authorities with grounds for intervention and hence promote adherence to directives and standards. At the same time, it would encourage standards organizations to step up work on safety standards.

Product safety obligations in the various national legislations differ in the way they are formulated. The German Appliances Safety Law (Gerätesicherheitsgesetz) refers to "generally recognized rules of the art" (allgemein anerkannte Regeln der Technik) and provides protection in the case of "proper use" (bestimmungsgemäße Verwendung) – although the basic standards DIN 820, Part 12 and DIN 31.000/VDE 1000 call for "foreseeable misuse" (voraussehbares Fehlverhalten)[73] to be taken into account. Article 1 of the French Consumer Safety Law[74] refers to "normal" use (condition normale) or use that can be reasonably foreseen by the manufacturer (condition raisonnablement prévisible), and "legitimate" consumer expectations. The US Consumer Product Safety Act uses the expressions "unreasonable risk of injury" (for product bans under § 8 CPSA) and "substantial risk of injury" (for recall procedures pursuant to § 15 CPSA), requiring that foreseeable misuse be taken into account[75]. § 3 (1) of the British Consumer Protection Act 1987[76] follows the model of the product liability Directive ("There is a defect in a product... if the safety of the product is not such as persons generally are entitled to expect..."); but the description of the product safety requirement for the purposes of the criminal law in § 10 (2) says: "...consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances...". Article 14 (a) in the Dutch bill amending the "Warenwet" (Goods Law) aims to provide protection against hazards arising from reasonably foreseeable use (overeenkomstig redelijkerwijze te verwachten gebruik).[77]

[72] *Cf. Joerges, C./Micklitz, H.*, The need to supplement the new approach to technical harmonization and standards by a coherent European product safety policy, Hanse Law Review (HanseLR) 2010, 351, 1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art06.pdf.

[73] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.5. for details. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[74] J.O. No. 168, p. 2261, 22 July 1983; cf. *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 1.2.1. for details. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[75] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.3. and 4.5.1., for details. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[76] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 2.4.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[77] Tweede Kamer, vergaderjaar 1985-1986, 17495 Nr. 18; on legal developments relating to liability see, comprehensively, Snijders, 1987, 147 et seq. and 152 et seq. (specifically on the safety obligation in liability law).

A decision in favour of a European general clause is made easier by the fundamental consensus on safety policy, which is evident in spite of the wide variation among the examples mentioned, and by the limited functions of such a general clause. There is a consensus that safety criteria should not be defined unilaterally by the manufacturer.[78] This principle, which is common to all modern product safety laws and which is set out, as far as the Federal Republic of Germany is concerned, in the basic safety standards DIN 820, Part 12 and DIN 31.000/VDE 1000, precludes the adoption of the expression "proper use" (bestimmungsgemäßer Gebrauch) employed in § 3 of the German Appliances Safety Law.[79] The general clause is intended to anticipate standardization in individual sectors and help consolidate European legislation. It is also intended to provide for powers of intervention in those Member States that do not possess fully-fledged systems of national standards, and cover products for which there are no safety standards. It necessarily follows from the above that the general cause cannot refer to standards as such.

Finally, in view of the interest of the Community in a safety counterpart to the principle of the free movement of goods, the product safety obligation must extend explicitly to importers and dealers as well. No distinction should be made between importers and dealers in intra-Community trade, since the aim of the efforts to achieve the internal market is precisely to secure a common European standard of safety and mutual recognition of national control measures. On the other hand, the jurisdiction of the various administrations remains confined to their respective territories. The safety loopholes this entails can only be closed by extending the product safety obligation to cover the trade sector.[80]

Accordingly, the question remains as to which alternative to "proper use" should be incorporated in the general clause. Reliable pointers exist for this decision as well. Firstly, the general clause must be formulated so broadly as to cover the safety needs of all consumer groups, particularly children. Consequently, it should take account of "foreseeable misuse".[81] On the other hand, however, the criterion of foreseeable misuse cannot be assumed to apply to all products without taking their use and users into account. In particular, there is no question that, in addition to the definition of the responsibilities of manufacturers and users, a large number of additional factors are relevant for a normative assessment of risks: the usefulness of the product, the likelihood of harm being caused and the extent of potential hazards, the availability of suitable technical alternatives, and the cost of safety design requirements.[82] A formulation that provides for distinctions to be made and for all factors relevant for assessing safety to be taken into account is contained

[78] *Cf. Joerges, C.*, Product Safety, Product Safety Policy and Product Safety Law, Hanse Law Review (HanseLR) 2010, 117, 2.1 for details. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[79] *Cf.* for the restricted meaning of § 3 of the Gerätesicherheitsgesetz (GSG), *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[80] This conclusion is anyway in line with the development of product safety and liability law; cf. for the unsatisfactory response by German law, *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.3.2 and 3.3.7 end. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[81] *Cf.* Article 2 of the old proposal for a Directive on toy safety, OJ C 203, 29 July 1983, p. 1; the new draft directive (OJ C 282, 8 November 1986, 4) has changed the formulation but the content remains the same (cf. *Joerges, C./Micklitz, H.*, The need to supplement the new approach to technical harmonization and standards by a coherent European product safety policy, Hanse Law Review (HanseLR) 2010, 351, 1, fn. 15. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art06.pdf).

[82] *Cf. Joerges, C.*, Product Safety, Product Safety Policy and Product Safety Law, Hanse Law Review (HanseLR) 2010, 117, 2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

in the product liability Directive,[83] which refers to "the safety which a person is entitled to expect". There are pragmatic considerations in favour of such a criterion. Parallel development of product liability law and safety law would help consolidate Community law, while the Member States should find it easier to agree on a previously accepted standard than to consent to a new formulation. The choice of this criterion is, moreover, in line with the development of the law in the Member States. It accords with French law and the Dutch "Warenwet" bill,[84] should be reconcilable with the likely application of the British Consumer Protection Act 1987,[85] and is *de facto* compatible with the legal situation in the Federal Republic of Germany.[86]

4. Follow-up market control

The main practical point of connection between the Community's internal-market policy and its product safety policy is follow-up market control. The attitude of the Community to this tool represents the acid test of the quality of its new legal approximation policy. The following considerations are intended as suggestions for Community framework regulations on follow-up market control. They first of all explain why in this area a bold harmonization policy that goes beyond mere approximation of existing legal provisions is necessary (3.4.1) and go on to develop proposals that build on the beginnings already present in Community directives or draft directives, as well as on relevant national provisions.

a. Integration policy functions

As far as national product safety policy is concerned, follow-up market control essentially involves penalizing breaches of product safety obligations, responding to newly identified risks and ensuring compensation for financial loss.[87]
All these aspects are also relevant to a European product safety policy. The introduction of a general product safety obligation would be practically meaningless if breaches were not punishable - the legal need for provision for follow-up action is incontrovertible in view of the inevitable gaps in preventive control measures, and any elimination of product risks must, in order to be fair, also ensure compensation for any damage or injury caused.
However, these general safety policy tasks of follow-up market control gain appreciably in importance in the context of the new harmonization policy. The declared aim of the New Approach is to improve the conditions for the marketability of products in the common market. This objective explains the provisions for the equivalence of European standards and national standards (where included in the standards list), the admissibility of attestations of conformity for "products for which the manufacturer has not applied any

[83] OJ L 210, 7 August 1985, p. 29 (Article 6); cf. *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3.5. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.
[84] Fn. 74 and 77.
[85] Though the Act has loosened the originally intended linkage between liability and safety law (see §§ 3, 10 of the bill, reprinted in PHI 1987, 18).
[86] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[87] *Cf. Joerges, C.*, Product Safety, Product Safety Policy and Product Safety Law, Hanse Law Review (HanseLR) 2010, 117, 3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

standard", and mutual recognition of attestations of conformity issued by national certification bodies[88]. However, these improvements to the conditions governing the marketability of products, which are motivated by competition and internal-market policy considerations, inevitably reinforce the legal need for surveillance of their conformity to safety standards. Here too - as with the product safety obligation - the territorially restricted application of administrative measures means that Member States can react to identified product hazards only within their own territories. Each Member State has therefore to take such action on its own account. In addition to these functions, which are primarily concerned with safety policy, follow-up market control also has genuine internal-market functions, which too have been taken into account in the model directive: easing the burden on the Community's legislative procedures with the new reference method has its price in terms of integration policy – it allows only the substantiation of market access rights on the basis of "presumption of conformity", while conceding to Member States the power to check the justification of such presumptions. The dangers that these Member States' powers pose to the unity of the internal market can be countered only after the event in the safeguard clause procedure. However, this corrective function requires equivalent standards for follow-up market control[89] if it is to be effective.

The new harmonization policy has thus produced a "regulatory gap" as far as follow-up market control is concerned. This term refers to the inadvertent creation of a need for positive intervention by a policy aimed at market integration.[90] Indeed, the Member States have neglected the development of follow-up market control as an instrument for product safety policy;[91] now they are under pressure from the "anti-interventionist" principle of the free movement of goods and the "anti-interventionist" reference method to introduce positive regulation. This consequence appears paradoxical only at first sight. It is in line with the logic of an integration policy that does not permit the achievements of a single internal market to be jeopardized again by one-sided and uncoordinated safety policy measures by Member States.

b. Information sources

The intensity with which Member States seek to detect hazards is the essential determinant of the practical importance of their safety provisions, and the well-considered utilization of information is among the essential conditions for rational use of administrative resources. To date, the Community has contributed to controlling the "information input" to follow-up

[88] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[89] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.4 for details. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[90] *Cf.* T. Bourgoignie/ D. Trubek, 1987, 3 et seq., 12 et seq. 171 et seq.

[91] *Cf. Joerges, C.*, Product Safety, Product Safety Policy and Product Safety Law, Hanse Law Review (HanseLR) 2010, 117, 3.3. (end). Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf, and the description of the legal situation regarding follow-up market control in Member States in *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

market control essentially only through the decision on exchange of information on product hazards.[92] It has however begun to build on this pledge. By Articles 12 and 13 of the draft Toy Directive,[93] Member States would be oblige to verify observance of toy safety requirements by export checks and inform the Commission on application of the test and supervision procedures.[94] Similar supervisory measures are provided for in the directive on airborne noise emitted by household appliances.[95] Article 4 of the Directive on dangerous imitations of consumer goods,[96] finally, provides at any rate that information on measures by a Member State may be passed on before an "exchange of views" on the justification for them is held.

The most obvious way of systematically advancing from these starting points is offered by the demonstration project on a Community accident information system.[97] Its data can, as American experience with NEISS shows,[98] be utilized for follow-up market control. Data from the European accident information system are suitable as a primary information source also because they are collected according to uniform criteria Community wide, so that using them would help to harmonize administrative practice,[99]

However, accident information systems cannot be the sole source of information. Member States must be free to make use of their existing administrative facilities and, for example, to evaluate studies carried out by test institutes. However, a range of information sources should be underpinned by uniform principles: the admissibility of consumer complaints, the admissibility of input from consumer organizations, the obligation to take account of legal judgments concerning product liability, and an obligation on enterprises to provide notification whenever they posses knowledge from which it can be reasonably concluded that the products they market represent a significant hazard.[100]

Consideration of legal judgments concerning product liability fulfils a function specifically related to integration policy, because it indirectly[101] contributes towards the harmonization of safety law criteria. In contrast, the obligation on enterprises to provide notification primarily furthers safety policy. Especially where serious risks are involved, enterprises will move to eliminate them of their own accord, and for instance voluntarily make recalls.[102] It should not be assumed, though, that the willingness to do so exists throughout

[92] OJ L 70, 13 March 1984, 16; on the limited scope of this decision and the need to reform it see *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[93] OJ C 282, 8 November 1986,4, amended proposal of 2 October 1987, COM (87) 467 final.

[94] On the "Europeanization" of positive decisions cf. 3.4.4 below.

[95] OJ L 344, 6 December 1986, 24 (Art. 5).

[96] OJ L 192, 11 July 1987, 49.

[97] Fn. 52 above.

[98] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[99] Though a prerequisite for this would be removal of the existing prohibitions on using the data (cf. 3.2.1 above, and *Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf).

[100] *Cf.* for US law as a model, *Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.5.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[101] *Cf.* 3.4.3 below.

[102] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 3.4.

an entire industry or will (or even can) lead to corresponding action on export markets. Nevertheless, the obligation to provide notification would not only meet the safety requirements of consumers but also provide information on inadequacies of standards or deficiencies of national attestations of conformity.

c. Requirements for intervention and instruments for taking action

Public-law product safety duties are intended to provide the competent authorities with possibilities of intervention to ward off product hazards. In legally specifying such intervention rights, general clauses are indispensable. This follows even from the fact that product safety duties in the form of "basic safety requirements" can in principle only set "performance requirements", but not prescribe definite design characteristics.[103] This is also in line with the regulatory functions of a general duty of product safety in the sense proposed above. While "legally" the general product safety obligation acts "preventively", in practice it at the same time turns away from the hopeless attempt to guarantee the safety of consumer goods preventively by specifying particular design requirements. But just because specific prior binding instructions are thus not being given, government must nevertheless remain in a position to meet its responsibilities for product safety by responding to dangers that do become evident. The embodiment of this power of intervention in the form of a general clause in safety law is thus the necessary consequence of abandoning specific governmental product regulations.

But even if Community-law preconditions for the intervention powers of the competent authorities in Member States can thus be laid down only in general form, it is possible, and imperative, to adopt detailed regulations on the instruments of follow-up market control. The Directive on dangerous imitations of consumer goods[104] states that Member States should set up a body with powers to remove, or cause to be removed, products from the market (Article 3). The draft Toy Directive[105] says less specifically that Member States should "take all appropriate measures to withdraw" unsafe toys "from the market and prohibit their placing on the market" (Article 7 (1)).[106]

It does indeed seem appropriate to leave Member States the freedom to use institutional solutions that are in line with their various legal traditions. For example, the obvious approach for the Federal Republic of Germany would be to entrust follow-up market control to the industrial inspectorate (Gewerbeaufsicht),[107] while France would do best to maintain the division of functions between the Commission for Consumer Safety and government administration [108] and the United Kingdom should retain the responsibility of

Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[103] For this distinction, see *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.2. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.

[104] Fn. 96 above.

[105] Fn. 93 above.

[106] *Cf.* the corresponding provision of Article 7 of the directive on airborne noise emitted by household appliances, fn. 95 above.

[107] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 3.3.7. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

[108] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 1.5.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.

local authorities.[109] Finally, the establishment of independent commissions is also conceivable.[110]
However, as regards the legal instruments to be made available to these bodies, Community coordination would be advisable. The possibilities are bans, confiscations, recalls, warnings and compensation to consumers affected by recalls.
The type of action taken should depend on the nature and severity of the hazards. Bans or even confiscations are not always necessary, but are not always enough either. It may suffice to have the manufacturer rectify faults. However, it may also be necessary to have products replaced or recalled, with compensation for financial losses. The right to inform the public or demand that the manufacturer or importer provide appropriate information is essential, but the necessity and nature of the information will in turn depend on the seriousness of the product risk. For example, a public information campaign will not be required if the manufacturer is able to identify the customers concerned directly from its files and contact them. This particular example illustrates that the appropriate control measures should best be agreed in conjunction with the manufacturer or importer. A commitment by the enterprise concerned to propose, in the event of significant product hazards, a catalogue of measures for preventing such dangers would normally enable a settlement to be reached, as is shown by the example of US law.[111]

d. The role of the Community in follow-up market control

The development of the law relating to follow-up market control is not an end in itself, but fulfils a dual function in terms of both safety policy and internal market policy. The aim of Europeanizing follow-up market control is to reduce the potential for conflict in the field of safety policy resulting from the objectives of internal market policy[112] by Europeanizing the practice of safety law.

aa. Standing Committee on technical standards and regulations and a "Committee on follow-up market control"
The model directive provides for all questions connected with the implementation of new directives to be handled by the Standing Committee on technical standards and regulations. However, the main task of this Committee is to advise on new plans for directives and standards. In addition, the primary function of the safeguard procedure is to examine the quality of European and national standards and, where necessary, ensure that they are

[109] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 2.2.3., 2.3. and 2.4.1. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[110] *Cf.* for example the proposals by A. Pauli, 1985, p. 180 et seq.; in the Netherlands, a Parliamentary initiative to supplement the Government Bill amending the "Warenwet" (fn. 77) provides for responsibility to lie with the Minister of Welfare, Public Health and Culture (Tweede Kamer, vergaderjaar 1985-86, 17495 Nr. 22).
[111] *Cf. Brüggemeier, G./Falke, J./Joerges, C./Micklitz, H.*, Examples of Product Safety Legislation, Hanse Law Review (HanseLR) 2010, 137, 4.5., fn. 154. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art03.pdf.
[112] *Cf. Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 3.4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf, and *Joerges, C./Micklitz, H.*, The need to supplement the new approach to technical harmonization and standards by a coherent European product safety policy, Hanse Law Review (HanseLR) 2010, 351, 3. to 4. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art06.pdf.

developed further. On the other hand, follow-up market control essentially involves executive tasks. The question of whether certain risks require intervention can be considered separately from the question of whether these risks require changes to European or national standards. This distinction could also be taken into account in the institutional arrangements: the Standing Committee on technical standards and regulations should be relieved of executive tasks to allow it to concentrate entirely on problems of legislation and standardization.

The executive tasks are difficult enough. Harmonization of information sources, conditions for intervention and instruments of follow-up market control is a necessary but not sufficient condition for achieving an equal standard of safety throughout Europe. The Community thus requires a body through which differences of opinion between the competent bodies can be argued out and settled. With a view to harmonizing practice in Member States, their inclusion on a "Committee on follow-up market control" is to be recommended here as well. However, since it will be concerned with executive questions, this committee does not need the legal status of an administrative or regulatory committee, but should be set up as a subcommittee of the Advisory Committee on product safety proposed above.[113]

Making the administration of follow-up market control institutionally autonomous does not immediately seem to be in line with approaches in the Community's recent legal acts in the area. The Directive on airborne noise emitted by household appliances[114] explicitly refers all questions in connection with its implementation to the "Standing Committee set up by Directive 83/189/EEC" (Article 9 (1)).[115] The draft Toy Directive[116] takes the position that the Commission alone will decide on questions of follow-up market control (Article 7 (4)), and where shortcomings in harmonized standards or gaps in the standards become apparent, provides for consultation of the Standing Committee on technical standards and regulations (Articles 5 and 7 (2)). The directive on dangerous imitations of consumer goods entrusted the Advisory Committee on information exchange on dangers arising from the use of consumer products, set up by decision 84/133 of 2 March 1984, with the tasks of coordinating measures by individual States.[117]

bb. Decision-making powers of the Commission

The above-mentioned functions of the Europeanization of follow-up market control entail requirements that cannot be met simply by an exchange of information restricted to the authorities concerned, which leaves any reaction to hazards at the discretion of Member States. The Community must therefore go well beyond the Council Decision of 2 March 1984.[118] It requires comprehensive information and considerable decision-making powers.

Initially, it needs to be informed of decisions by the competent bodies in the Member States. However, the obligation on Member States to supply information should not be

[113] 3.1 above.
[114] Fn. 95 above.
[115] On problems of the differential treatment of objections to European standards on the one hand and to national standards on the other, see *Falke, J./Joerges. C.*, The new approach to technical harmonization and standards, its preparation through ECJ case law on Articles 30, 36 EEC and the Low-Voltage Directive, and the clarification of its operating environment by the Single European Act, Hanse Law Review (HanseLR) 2010, 289, 5.3. Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art05.pdf.
[116] Fn. 93 above.
[117] The reference to the decision (fn. 92 above) can be found in Article 4 of the new directive (fn. 96 above).
[118] Fn. 92 above.

confined to cases where positive measures are ordered. It ought also to cover cases where a settlement was reached or where intervention was rejected, since such procedures are no less important for the harmonization of administrative practice, and their justification can be just as questionable as the ordering of positive measures. Decision-making in the Commission and the Advisory Committee on follow-up market control proposed here can also be aided by the findings of the demonstration project on accident information systems as well as by other own sources of information. Consumer organizations should be allowed to approach the Commission, and the "Consumers' Consultative Committee on Standardization"[119] should have access to Commission decisions.

Two types of decision in the area of follow-up market control can be distinguished: responses to urgent measures and definitive decisions on conflicts concerning the justification or necessity of measures. In cases of "serious and immediate risk", which already have to be notified "immediately" to the Commission under Article 1 (1) of the Council Decision of 2 March 1984, the safety policy function of follow-up market control calls for the Commission to have the authority to order other Member States to take provisional measures. However, such measures should then be discussed with the Advisory Committee on follow-up market control before the Commission takes a final decision. In all cases where no immediate action is required on the part of the Commission, the Committee should be consulted before a decision is taken. Its participation is essential for the development of common assessment criteria in the Community.

IV. Institutional measures to coordinate internal market and product safety policy

The network of committees and cooperative relationships sketched out in the foregoing sections may look over-differentiated and too intricate. Nevertheless, all these proposals are ultimately concerned only with the institutional consequences of two conceptual premises embodied in the Community's objectives for realizing the internal market themselves. The first premise concerns the relationship between internal market and product safety policies. It states that the legal harmonization essential in the interest of free movement of goods in the Community is inseparably linked with the elaboration of a European product safety policy, but that both elements of the integration process, that is, mutual interpenetration of economic sectors on the one hand, and the achievement of closer integration through a European product safety policy on the other, call for separate forward-looking policies and organizational structures. This premise is the basis for the proposals for giving the tasks in internal-market policy and in product safety policy an independent organizational form in different ways, related to the historical separation of these policy areas in the Community. The second premise concerns the Community's relationships with Member States, and states that both for its legal harmonization policy and for the Europeanization of administrative tasks essential in connection with it, the Community is dependent on continuing cooperation with Member States. This need for cooperation is confirmed not only by theoretical analysis of the Community's political system and of specific features of European federalism,[120] but also by the practice of Community politics, where decision-

[119] 3.2.2 above.

[120] *Cf. Falke, J./ Joerges, C.*, The "traditional" law approximation policy approaches to removing technical barriers to trade and efforts at a "horizontal" European product safety policy, Hanse Law Review (HanseLR) 2010, 239, 1.2.

making processes are open at all levels to influence from the Member States. This development has gone hand in hand with the setting up of administrative, regulatory and advisory committees, something that started early in internal market policy, and is also indispensable in product safety policy.

A first conclusion drawn from these premises is the proposal to set up, alongside the Standing Committee on technical standards and regulations created by the information Directive 83/189/EEC, a Standing Committee on product safety.[121] It is indubitable that, in drawing up directives and standardization mandates, safety concerns belong among the most important tasks for the Standing Committee on technical standards and regulations. But whether at national or at Community level, product safety policy is not confined to questions of law-making and standardization. Instead, it belongs much more in the whole context of comprehensive, varied machinery for guaranteeing consumer safety. The Community must in the long term develop such a policy, and will in doing so be dependent on cooperation with the competent bodies and institutions responsible for product safety policy in Member States. Equally, a legal harmonization policy concerned with achieving the internal market has to concentrate on the steps necessary to that end, and thus set its priorities primarily from an economic viewpoint, on which too it will seek the necessary agreements. Accordingly, organizational differentiation between internal-market and product safety policy does not in any way promote competing political projects, but instead aims at easing the burden on both areas and promoting their cooperation.

A second organizational proposal, namely to set up a Consumers' Consultative Committee on standardization,[122] is connected with the differentiation between internal-market and product safety policy and the Community's relationship with Member States, but is primarily a consequence of the technique of reference to standards favoured in the new harmonization policy. This legal technique links up the European standardization organizations on "functional" law-making tasks. Because of these *de facto* effects of the reference technique, the justification for calls for consumer participation is in principle indisputable. Our proposals for giving shape to this participation are meant to flesh out this concept, so as to take account of the organizational and staff constraints on consumer organizations and formally guarantee them possibilities of collaboration.

The third proposal, namely to set up a separate committee on follow-up market control, is a direct consequence of the distinction between internal-market and product safety policy, but is also connected with the peculiarities of the new legal harmonization method. On our proposal, the tasks of verifying the substance of European and national standards and developing them further should remain with the Standing Committee on technical standards and regulations, since from the functional viewpoint this is a future oriented law-making activity. Follow-up market control is, instead, often concerned with urgent decisions to deal with acute dangers to consumer safety. In each case, what has to be done is implement Community regulations, something for which the Community is *de facto* dependent on cooperation from the competent authorities in Member States. By its very nature, the case is one of nothing less than the Europeanization of administrative tasks. In view of these far-reaching implications, it would seem appropriate to create the organizational prerequisites for setting administrative cooperation between Community and Member States on a permanent footing.

Online available at: http://www.hanselawreview.org/pdf10/Vol6No02Art04.pdf.

[121] *Cf.* 3.1 above.

[122] *Cf.* 3.2.2 above.

To conclude, the institutional proposals in this section are set out below in an overview:

Table 3: Overview of Standing Committees in the area of internal-market and product safety policies

	Internal-market policy	***Product safety policy***
Involvement of Member States	Standing Committee on technical standards and regulations (1983 information directive and 1985 model directive)	Standing Committee on product safety (future Product safety directive)
	Subcommittees for individual directives (e.g. for simple pressure vessels, toys, the building industry)	Committee on accident information systems (Council Decision of 22 April 1986)
		Committee on follow-up market control (future product safety Directive)
Involvement of Non-governmental actors	CEN/CENELEC	Consumers' Consultative Committee on Standardization