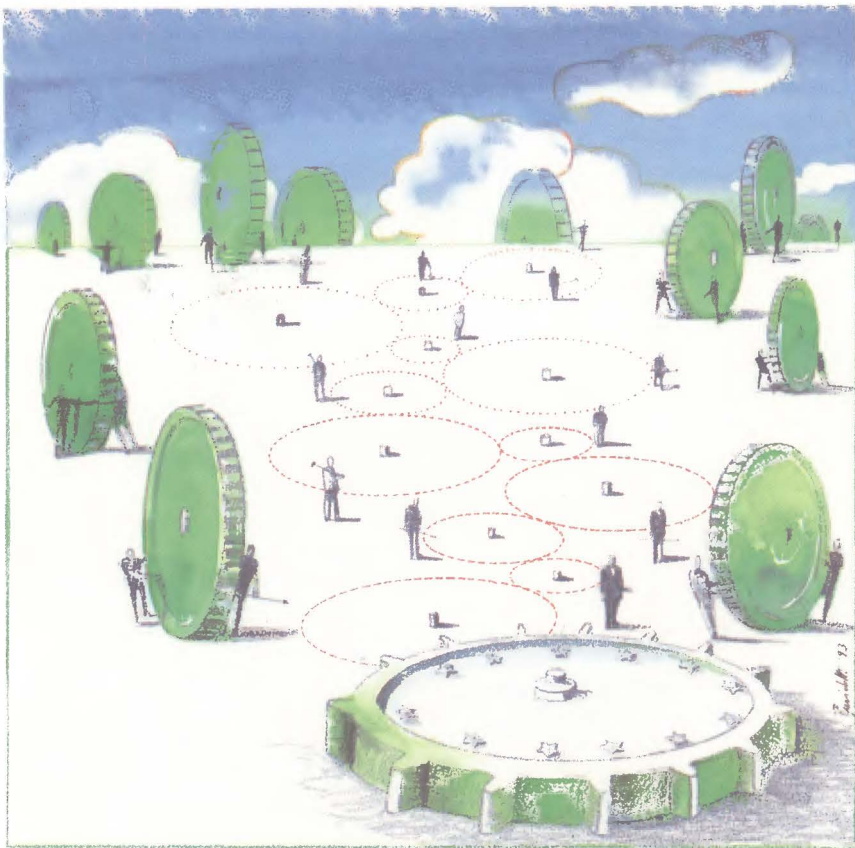


WORKING TOGETHER — THE INSTITUTIONS OF THE EUROPEAN COMMUNITY

by Emile Noël



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(continuation on third page of cover)

Originating department:
Directorate-General for Information, Communication, Culture and Audiovisual, Publications Unit

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by Emile Noël

Manuscript completed in November 1993
New edition 1993
Cover: Drawing by Paolo Guidotti, Milan

Cataloguing data can be found at the end of this publication.

Luxembourg: Office for Official Publications of the European Communities, 1994

ISBN 92-826-5064-2

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Printed in Germany

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I would like to extend my thanks to Mr Hartmut Offele, Adviser in the Secretariat-General of the European Commission, who helped produce this updated edition.

THE FIVE INSTITUTIONS

The institutional system of the European Communities is difficult to classify. The Community is much more than an intergovernmental organization: it has its own special legal status and extensive powers of its own. But the Community is not a true federation to which national parliaments and governments are subordinate in important matters. Our best course may be to leave it to future historians to find an appropriate label and simply describe it as a 'Community' system.

The task of achieving the aims of the three Communities — the European Coal and Steel Community (ECSC) (established in 1952), the European Economic Community (EEC) (1958) and the European Atomic Energy Community (Euratom) (1958) — rests with five institutions: the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors, with the support of the Economic and Social Committee and the Committee of the Regions.

A European System of Central Banks and a European Central Bank are to be added (if possible in 1997, but in any event no later than 1999) as a result of the establishment of economic and monetary union. From the beginning of 1994 their activities are to be prepared by a European Monetary Institute, whose functions will pass to the European Central Bank as soon as it is set up.

Until July 1967 the three Communities had separate Councils and executive Commissions (known as the 'High Authority' in the ECSC). But since then there has been a single Commission and a single Council, which exercise all the powers and responsibilities rested in their respective predecessors by the three Community Treaties. By contrast, the European Parliament and the Court of Justice have been common to the three Communities since 1958.

The merger of the institutions was seen as the first step towards setting up a single European Community to be governed by a single Treaty, replacing the Paris Treaty (establishing the ECSC) and the Rome Treaty (establishing the EEC and Euratom).

But this idea was not followed through at the time; nor was it taken up again in the negotiations on the Single Act in 1985 or on the Treaty on European Union in 1991.

What this last Treaty did, however, was to provide that the European Economic Community was henceforth to be called simply the European Community; this underscores its general role. The ECSC Treaty was originally concluded for 50 years and will expire in 2002; in all likelihood those of its functions which are preserved will then be taken over by the European Community.

The successive enlargements of the Communities¹ — with the accession of the United Kingdom, Ireland and Denmark on 1 January 1973, Greece on 1 January 1981, and most recently Spain and Portugal on 1 January 1986 — have not affected the basic structure or responsibilities of the Community institutions although their composition has altered.

¹ *The original Member States were Belgium, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands.*

The text of this publication was completed in October 1993. It, therefore, does not include details of institutional changes after that date.

With the unification of Germany on 3 October 1990, the Community was enlarged to include the territory of the former German Democratic Republic (GDR), and Community legislation is now applicable there, subject to a number of temporary exceptions (some of them valid for a considerable number of years). Germany's representation in the various Community institutions remains unchanged, though the membership of Parliament is to be adjusted (see below).

The Single European Act (which was signed in February 1986 and entered into force on 1 July 1987) has extended the Community's field of competence and brought about significant changes in relations between the institutions and in their operating rules. It also gave formal legal status to European political cooperation, which has been operating since 1970 simply on the basis of intergovernmental agreements.

The Treaty on European Union (the Maastricht Treaty), which was signed at Maastricht on 7 February 1992 and entered into force on 1 November 1993, makes far-reaching changes. It establishes a European Union founded on the European Communities and embracing all the forms of cooperation that have built up with them, including political cooperation (already mentioned) and cooperation on justice and home affairs. Before the decade is out the Community is to establish an economic and monetary union leading to the introduction of a single currency, the ecu. Major institutional changes have also been made, chiefly to enhance the powers of Parliament and the Court of Auditors (now raised to full institutional status) and to set up a new Committee of the Regions.

The **European Parliament** has been directly elected since 1979. The Edinburgh European Council (December 1992) decided to alter its membership to take account of, among other things, the unification of Germany. The decision is now up for ratification by the Member States and should be in operation in time for the next elections in June 1994. Its member-

ship will then be 567, the breakdown of seats being as follows: Belgium 25; Denmark 16; France 87; Germany 99; Greece 25; Ireland 15; Italy 87; Luxembourg 6; Netherlands 31; Portugal 25; Spain 64; United Kingdom 87.

The **Council** is made up of representatives of the governments of the 12 Member States. Each government normally sends one of its ministers. Its membership thus varies with the subjects down for discussion. The Foreign Minister is regarded as his country's 'main' representative in the Council, but Ministers for Agriculture, Transport, Economic and Financial Affairs, Social Affairs, Industry, the Environment and so on also meet frequently for specialized Council meetings.

The Maastricht Treaty also made the Council responsible for intergovernmental cooperation in the European Union (common foreign and security policy, justice and home affairs).

At their December 1974 Summit, the Heads of State (for France) or Government agreed to meet regularly together with the President of the Commission as the 'European Council', accompanied by their Foreign Ministers and a Member of the Commission.

The first formal provision for the European Council was made in the Single European Act; the Maastricht Treaty followed it up by confirming its central role of providing the European Union (the Community and political cooperation combined) with the necessary impetus for its development and defining its general guidelines. Since 1986 the European Council has generally met every six months, but additional meetings may be held where circumstances so require.

The Presidency of the Council and of the European Council rotates between the member governments at six-monthly intervals. When decisions are taken in the Council by majority vote, France, Germany, Italy and the United Kingdom have 10 votes each, Spain has eight, Belgium, Greece, The Netherlands and Portugal five each, Den-

mark and Ireland three each and Luxembourg two. A qualified majority means 54 votes out of a total of 76.

The Council is assisted by a **Permanent Representatives Committee** which comprises the Permanent Representatives (ambassadors) of the Member States to the Communities. Its main task is to prepare the ground for Council meetings. A large number of working parties operate under its authority.

The **European Commission** consists of 17 Members, appointed by agreement between the member governments. There are two nationals each from France, Germany, Italy, Spain and the United Kingdom and one from each of the other seven Member States. Throughout their four-year term of office Members must remain independent of the governments and of the Council. The Council cannot remove any Member from office. Parliament, however, can pass a motion of censure compelling the Commission to resign as a body (in which case, it would continue to handle everyday business until its replacement). The Maastricht Treaty substantially altered the procedure for appointing the Commission with effect from 1995 (see below in the chapter on Parliament). The Commission appointed to hold office from January 1993 has a term of only two years. It may be necessary to reorganize the Commission somewhat when current accession negotiations with four countries are completed.

The **Court of Justice**, composed of 13 judges appointed for six years by agreement among the governments, ensures that implementation of the Treaties is in accordance with the rule of law. The judges are assisted by six advocates-general. An additional **Court of First Instance** was set up in 1989. It consists of 10 judges, also appointed for six years by agreement among the governments.

The **Court of Auditors** has 12 members appointed by unanimous decision of the Council after consulting Parliament. It began

operating in October 1977. It audits the accounts of the Community and of Community bodies, examines whether revenue and expenditure have been properly and lawfully received and incurred, checks that financial management has been sound, and reports back to the Community institutions. It is also required to provide Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

In EEC and Euratom matters, the Council and the Commission are assisted by the **Economic and Social Committee**. This consists of 189 members, representing various sectors of economic and social life. It must be consulted before decisions are taken on a large number of subjects, and is also free to issue opinions on its own initiative.

In ECSC matters, the Commission is assisted by a Consultative Committee, which has 96 members representing producers, workers, consumers and dealers in the coal and steel industries. It too must be consulted before decisions are taken on a large number of subjects and it can also issue opinions on its own initiative.

Through the Economic and Social Committee and the Consultative Committee, the various interest groups concerned are actively involved in the development of the Community.

The Maastricht Treaty further established a **Committee of the Regions** to assist the Commission and the Council. It is composed of 189 members (plus the same number of alternates) representing regional and local bodies. It must be consulted prior to the adoption of any decision affecting regional interests. It may also issue opinions of its own motion.

The **European Investment Bank** contributes, by raising funds on the capital markets, to financing investment projects that will promote the development of the common market, particularly in the less-developed regions and in conjunction with the Structural Funds.

At the Edinburgh European Council in December 1992, the governments of the Member States finally came to a decision, awaited for 40 years, on the headquarters of the Community institutions, which hitherto only had provisional places of work. The decision broadly confirmed the status quo. The Commission's headquarters are in Brussels, but some departments operate in Luxembourg. The Council also has its headquarters in Brussels, but meets in Luxembourg for three months each year. Luxembourg is the headquarters of the Court of

Justice, the Court of First Instance, the Court of Auditors and the European Investment Bank, while the Economic and Social Committee and the Committee of the Regions are based in Brussels. The real change, which made the final compromise possible, concerns Parliament, whose headquarters are in Strasbourg, where it holds its plenary sessions, while its secretariat remains in Luxembourg and its committees meet in Brussels. The novel element is that it may now hold shorter 'additional' plenary sessions in Brussels.



■ HOW DO THE INSTITUTIONS DISCHARGE THEIR DUTIES?

When acting under the Paris Treaty establishing the European Coal and Steel Community, the Commission can take decisions, make recommendations or issue opinions. Decisions are binding in their entirety; recommendations are binding as to the ends but not as to the means; opinions are not binding.

The Council acts in ECSC affairs mainly at the request of the Commission, either stating its opinion on particular issues or giving the assent without which, in certain matters, the Commission cannot proceed.

The Commission's ECSC decisions are mostly addressed to individual persons, firms or governments but they may also lay down general rules, since the Commission does also have general rule-making powers.

In the European Community established by the Maastricht Treaty, regulations, directives, decisions, recommendations and opinions may be issued by Parliament acting jointly with the Council, by the Council and by the Commission. The situation is much the same in Euratom, except as regards the role of Parliament. Regulations are of general application: they are binding in their entirety and applicable in all Member States. Directives are binding on the Member States to which they are addressed as regards the result to be achieved, but leave the form and methods of achieving it to the discretion of the national authorities. Decisions may be addressed to a government, an enterprise or a private individual; they are binding in their entirety on those to whom they are addressed. Recommendations and opinions are not binding.

The discrepancy in terminology between the Paris and the two Rome Treaties is perhaps

confusing. An ECSC recommendation is a binding enactment corresponding to the European Community directive, whereas a European Community recommendation is not binding and is no stronger than an opinion.

The Commission is the driving force behind the ECSC (though the Council's role in connection with issues of special importance must not be underrated). In the European Community, on the other hand, we have what is perhaps the most novel feature of the whole institutional system, with the Commission and the Council operating in tandem to provide the motive power since 1958.

In the future, however, Parliament's role in the legislative process will be boosted by the co-decision and assent procedures provided for by the Maastricht Treaty. The Single European Act had already strengthened Parliament's position through the cooperation procedure, which Maastricht extends to new areas. These procedures will be considered in more detail below. The significance of the dialogue between Parliament and the Council is thus greater than ever.

The Commission's political authority, without which it would never be able to play its role *vis-à-vis* the Council, will be enhanced following Maastricht, since its appointment requires the assent of Parliament from 1995 onwards and it is answerable to Parliament alone. This will tighten the political link between the Commission and Parliament, with an obvious effect on relations with the Council. The true impact of all these changes will only become clear after a decade or so of practice.

In the three Communities, the Court of Justice not only affords the Member States and individuals the assurance that the Treaties and the legislation implementing them will be fully complied with, but also plays a notable part in ensuring uniform interpretation and enforcement of Community law, particularly through national courts.

The importance of the Court of Auditors has been rising steadily; the Maastricht Treaty

reflects this by conferring full institutional status on it. The findings of its annual report and of its special reports on specific topics heavily influence the administrative and budgetary management of the institutions. Parliament's Committee on Budgetary Control makes extensive use of the information and recommendations in these reports when preparing debates of the full House on the discharge which it is required to give the Commission for its implementation of the budget.

■ FINANCING THE COMMUNITY

The budgets

From the very outset in 1952 (with the ECSC), the Community has been provided with funds not only for its own administrative working but also to finance a variety of operations.

It has also been very active in borrowing and lending. Both the budget and other financial operations have increased considerably over the years.

The ECSC is financed in a rather novel way — by a levy on the value of coal and steel production, paid direct to the High Authority (now the Commission) by the various producers. The EEC and Euratom, on the other hand, were originally financed by contributions from the Member States. But with the completion of the customs union and the introduction of a common agricultural policy financed entirely on a Community basis, the Heads of State and/or Government, meeting in December 1969 in The Hague, decided to set up a system for the Communities' own resources, as foreseen in the Treaties, which would meet all the requirements of the EEC and Euratom. This 'own resources' system would exist alongside the ECSC system.

The new system, after ratification by the Parliaments of the six founder Member States, was gradually introduced from the beginning of 1971.

The Community's own resources consisted primarily of levies on imports of agricultural produce and customs duties collected at Community borders, plus certain other taxes introduced under the common agricultural policy and part of the value-added tax (VAT) collected in the Member States up to a maximum of 1% of the tax base. Owing to the growth of the Community's budget, the full amount of available own resources was called up in 1984. After the adoption of transitional measures that year, an overall financial reform was decided on; it entered into force on 1 January 1989. It guaranteed that the Community would receive the resources necessary to carry out its activities up to the end of 1992 (including the full implementation of the Single European Act) and incorporated the following novel features:

- (i) the ceiling for own resources was set at a percentage of the Community's GNP, ranging from 1.15% in 1988 to 1.2% in 1992 (payment appropriations);
- (ii) a new 'fourth resource' was instituted, based on the GNP of the Member States, to ensure that the amount of resources paid by each Member State is more closely related to its ability to pay;
- (iii) customs duties on ECSC products would from then on be part of own resources.

In view of the development of the Community's activities, and especially its international commitments and the Maastricht political commitments towards the less-developed Member States, a new financial reform has been agreed for the period from 1993 to 1999. This consists of raising the limit on own resources (from 1.2% to 1.27% of the gross national product of the Community), reducing the proportion of income from VAT, and consequently making the new 'fourth resource' more important.

The following figures will give some idea of the size of the budget and the various sources of revenue. The 1992 budget totalled ECU 59.5 billion,¹ (appropriations for payments). Financing came from ECU 2.2

billion in levies and other agricultural revenue (3.7%), ECU 12.6 billion in customs duties (21.1%), ECU 34.6 billion in VAT (58.1%), and ECU 8.3 billion under the 'fourth resource' (14%), the remainder being made up of miscellaneous revenue.

The ECSC operating budget is far smaller; ECU 484 million in 1992, of which ECU 154.5 million came from the ECSC levy (at a current rate of 0.27%) and the rest from interest on investments and loans made from ECSC own resources.

Details about the main chapters of the Community budget are given below.

¹ *All amounts are given in ecus. The ecu (a name adopted by the European Council in December 1978, deriving from the abbreviation for European currency unit and also calling to mind a medieval French coin) is the accounting unit of the European Monetary System and in 1981 replaced the accounting units previously used for the budget and for the accounts of borrowing and lending operations. The ecu is made up of fixed amounts of Member States' currencies. Its composition, which was first determined in 1979, has subsequently been revised with the introduction of the Greek drachma, the Spanish peseta and the Portuguese escudo. Its value is calculated daily on the basis of exchange market rates. ECU 1 (15.11.1993) = 40.9076 Belgian/Luxembourg francs; 7.65294 Danish kroner; 1.91605 German marks; 274.767 Greek drachmas; 155.776 Spanish pesetas; 6.67366 French francs; 2.15067 Dutch guilders; 0.805724 Irish pounds; 1890.65 Italian lire; 196.083 Portuguese escudos; 0.761874 pounds sterling.*

The British contribution to the Community budget

During the accession negotiations in 1970-71 the United Kingdom had claimed that application of the own resources system established by the Six would produce an unbalanced situation in which it would be the loser. The Accession Treaty laid down lengthy transitional measures. Moreover, it had been agreed during the accession negotiations that if a Member State found itself in an unacceptable position, the Community should take appropriate measures.

In 1979 the UK Government, citing this agreement, asked for special measures to replace the transitional provisions expiring that year.

Although the other Member States and the Commission disputed the basis of the British

calculation (since own resources cannot be viewed as State contributions), they recognized that the situation was unjust, mainly because British agriculture receives very little cash under the common agricultural policy.

After some hard bargaining, the principle of financial compensation was accepted and a fixed system was adopted at the Fontainebleau European Council in June 1984. This arrangement was confirmed and geared to the new system of own resources in 1988 and again in 1993. There are complex rules for calculating the amount of 'compensation' and the cost is borne by the other 11 Member States in proportion to their GNP, with reductions being granted to Germany.

In 1992 the United Kingdom received compensation of ECU 2.9 billion for the 1991 financial year.

Community borrowing and lending operations

The Community carries out borrowing and lending operations under the ECSC, EEC and Euratom Treaties. It also has its own banking institution for long-term financing — the European Investment Bank, established by the Treaty of Rome.

The Community's borrowing and lending has expanded considerably over the years thanks to its excellent credit rating on the international capital markets.

Most of the Commission's ECSC loans go towards the modernization of mines and steel plants and the conversion of areas affected by declining coal or steel production. Some of them are eligible for interest relief financed from the ECSC budget. Between 1954 and the end of 1992 the High Authority (later the Commission) borrowed and on-lent a total of ECU 21.4 billion in this way.

Euratom borrowing and lending activities have so far raised ECU 3 billion to support nuclear energy development projects.

To help Member States overcome balance-of-payments difficulties the EEC has, since 1981, been allowed to raise up to ECU 8 billion in loans for on-lending. In return, recipients have to accept a certain measure of economic and monetary discipline. A loan of ECU 4 billion was made to France in 1983, ECU 1.75 billion was lent to Greece in 1985/86 and 8 billion was lent to Italy in 1992/93.

Following the changes in central and eastern Europe and the former USSR, the Community provided extensive loan financing for the countries of Central and Eastern Europe and the Baltic States, notably to provide balance-of-payments support. Loans were subsequently also made to the Russian Federation and other republics of the former USSR. Loans outstanding at the end of 1992 amounted to ECU 1.84 billion.

The Community finances the loans it makes by borrowing funds under guarantees from the Community budget. Beginning with the

1993 budget a special Guarantee Fund was set up to reflect the scale of these operations; its volume will expand with the volume of loans outstanding.

The European Investment Bank gives guarantees and loans for a variety of investment projects, mainly in industry, energy and infrastructure. In order to qualify for assistance, projects must promote regional development or be of common interest to several Member States or the Community as a whole, or they must contribute towards industrial modernization or conversion. The EIB may also grant loans to non-member countries with Community authorization.

The Bank's capital, which is subscribed by the Member States, amounts to ECU 57.6 billion. Its activities have increased considerably in recent years. Between its establishment in 1958 and the end of 1992, the Bank granted loans totalling more than ECU 113 billion from its own resources. In 1991 and 1992 alone, loans totalled ECU 15.2 billion and ECU 16.9 billion respectively. Some of its loans are eligible for interest relief financed from the Community budget.

THE COMMISSION

The Community Treaties assign the Commission a wide range of tasks. In broad terms the Commission's role is to act as the guardian of the Treaties, to serve as the executive arm of the Communities, to initiate Community policy, and to defend the Community interest in the Council.

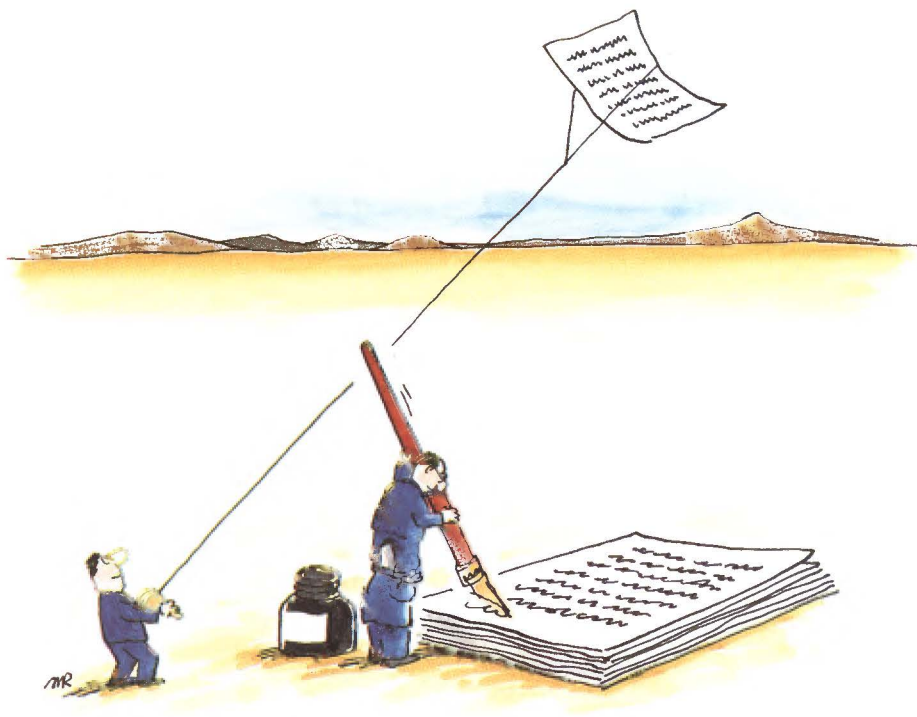
■ THE COMMISSION AS THE GUARDIAN OF THE TREATIES

The Commission has to see to it that the provisions of the Treaties and the decisions of the institutions are properly implemented and endeavours to maintain a climate of mutual confidence. If it performs its watchdog function properly, all concerned can carry out their obligations to the full, secure in the knowledge that their opposite numbers are doing the same and that any infringement of the Treaties will be duly penalized.

Conversely, no party can plead others' failure to meet their obligations as a reason for not fulfilling its own: if any party is in breach, it is for the Commission, as an impartial authority, to investigate, issue an objective ruling, and notify the government concerned, subject to review by the Court, of the action required to put matters in order.



The President and his 16 fellow Members of the Commission at their weekly Wednesday meeting.



The ECSC Treaty was the first to require the institutions to discipline infringements. But the procedure, since it involves governments, is complex and cumbersome, and (fortunately) has seldom been applied. In the light of experience with the ECSC, the provisions written into the Rome Treaties were simpler and tougher and, in the case of the EEC, have been quite extensively used. It is these rules that are described in what follows.

The Commission investigates a presumed infringement of the Treaty either on its own initiative or on the strength of complaints — from governments, firms or private individuals. Such complaints are always examined with particular care. Once an infringement has been established, the Commission requests the State in question to submit its comments within a specified period, generally two months. This time-limit is much shorter in the case of serious infringements which directly affect the functioning of the internal market. If the Member State allows the disputed practice to continue and is unable to satisfy the Commis-

sion, the Commission issues a reasoned opinion, which the State must comply with before a given deadline. If it fails to do so, the Commission may refer the matter to the Court of Justice, whose judgment is binding on both parties.

These rules, which give the Commission and the Court considerable powers, are comprehensively enforced. In 1992, for example, the Commission instituted infringement proceedings in 1 210 cases, issued 248 reasoned opinions and referred 64 cases to the Court.

As these figures show, only a very limited number of cases are referred to the Court of Justice. The majority (888 in 1992) are settled at an earlier stage, the Member State concerned having rectified the situation.

The Community stepped up its legislative activity in the run-up to the single market. At the same time long delays built up in the implementation of decisions once they had been taken; this was especially true of the incorporation of Community directives into national law.

The Commission was therefore obliged to adopt a tougher stance and, with the support of the European Parliament, exert political pressure on the countries which had fallen furthest behind. As a result, all governments made a major effort to improve their record and meet the deadline of 1 January 1993. Around 80% of the infringement proceedings commenced in 1992 arose because directives had been wrongly incorporated into national law or not incorporated at all, compared with 67% in 1991.

The delays in incorporating internal market directives were made good during the first few months of 1993, so that the rate of transposal stood at 84.8% by mid-June.

The areas where the largest number of infringements occur are the internal market, agriculture and the environment.

Despite the high number of infringements against which action has been taken, their economic significance has been limited. Except in a few serious cases, they have tended to be not so much deliberate attempts to evade the Treaty rules as differences in interpretation between the Commission and Member States, and these have been settled by the Court. More frequently still, they have been the result of delays in national administrative or parliamentary procedures or the kind of mistake that is bound to crop up occasionally when national civil services have to adjust to Community procedures.

It should be remembered that most Community law is directly applicable (notably regulations but other instruments too). This means that any individual or firm can invoke Community law in a national court or claim redress if it is wrongly applied. This decentralized monitoring of the application of Community law is gradually developing more widely, complementing the supervision carried out by the Commission.

■ THE COMMISSION AS THE EXECUTIVE ARM

The Commission is directly invested by the Treaties with wide executive powers. In addition,

substantial extra powers have been conferred on it by the Council, mostly in the EC context, to secure implementation of legislation based on the Treaty (normally termed 'secondary legislation'). Under the Single European Act, the conferring of executive powers on the Commission is now the general rule.

The powers deriving directly from the Treaties and those conferred by the Council can be subdivided into three broad categories.

1. Issuing of decisions and regulations implementing certain Treaty provisions or Council acts

The ECSC Treaty gives the Commission particularly extensive legislative powers: its function is declared to be 'to ensure that the objectives set out in this Treaty are attained', i.e. to establish and operate a common market in coal and steel. Practically every article invests it with specific responsibilities and corresponding powers.

The Rome Treaties also give the Commission direct legislative powers. This is particularly true of the EEC Treaty in all matters connected with the establishment of a customs union in accordance with the Treaty timetable. But it is above all the powers conferred by the Council in connection with the common policies — especially the common agricultural policy and the completion of the internal market — that have so notably enlarged the Commission's responsibilities. Figures speak louder than words: during 1992 alone, the Commission enacted about 3 500 regulations, most of them relating to the common agricultural policy.

2. Application of the Treaty rules to specific cases (involving governments or firms)

Here again the Commission was given a particularly prominent role by the ECSC Treaty; it deals direct with coal and steel undertakings and monitors certain aspects of their activities. It can promote and coordinate their capital spending, assist miners and steel-

workers facing redundancy, grant loans, etc. The crisis affecting the European steel industry in the 1980s demonstrated the scope of the Commission's activities in this field.

Under the EEC Treaty, it has many similar powers, especially with regard to competition (keeping restrictive practices and market dominance within bounds; setting limits to or prohibiting State subsidies; discouraging discriminatory tax practices, etc.). In addition, it has been given various powers by the Council in connection with the common policies (agriculture, fisheries, commercial policy, the environment, etc.) and completion of the internal market.

Under the Euratom Treaty it has the same sort of supervisory responsibilities as in the coal and steel industries, covering such matters as supplies of fissile material, radiation protection, inspection of nuclear plants and dissemination of technical information.

3. Administration of the safeguard clauses

The Rome and Paris Treaties contained general clauses enabling a wide variety of waivers to be authorized, ranging from tariff quotas to measures excluding a whole sector of the economy from the rules. These clauses were valid for a limited period only and are no longer in force, except for Article 115 of the EEC Treaty, which provides for action to prevent external trade being deflected and has been maintained in the Maastricht Treaty in a revised form. However, with the establishment of the internal market, the Commission no longer intends to apply this article to trade between Member States.

Other general safeguard clauses have been written into subsequent accession treaties to deal with problems involving the new Member States. Of these, only a few — affecting Spain and Portugal — will remain in force after 1993, and they are due to expire in 1995.

In order to guarantee independence and objectivity, the Treaties conferred the task of administering these safeguard clauses on the Commission, while stipulating that, in each case, the measures chosen by the Commis-

sion must disrupt the common market as little as possible. After the general safeguard clauses had expired, the Community legislation which grew out of the Treaties allowed for various limited exceptions in specific cases. The Commission is also responsible for administering these, though in certain cases the Council may subsequently be asked to confirm or modify the measures taken by the Commission. Recourse to these exceptional measures has become less and less frequent and the Commission has always insisted on granting derogations only where they are necessary and on condition that they are implemented in such a way as to avoid any substantial effect on the functioning of the common market.

4. Administration of Community funds

The Commission is responsible for administering appropriations for the Communities' public expenditure and the major Community funds.

As early as 1952 the ECSC levy (the ECSC's own resource) made it possible not just to guarantee Community borrowing but to finance operations in the coal and steel industries. The ECSC operating budget for 1992 was ECU 484 million. Most of this was spent on grants for research (ECU 123 million), interest subsidies on investment and conversion loans (ECU 131 million), grants for the retraining and redeployment of workers (ECU 170 million) and other social measures linked to the restructuring of the coal and steel industries (ECU 55 million).

Many different operations are financed from the European Community budget, covering all the fields falling within the Community's jurisdiction. The most important of these operations come under the major Community funds.

The promotion of research and technological development has become one of the Community's main objectives under the Single European Act and the Maastricht Treaty. Ever since 1958, the Community has run nuclear research and training pro-

grammes which led, in particular, to the setting-up of the Joint Research Centre, consisting of four nuclear research establishments, at Ispra in Italy, Karlsruhe in Germany, Geel in Belgium and Petten in the Netherlands. Euratom also coordinates the nuclear research activities of the Member States in order to carry out joint projects, of which the most spectacular has been JET (Joint European Torus), a vast installation for advanced research into controlled nuclear fusion, sited at Culham near London.

Since the 1970s Community research has extended well beyond the nuclear field. The Single European Act confirmed this trend and reorganized the Community's activities accordingly.

Research and technological development is now organized within multiannual framework programmes — currently of four years' duration — which are adopted by the Council in conjunction with Parliament. Each framework programme lays down the scientific and technical objectives to be attained and fixes the Community's total budget contribution. The Community's role is to coordinate and (through part-financing) promote research in private firms, research centres and universities in the Member States. The Joint Research Centre also plays a part in implementing the framework programme.

Under the present framework programme (1990-94), Community action focuses on three main areas: enabling technologies (information and communication technologies, industrial and material technologies), management of natural resources (environment, life sciences and technologies, energy) and management of intellectual resources.

The initial budget of ECU 5.7 billion was increased to ECU 6.6 billion at the end of 1992. A total of around ECU 13 billion (at 1993 prices) has been proposed for the next programme (1994-98).

Turning to the implementation of the common agricultural policy, the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) is responsible

for all financing of measures agreed by the Community concerning agricultural market organization and support, including the income support schemes recently adopted under the reform of the CAP. It is the only instance where a common policy covers an entire sector of the economy and the Community is wholly responsible for determining and providing the financial resources. That is why agricultural expenditure accounts for a considerable proportion of the Community budget (54.5% in 1992). EAGGF-Guarantee expenditure in 1992 was ECU 36 billion.

Following a series of initiatives by the Commission, a major reform of the common agricultural policy was adopted in 1992 (the first steps had already been taken in 1984 and 1988), with the aim of stabilizing agricultural production and expenditure.

Under the Single European Act one of the Community's main objectives — later consolidated by the Maastricht Treaty — is the strengthening of economic and social cohesion. The Community's Structural Funds were set up to help achieve this aim. They comprise the European Social Fund, the EAGGF Guidance Section, the European Regional Development Fund and the new Cohesion Fund set up under the Maastricht Treaty. Under the Single Act and the Maastricht Treaty, the first three Funds were radically reformed in 1988 and further revised in 1993 so as to forge a closer partnership between the Commission and the national, regional and local authorities involved in the work of the Funds and to concentrate action on five priority objectives:

- (i) the development and structural adjustment of regions whose development is lagging behind;
- (ii) the conversion of regions seriously affected by industrial decline;
- (iii) combating long-term unemployment;
- (iv) more effective occupational integration of young people;

(v) the adjustment of agricultural and fisheries structures and rural development.

The reform of the Funds was backed up by a substantial increase in their budget: commitment appropriations were doubled in real terms between 1987 and 1993, providing more than ECU 60 billion over six years. For the period 1993-99, the Edinburgh European Council allocated the three Funds a total of ECU 176 billion (at 1992 prices).

The *European Social Fund* (ESF), for which provision was made in the Treaty of Rome itself, seeks mainly to expand vocational training for workers in order to promote employment and occupational mobility. Its budget was ECU 4 billion in 1991 and ECU 4.7 billion in 1992 (commitment appropriations).

The purpose of the *EAGGF Guidance Section* is to contribute to the modernization of agricultural structures and the development of rural areas. It had a budget of ECU 2.2 billion in 1991 and ECU 2.6 billion in 1992 (commitment appropriations).

The *European Regional Development Fund* (ERDF) was established in 1975 to help correct regional imbalances in the Community. It had a budget of ECU 5.9 billion in 1991 and ECU 6.9 billion in 1992 (commitment appropriations).

The *Cohesion Fund* was introduced by the Maastricht Treaty to help support environmental projects and trans-European networks (transport and communications infrastructures) in the four poorest countries of the Community — Greece, Ireland, Portugal and Spain. More than ECU 15 billion (at 1992 prices) has been earmarked for the Fund for the period 1993-99.

In a different field altogether, the *European Development Fund* (EDF), for which provision was made in the Treaty of Rome, is the principal instrument in the Community's development aid effort. It operates on the basis of agreements concluded periodically between the Community and its Member States on the one hand, and the African,

Caribbean and Pacific (ACP) countries which formerly had special ties with them. These agreements have included the series of Yaoundé Conventions concluded with the African States and Madagascar associated with the Community of Six and, following enlargement, the Lomé Conventions. Seventy ACP States are party to the Lomé IV Convention signed on 15 December 1989.

Community financial assistance for 1990-95 was set at ECU 12 billion, made up of ECU 10.8 billion under the EDF (grants and loans on special terms) and the remainder as loans administered by the European Investment Bank. The Lomé Convention also provides for very broad trade cooperation, economic cooperation (promotion of industrial and agricultural development, finance for mining operations) and a scheme for stabilizing export earnings from the chief ACP products.

The Commission also runs Community operations to assist non-ACP developing countries, including the Mediterranean countries and a number of countries in Asia and Latin America. These operations are comparable in financial scale to the EDF and primarily involve technical assistance and investment support (with appropriations totalling ECU 912 million in 1992). A considerable amount of food aid is also provided (ECU 486 million in 1992).

Committees

We have seen how much the Council has extended the Commission's management and administration function in the European Community by giving it additional responsibility for the implementation of secondary legislation. In many cases, the Council was anxious that the powers so conferred should be exercised in close consultation with the governments of the Member States (or rather with their administrative departments). For this reason various committees of government representatives are attached to the Commission. As well as making this transfer of responsibilities the general rule, the Single European Act also envisaged an overhaul of

the committee system, and on 13 July 1987 the Council adopted a Decision — known as the Decision on committee procedures — which provides for four procedures.

In **advisory committees**, the Commission listens to the opinions of representatives of the Member States. While it has promised to take the fullest account of the views expressed during these consultations, it is in no way bound by them and the committee has no influence on the further course of the procedure.

Declarations annexed to the Single European Act recommend the use of the advisory committee procedure for measures relating to the completion of the internal market.

Management committees were first set up in 1962 under the arrangements for the agricultural markets and in the event have proved to be very valuable and effective. One committee exists for each category of products.

The procedure is that the implementing measure the Commission intends to enact is submitted in draft form to the appropriate management committee, which gives its opinion by qualified majority (54 votes out of 76), votes being weighted as in the Council.

Again the Commission is not bound by the committee's opinion; it takes note of it, but remains entirely free to decide for itself; and the measure, once enacted, has direct force of law. However, if the Commission decides to go against the committee's opinion, the matter is referred to the Council, which may reverse the Commission's decision within one month. If, on the other hand, the Commission's decision is in line with the committee's opinion, or if no opinion has been forthcoming (the committee having failed to muster a qualified majority either for or against), the decision is final and there is no appeal to the Council.

The management committee formula is widely used and works extremely well. In 1992, for example, there were 355 meetings of various management committees concerning the common agricultural policy.

Favourable opinions were given in 2 040 out of 2 171 cases. No adverse opinion was given. In 131 cases no opinion was offered by the committee.

This is eloquent testimony to the atmosphere of cooperation and mutual confidence which has developed in the committees between the Commission's departments and the national departments which subsequently enforce the Commission's decisions.

The management committee's function is to act as a kind of alarm mechanism. When the Commission departs from an opinion given by a qualified majority — that is, voted for by most of the government representatives — this is a clear indication of a serious problem, which it is only right and proper that the Council should discuss. The fact that it is seldom called upon to do so is proof of the measure of understanding between the parties and of how well the system works.

The third type of committee set up by the Council is the **regulatory committee**, in which the management committee formula is applied to other fields. It was used initially in the management of the Common Customs Tariff, then for the management and adaptation of common standards (food, veterinary and plant health regulations, for instance), environmental legislation, etc. The procedure is similar to that followed in the management committees, but with greater scope for appeals to the Council. When the measures envisaged by the Commission go against the committee's opinion, or when no opinion is forthcoming, the Commission makes a proposal to the Council on the measures to be taken. The Council then decides by a qualified majority vote. If it has not reached a decision within a certain time (normally three months) after the matter is referred to it, the Commission takes the decision itself. An exception to this rule has been introduced in a number of cases where, if the Council has expressly rejected the Commission's proposal by a simple majority, the Commission may not take a decision. It can, however, restart the procedure for a new decision.

Finally, a **special procedure** has been set up for commercial policy measures or action under the safeguard clauses, enabling the Commission to take directly applicable decisions once it has received the advisory committee's opinion. None the less, these decisions must be approved by the Council within a period of three months, failing which they become null and void.

Parliament has strong reservations about the use of these various types of committee, fearing that they may affect the Commission's independence.

Moreover, in practice, the Council has almost entirely ignored the undertaking given by the governments of the Member States to give precedence to the use of the advisory committee procedure for measures relating to the completion of the internal market; instead it is making increasing use of procedures which offer no guarantee that a decision will be taken (certain types of regulatory committee) at the risk of jeopardizing the effectiveness of Community measures. Despite attempts by the Commission, no changes were made to this system during the negotiations leading up to the Maastricht Treaty.

■ THE COMMISSION INITIATES COMMUNITY POLICY AND DEFENDS THE COMMUNITY INTEREST. IT SEES TO IT THAT COMMUNITY POLICY FORMS A CONSISTENT WHOLE

The ECSC High Authority and the Euratom Commission had a predominantly administrative and supervisory function, the framing of common policies being particularly difficult for Communities with jurisdiction in rather limited fields.

The EEC Commission, on the other hand, regarded the initiation of common policies as one of its most important functions from the outset. This approach was later borne out by the Single European Act and even more so by the Maastricht Treaty, which established the European Community.

The ECSC and Euratom Treaties may be regarded as 'code of rules' treaties which spell out the rules to be applied and the tasks to be performed in their respective spheres. Over the years this has given rise to certain difficulties in implementation because of the changing economic situation. By contrast, the European Community Treaty (i.e. the EEC Treaty as amplified by the Single European Act and the Maastricht Treaty) is a 'framework' treaty which sets objectives and defines general guidelines, while leaving it to the Community's institutions, and more especially the Commission, the Council and Parliament to work out the actual arrangements to be applied within this framework.

The institutions are thus empowered to bring in full-scale 'European laws', directly enforceable in all the Member States and capable of producing radical changes in the sectors concerned. A few examples will serve to illustrate the scope of these provisions — the great corpus of 'European laws' on agriculture, promulgated in the 1960s and

revised in 1992, the liberalization of international air and road transport and, in future, economic and monetary union.

These 'European laws' are adopted by the Council (in certain cases in conjunction with Parliament) on a proposal from the Commission. The Commission has a virtual monopoly of the right to initiate legislation and, as we shall see, is able to wield an influence throughout the legislative process. It therefore has a twofold responsibility. First, it must be objective: its proposals have to correspond to the Community's interest and may not favour the position or interests of a particular Member State. Second, it must ensure that all secondary legislation and the various common policies are legally consistent. This double requirement is reflected in the internal organization of the Commission's departments.

In the past it was often said that the EEC Treaty was less supranational than the ECSC Treaty and that the Commission's position was weaker than that of the ECSC High Authority. This view was something of a misconception. The ECSC Treaty's 'code of rules' defined the High Authority's implementing powers in detail. By contrast the Commission's implementing powers could not be known until the requisite common policies had been agreed — and no one would deny the wide scope of these powers today.

In point of fact, the Paris and Rome Treaties — and all those which followed — are based on the same principles and purport to set up parallel institutional systems. But the EEC Treaty, evolving as it goes along and allowing the arrangement best suited to a particular sector or situation to be worked out pragmatically, has perhaps been better able to allay the fears of those not fully converted to the Community idea. The balance which it represents between the powers of the national governments and the powers of the institutions is more clearly apparent, as is the close association between governments and institutions in the pursuit of Community policies. This is true despite all the difficulties encountered over the years.

Recent developments, such as the Single European Act and its consequences, the completion of the internal market and the negotiation and entry into force of the Maastricht Treaty on political and economic and monetary union have borne out the approach adopted in 1956 and 1957 by those who negotiated the Rome Treaties. They organized a cautious new impetus to the process of building the Community but pro-

vided it with the capacity to evolve and progress, in particular through the gradual extension of majority voting in the Council and direct elections to Parliament. The obstacles which prevented progress after 1966 (these will be dealt with in a later section) have now been removed and the forces for change within the Community system are able to take full effect.

THE COMMISSION-COUNCIL DIALOGUE



The Council is the main decision-making institution of the Community. It consists of one Minister representing each Member State. The interpreters can be seen behind their glass screens; thanks to them, speakers in all the Community's official languages can communicate with each other.

Successive treaties have laid the foundations, but the task of building up the structure and fabric of the European Union rests with the institutions. And even once that structure is in place for a particular sector, the institutions are still responsible for the formulation and day-to-day implementation of the Community policy that is to replace or supplement the Member States' separate policies.

The ECSC Treaty made provision for dialogue between the Commission and the Council, but on a limited scale only. The Commission (or the High Authority, as it then was) bears a great deal of the responsibility

for implementation of the Treaty. Nevertheless the Council's assent (in some cases unanimous) is required for certain particularly important decisions — to declare a 'manifest crisis' for instance (as in the case of steel) or to adapt the provisions of the Treaty. The approach is, of course, not the same as in the Rome Treaties. In the ECSC, the High Authority (now the Commission) decides with the Council's assent; in the EEC and Euratom, the Council decides on a proposal from the Commission. The difference is not without its political implications, but in both cases the two institutions have a part to play before a decision can be adopted.

Under the Rome Treaties and subsequent treaties, any measure of general application or of a certain level of importance must be enacted by the Council, but only in rare cases can the Council proceed without a proposal from the Commission. The Commission, then, has a permanent right and duty to initiate action. If it submits no proposals, the Council is paralysed and the progress of the Community comes to a halt — in agriculture, in transport, in commercial policy, in harmonization of legislation, whatever the field may be.

As an indication of the volume of work done by the institutions, the statistics for 1992 show that the Commission laid 651 proposals and drafts, and 272 communications, memoranda and reports before the Council.

In the same year the Council, besides dealing with purely procedural matters and with budgets and financial regulations, adopted 383 regulations, 166 directives and 189 decisions.

The Single European Act and, to an even greater extent, the Maastricht Treaty give Parliament an increasingly important part to play in the Community's legislative procedure. We shall return to this subject later. The point to note here, however, is that Parliament's involvement comes in the final stages of the procedure. During the initial stage leading up to adoption of a 'common position' by the Council, as when Parliament is only consulted, the key element is the Commission-Council dialogue laid down in the Treaties. This therefore warrants a more detailed description.

Once a proposal (or a proposal amended after Parliament has delivered its opinion) is lodged, a dialogue begins between the ministers in the Council, who put their national points of view, and the Commission, which seeks to uphold the interest of the Community as a whole and find European solutions to common problems.

There might seem to be some danger of the dialogue becoming rather one-sided because of the Commission's weak position

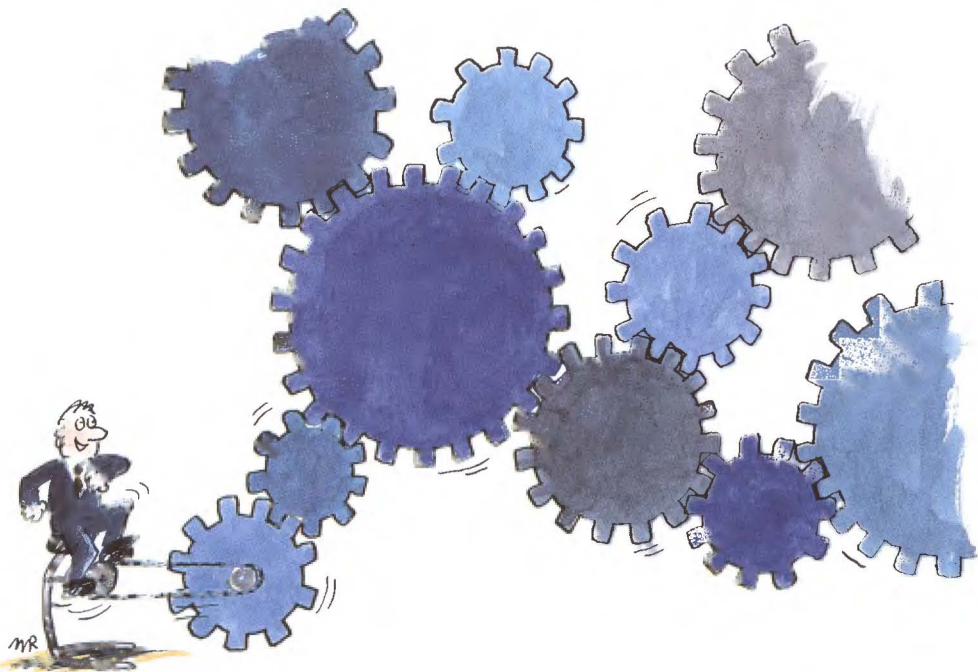
compared to the governments', with the full weight of national sovereign authority behind them. But in fact the Rome Treaties contrive rather ingeniously to ensure that the two are evenly matched.

To begin with, it is the Commission which draws up the proposal the Council is to discuss — and only on the basis of that proposal can the Council deliberate at all. So here the Commission can already exert some real influence, and its hand is further strengthened if Parliament gives a favourable opinion. But its position is buttressed in other ways too.

The new Article 189a added by the Maastricht Treaty (replacing the old Article 149 of the EEC Treaty, which had for long been the cornerstone of the institutional system) lays down that where the Council acts on a proposal from the Commission, unanimity is required to amend the proposal. So except where Parliament has the power of co-decision (see the chapter on Parliament), the Council can even take a decision that departs from the Commission's proposal, provided the decision is unanimous. This is fair enough, since the Council is then expressing a view shared by all the Member States.

By contrast, the majority rule applies only if their decision is in line with the Commission's proposal. In other words, if the Member States are divided, all they can do by a majority vote is to accept the proposal *in toto*, without amendment, since only the Commission can amend the proposal. The position, then, is that the Council can either adopt the Commission's (possibly modified) proposal by a majority; or it can depart from the proposal if there is unanimity; or it may fail to come to a decision at all. So the Commission does in fact have genuine bargaining power in the Council. The dialogue can be — and is — conducted on ground of the Commission's own choosing.

This dialogue obeys its own dynamic laws. Long experience has shown that application of the majority rule does not mean that a



State is liable to find itself 'isolated'. When drafting its proposal, the Commission will have been at pains to take the often widely varying interests of the individual States into account and to establish where the general interest lies. It is only normal in a small 'club' of this kind that Council and Commission Members like to be in agreement if they can. Faced with the prospect of being outvoted, a minister may therefore decide to abandon an extreme or isolated position, while in the interests of good relations the Commission, and the ministers who favour its proposal, may make the effort needed to secure a *rapprochement*. The result — a trifle paradoxical, but amply confirmed in practice — is that the majority rule makes unanimity easier and quicker. In this delicate interplay of forces, the Commission is always in a position to sway the outcome.

The Commission is thus centrally placed in the Council; it can act as a mediator between

governments and, above all, apply the prompting and pressure required to evolve formulas acceptable all round.

The political implications are more important still. The Commission's proposals embody a policy based solely on the interests of the Community as a whole. The fact that the Commission is in office for a fixed term ensures continuity, and the Council can only pronounce on measures proposed by the Commission for putting the policy into effect. There is no danger, then, of the Council adopting conflicting provisions on different issues as alliances change and power struggles develop between governments. Nor can a majority in the Council impose on one of the minority a measure gravely damaging to that State's vital interests without Commission backing. If the Commission does its job properly, it will not be party to any such move. This therefore provides an important guarantee, especially to the smaller Member

States, and they have always set great store by it.

The Maastricht Treaty has introduced an important new element, conferring on the Council responsibility for the intergovernmental cooperation that is to be developed under the umbrella of 'European Union'. At the same time it gives the Commission the right to make proposals in this connection. This right is not exclusive but is shared with the Member States and does not carry the guarantees provided under Article 189a. Unanimity is still the rule for most decisions in this area and it will mainly be a question of officially recognizing practices that already exist. But once these areas formally come within the Commission's sphere of activity, they take on a completely new significance. The Commission will then have to be very watchful to ensure that the new procedures do not lead to its institutional position being weakened.

■ UNANIMITY AND MAJORITY

Under the Paris Treaty, as we have seen, the Council's assent is required only in a limited number of cases; sometimes it has to be unanimous, but mostly it can be given by a majority vote. This system has been duly adhered to since the Treaty came into force. Interestingly enough, when the Council refused to give its assent to the High Authority's plan to declare a state of 'manifest crisis' in the coal industry in May 1959, the decision was one calling for a majority vote rather than unanimous assent. This means that the Council's refusal was due not to a solitary veto but to the fact that it could not muster a majority in favour.

Under the EEC Treaty most Council decisions during the first two stages of the transitional period — from 1958 to the end of 1965 — had to be unanimous. Consequently the procedure described above was not often needed. But even when it was, the Community spirit of the members of the Council, the collective authority of the Commission and the personal reputation of its members always ensured that the dialogue went off smoothly and enabled the Commission to exploit its role of initiator and conciliator to the full.

The scheduled move into the third stage, on 1 January 1966, was to have brought a major extension of the areas in which majority decisions were possible. But at this point the majority rule became the focus of a Community crisis. Was it tolerable, one of the governments demanded, that a Member State should be overruled by the rest when one of its essential interests (or a 'very important interest') was at stake?

This question cannot be answered by citing the relevant provisions, nor is there an objective definition of what constitutes an 'essential interest'. Indeed, if the matter is viewed purely in terms of interests, it could well be that in areas where all the Member States have relinquished their freedom of action to

the Community, the vetoing of a Community decision on the grounds of national interest could prejudice the vital interests of other Member States in that they would be harmed by the paralysis of the Community. By contrast, a State accepting the Community system and relying on its inner logic, its institutions and their rules and traditions can rest assured that these will provide all reasonable safeguards.

In the general interest the Community must take account of the essential interests of its members. The institutions are therefore bound to give these interests every consideration.

Indeed, the Community's ultimate objective of an ever-closer union among its peoples would not be feasible if one nation's vital interests were to be severely harmed.

Moreover the Council procedures just described are calculated to achieve the broadest possible measure of agreement. Conversely, even where unanimity is the rule, no member of a community can disregard the general interest in assessing his own: unanimity in a community cannot be equated with an absolute right of veto.

So although abuse of majority voting — and of unanimity too — is a theoretical risk in a living community, the risk is bound to diminish as the community moves forward and its inner bonds draw ever closer, while the possibility of majority decisions renders the whole system more flexible and more dynamic. The only possible answer is to have faith in the future, faith in the institutions' and governments' good sense and desire to work amicably together.

In the end, the six Foreign Ministers in session in Luxembourg on 28 January 1966, after months of crisis and difficult debate, acknowledged that failure to agree on the application of the majority rule was no reason for not continuing with the joint venture. What has come to be known as the 'Luxembourg compromise' — was, in fact, a state-

ment of disagreement. However, this compromise and the crisis which preceded it had a profound effect on the development of the Community over the next 20 years. For a long time afterwards majority decisions were confined to budgetary and administrative matters, and various bad habits grew up. Some of the new Member States joining the Community since then have pleaded 'very important interests' and demanded unanimity. This state of affairs was confirmed in the drafting and adoption of the Solemn Declaration on European Union, signed in Stuttgart on 19 June 1983 by the Heads of State or Government meeting within the European Council.

At the end of the 1970s, systematic use of the unanimity rule in the Council together with major disagreements over several important issues (own resources, the United Kingdom contribution to the budget and the reform of the common agricultural policy) led to the virtual paralysis of the Community following a long period of crisis from 1979 to 1984. As a result, the governments of the Member States, under pressure from the European Parliament (which adopted the draft Treaty on European Union in February 1984), committed themselves for the first time to a thorough revision of the Rome Treaties. The return to majority voting was cemented by the Single European Act, signed in February 1986, which substantially extended the Council's scope for taking majority decisions, particularly as regards the internal market. These changes ratified by the parliaments of the Twelve marked a fundamental shift in political attitudes. The Maastricht Treaty has extended the scope for majority decisions even further, particularly in relation to economic and monetary union.

Since 1986 a large number of Council decisions have been taken on a majority basis and the use of voting has become common practice. Indeed the Council Presidency often confines itself to noting that the requisite majority in favour of a Commission proposal (possibly amended) can be mustered. Today, then, the 'Luxembourg compromise' is hard-

ly ever used to block a majority decision, even though some Member States still officially refer to it. In view of this new situation, the Council amended its Rules of Procedure in 1987 in order to lay down detailed rules on voting procedures. Over the years both delegations and ministers have gradually changed their approach to discussions to take into account the prospect of a final decision by majority vote.

■ THE EUROPEAN COUNCIL

We have already mentioned the establishment of the European Council (decided in December 1974), its formal enshrinement in the Single European Act and the central role assigned to it in the European Union by the Maastricht Treaty. The latter also for the first time confers operational responsibilities either on the European Council itself, in the case of the common foreign and security policy, or on the Council 'meeting in the composition of the Heads of State or Government' for the establishment and conduct of economic and monetary union.

The first meeting of the European Council was in March 1975 in Dublin. Since then its importance in the workings of the Community has steadily increased. This trend is linked with the fact that the authority of the Heads of State or Government has tended to grow stronger in most of the 12 Member States, either because of the way their constitutions work or because of how political affairs are conducted. Their personal intervention in Community affairs is therefore a major development. Since 1975 they have provided political impetus or laid down guidelines in areas of prime importance (such as direct elections to Parliament, the European Monetary System, reform of agricultural policy, the accession of new members, completion of the internal market and economic and monetary union).

At the same time, the simple fact that the European Council exists and meets regularly has had an effect on the position of the Council itself by opening up the possibility of appeal to a higher authority (even though the Heads of State or Government have, on a number of occasions, refused to take on such a role). The Commission — and in particular its President — has been given increased political status through participation in European Councils, even at the most restricted sessions.

Nevertheless, the nature of the meetings (free of any institutional formalities) and the fact

that they combine discussions on Community matters with discussions on intergovernmental cooperation have emphasized the intergovernmental aspects of these European 'summits'. The significance attached to the position of the Presidency of the European Council, particularly when it is held by one of the larger countries, has strengthened this impression as far as the public is concerned. The European Council's working methods (politicians meeting with neither civil servants nor experts present) play a major part in ensuring its political effectiveness. But they can also be a source of problems with subsequent implementation, and the action eventually taken in practice has sometimes been somewhat at variance with the conclusions reached by the European Council. Suc-

cessive presidencies have sought to remedy the problem. Since 1986 only two meetings are held each year rather than three (except where special needs arise) so as to reduce the European Council's involvement in the conduct of routine Community business. The 'conclusions of the Presidency' are drawn up and scrutinized with great care, and follow-up is closely monitored by the Foreign Ministers (meeting in the Council) and the Permanent Representatives.



The Heads of State or Government of the Community Member States and the President of the Commission meet two or three times a year as the European Council. Here we see them posing at the Copenhagen meeting (21 and 22 June 1993) with Queen Margrethe II of Denmark (centre), Prince Henrik, Queen Ingrid the Queen Mother, and the Foreign Ministers.

■ THE COUNCIL PRESIDENCY

Another significant institutional change in recent years has been the bigger role played by the Council Presidency. Like the setting up of the European Council, this has not come about as the result of an amendment or addition to the Treaties. It is a development which can be attributed, firstly, to practical needs resulting from the more complex operation in an enlarged Community of a body with representatives from nine, then 10 and now 12 countries plus the Commission and, secondly, to political factors resulting from the excessive insistence on unanimity (and the consequent need for compromises which may bear little relation to the Commission proposal) and from the way the European Council operates.

By limiting the length of the Presidency to six months, the negotiators of the Treaty

established a balance which still holds good over 30 years later. Often a country's turn in the Presidency is the occasion for it to show its commitment to Europe and six months is long enough in running the Council to produce results. The fact that the Presidency rotates regularly and thus alternates between the larger and smaller countries also obviates any risk of hegemony.

Cooperation between the Presidency and the Commission remains the general rule: properly applied, it leads to increased efficiency through a distribution of roles, provided that the Commission does not yield any of its powers or relax its vigilance (it can oppose a 'compromise of the Presidency' which departs too far from its own position) and provided that the Council Presidency performs effectively in its role as political stimulator and impartial referee at meetings of the Council and its preparatory bodies.

THE EUROPEAN PARLIAMENT



The European Parliament at a sitting of the House. They are elected for five years by universal suffrage in all the Member States. The Maastricht Treaty enhances their powers of control over the Commission, the Community's executive branch, and their influence over new legislation.

■ A DIRECTLY ELECTED PARLIAMENT

On 7 and 10 June 1979 the citizens of the Community for the first time elected their representatives to the European Parliament. Provision had been made for these elections more than 20 years previously in the Treaty of Rome, which stipulated that the Assembly — the European Parliament — would eventually be elected by direct universal suffrage. In 1960 Parliament had submitted a draft convention to the Council, but this was never followed up.

In December 1974, when they decided to set up the European Council, the Heads of State

or Government agreed in principle to direct elections, and in January 1975 Parliament adopted a new draft convention. At the end of 1975, in Rome, the European Council confirmed that the first direct elections would take place on a single date in 1978. In July 1976, in Brussels, it decided on the number and distribution of seats in the future Parliament. Finally, on 20 September 1976, the Council approved and signed the instruments for the election of Members of Parliament by direct universal suffrage.

However, ratification of the September 1976 'Act' by national parliaments took longer than expected, partly because in the United Kingdom the elections and the electoral pro-

cedure to be followed were treated as a single issue. But finally, on 1 July 1978, the 'Act concerning the election of the representatives of the Assembly by direct universal suffrage' entered into force.

The first elections were held on 7 and 10 June 1979, each State using its own national electoral system, and national voting procedures were again used when the next two Parliaments were elected in 1984 and 1989. Eleven countries use systems involving a considerable degree of proportional representation, with only the United Kingdom (except Northern Ireland) using single-ballot majority voting by constituency.

■ THE FUNCTIONING OF PARLIAMENT

The composition of Parliament makes it a fully integrated Community institution. There are no national sections, only Community-level political groups.

The election of Parliament did not bring about any change in its powers. However, since 1979, the increase in the number of MEPs and the fact that, with a few exceptions, they sit only as MEPs (and not national MPs as well) has set a faster parliamentary pace and a more aggressive style.

Since then, both the Single European Act (with effect from 1987) and the Maastricht Treaty have substantially enhanced Parliament's powers, while at the same time Parliament has pleaded its direct election as grounds for taking a higher profile in Community life and expanding its role and influence. Relations between Parliament and the Commission and Parliament's budgetary and legislative powers will be considered in greater detail below.

Except in August the House sits for one week each month (in Strasbourg), and sometimes in between to discuss special items like the budget. Shorter sittings of a day or two can also now be held several times a year in Brussels. Between the monthly part-sessions, two weeks are set aside for meetings of the parliamentary committees (there are 19 Standing Committees) and the third week for meetings of political groups.

The appropriate Member of the Commission or his representative appears before the committees to give an account of the decisions taken by the Commission, the proposals presented to the Council, and the position adopted by the Commission, *vis-à-vis* the Council. The committees thus follow developments in detail and, as they usually meet in camera, can be given a great deal of information, even on confidential matters, and keep a careful eye on what the executive is up to. The committees are also responsible for preparing Parliament's opinions on the Com-

mission's proposals to the Council, amendments to the Council's common positions, as well as Parliament's own-initiative resolutions. This regularly involves them in hearings with independent experts and representatives of the interest groups concerned.

Questions from Members of Parliament to the Commission and to the Council (as such and in its intergovernmental cooperation form) provide a much-used means of control. In 1992, 3 051 written questions were put to the Commission, 338 to the Council and 137 to the Foreign Ministers (political cooperation).

Since 1973 there has been a Question Time at each part-session of Parliament. The formula has proved so popular with Members that, except in the case of very short part-sessions, there are now two hour-and-a-half periods, one for the Council and political cooperation and one for the Commission. Questions must be brief and to the point. As a follow-up to replies by the Commission or the President of the Council, the Members can put short supplementary questions which sometimes provide lively exchanges.

In 1992 the Commission replied to 785 questions during Question Time and the President of the Council to 335; there were also 205 questions on political cooperation.

Lastly, Parliament can hold urgent debates on current issues (Community and international affairs, violations of human rights, etc.) to bypass the sometimes rather lengthy procedure otherwise involved, under which the Commission presents a paper ('communication') which is then discussed in committee before the debate in plenary session. One sitting in each part-session is devoted to urgent topics, the selection of which sometimes involves heated debates and highly politicized voting.

Parliament has regularly set up special Committees of Inquiry to look into cases where there were grounds for suspicion of unlawful action or maladministration in Community affairs. It has acknowledged the right of all firms and citizens to petition it, and one of its

Standing Committees is responsible for examining all petitions (there were 396 in the 1991/92 session). The Maastricht Treaty expressly preserves all these possibilities, and further provides for an Ombudsman to be appointed to receive complaints from Community citizens, residents and firms who believe themselves to be the victims of maladministration by a Community institution other than the Court of Justice. The Ombudsman may investigate the complaint and refer the case to the institution concerned; he may also report to Parliament. He is to be totally independent, but there will be close links between him and Parliament. His function forms part of the new approach to Community citizenship created by the Maastricht Treaty.



EUROPEAN PARLIAMENT: 518 MEMBERS (567 Members from June 1994)

Parliament is presided over by a President assisted by 14 Vice-Presidents

Group of the Party of European Socialists

Group of the European People's Party (Christian Democratic Group)

Liberal Democratic and Reformist Group

The Green Group in the European Parliament

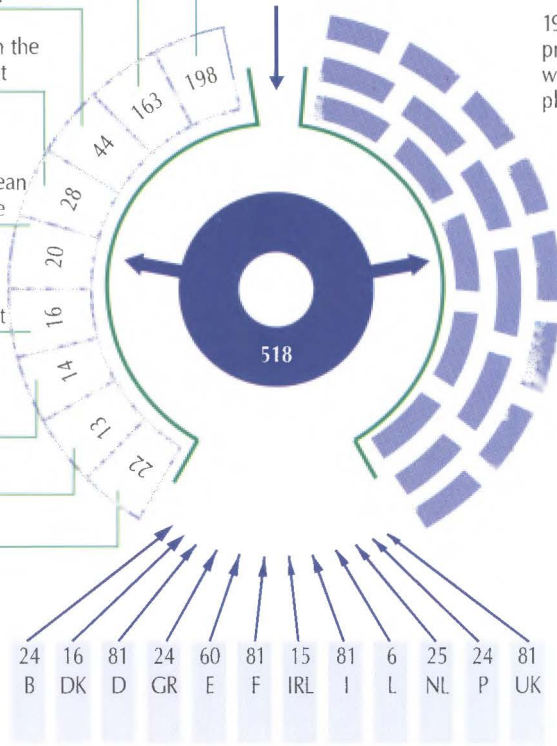
Group of the European Democratic Alliance

Rainbow Group in the European Parliament

Technical Group of the European Right

Left Unity Group

Non-attached



19 committees prepare the work of the plenary sessions

Composition of the European Parliament (situation on 21 June 1993)

1.	Group of the Party of European Socialists	198 Members
2.	Group of the European People's Party (Christian Democratic Group)	163 Members
3.	Liberal Democratic and Reformist Group	44 Members
4.	The Green Group in The European Parliament	28 Members
5.	Group of The European Democratic Alliance	20 Members
6.	Rainbow Group in the European Parliament	16 Members
7.	Technical Group of the European Right	14 Members
8.	Left Unity Group	13 Members
9.	Non-attached	22 Members

- | | |
|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1. Committee on Foreign Affairs and Security | 10. Committee on Transport and Tourism |
| 2. Committee on Agriculture, Fisheries and Rural Development | 11. Committee on the Environment, Public Health and Consumer Protection |
| 3. Committee on Budgets | 12. Committee on Culture, Youth, Education and the Media |
| 4. Committee on Economic and Monetary Affairs and Industrial Policy | 13. Committee on Development and Cooperation |
| 5. Committee on Energy, Research and Technology | 14. Committee on Civil Liberties and Internal Affairs |
| 6. Committee on External Economic Relations | 15. Committee on Budgetary Control |
| 7. Committee on Legal Affairs and Citizens' Rights | 16. Committee on Institutional Affairs |
| 8. Committee on Social Affairs, Employment and the Working Environment | 17. Committee on the Rules of Procedure, the Verification of Credentials and Immunities |
| 9. Committee on Regional Policy, Regional Planning and Relations with Regional and Local Authorities | 18. Committee on Women's Rights |
| | 19. Committee on Petitions |

■ BUDGETARY POWERS

When the Council decided to give the Community financial resources of its own, the Member States agreed to amend the Treaties to increase Parliament's budgetary powers. Two treaties were concluded for this purpose — one on 22 April 1970 (effective 1 January 1971), the other on 22 July 1975 (effective 1 June 1977). The latter also set up the Court of Auditors. These budgetary powers were left unchanged by the Maastricht Treaty, despite Parliament's requests for changes.

Parliament now has the last word on all 'non-compulsory' expenditure, in other words expenditure that is not the inevitable consequence of Community legislation. Parliament's budgetary powers cover the institutions' administrative costs and, above all, certain operational expenditure (Structural Funds, research, energy, the environment, transport and the like). This expenditure is considerable, representing 44.4% of the budget or some ECU 28.4 billion in 1992, and it determines the Community's development by boosting certain policies (social, regional, research, etc.) or allowing new activities to be launched (environment, consumers, education, etc.). Parliament has the power not only to reallocate but also to increase expenditure within certain limits. This is a good illustration of the political significance of its budgetary powers.

The remainder of the budget is made up of 'compulsory' expenditure (56% or some ECU 35.5 billion in 1992). Basically this is expenditure on the common agricultural policy (52.3% of the budget in 1992), most of it for price support. Parliament can propose 'modifications' to this category of expenditure. Provided they do not increase the total amount of expenditure such modifications are deemed to be accepted unless the Council rejects them by a qualified majority.

Parliament has the right to reject the budget as a whole: this it did for the first time on 13 December 1979. Parliament also rejected the 1985 general budget, as well as a supplementary budget in 1982.

Lastly, it is Parliament's President who is responsible for declaring that the budget has been finally adopted once all the procedures have been completed. This has been an important factor in the budgetary debates in that Parliament has been able to bring to bear its own interpretation of the complex budgetary rules laid down in the 1970 and 1975 Treaties.

In 1986, however, the Court annulled the decision by which the President of Parliament had adopted the budget for that financial year, following an appeal by the Council. It thereby defined the extent of Parliament's prerogative and at the same time clarified the interpretation of certain budgetary rules.

Parliament, then, holds a strong position in the budget process. The dialogue between Parliament and the Council has increasingly come into play and where it has not been possible to resolve differences, Parliament has, on a number of occasions been able to impose its point of view. In 1988, the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure established the joint responsibility of Parliament, the Council and the Commission in this field while respecting the various competences attributed to them under the Treaties. It fixed new rules for cooperation between the institutions and opened the way to a 'lasting peace' in the area of the annual budget procedure. This agreement was renewed in 1993.

Lastly, on a recommendation from the Council, Parliament is to give the Commission a discharge in respect of its administration of the budget for the preceding year. The discharge is substantially inspired by the findings of the Court of Auditors, and is accompanied by observations and recommendations. The Maastricht Treaty now requires the Commission to take all appropriate steps to act on the observations made by Parliament (and the Council) and to report on the measures it takes.

■ LEGISLATIVE POWERS

Under the Treaties of Rome, Parliament's involvement in the legislative process was restricted to giving its opinion on certain Commission proposals. In addition to this compulsory consultation, provision was soon made for optional consultation at the request of the Council, so that Parliament can make its voice heard in the legislative process whenever major legislation is involved.

However, Parliament was not satisfied with this consultative role (even less so once it became an elected body). By using its budgetary powers it first endeavoured to obtain a greater say in the legislative activities of the Community. The introduction in 1975 of a conciliation procedure between Parliament, the Commission and the Council should have strengthened Parliament's influence on the drafting of legislation with significant budgetary implications. However, the procedure has not been really effective.

Parliament's stated objective since direct elections is that the power to enact legislation should be shared between Parliament and the Council. Not unreasonably, MEPs see such reform as the surest way of giving Parliament some influence in the running of the Community and of making its voice heard publicly. The low turnout in successive elections emphasized the need for such a change.

Thus in February 1984, before its dissolution, the first directly elected Parliament adopted a draft Treaty establishing the European Union, initiated by Altiero Spinelli, which aimed at a thorough overhaul of the Community system to enable the Communities to overcome the obstacles they faced and to move forward with renewed impetus. It also sought to reform the Community's system of legislation by giving Parliament and the Council an equal say in decisions.

Parliament's initiative was instrumental in prompting awareness of the need to reform the institutions and to set clear objectives for

the Community, and (as has already been pointed out) led both to the decision to complete the internal market by 1992 and to the convening of the Intergovernmental Conference which drafted the Single European Act.

The Single European Act and the Maastricht Treaty did not go all the way to meeting Parliament's demands, but at least they have made it into a veritable legislative body by establishing a co-decision procedure and an assent procedure in certain areas and a cooperation procedure in others.

The co-decision procedure is the creature of the Maastricht Treaty, which, however, does not describe it in those terms but refers drily to the procedure referred to in Article 189b. Where this procedure applies, Parliament jointly decides with the Council on regulations, directives and other instruments governing a wide range of matters — management of the internal market, freedom of movement for workers and freedom of establishment, research, trans-European infrastructure networks, cultural matters, public health, etc.

The co-decision procedure can be summed up as follows:

- (i) the Council, acting on a proposal from the Commission after receiving Parliament's opinion, establishes a common position. This is laid before Parliament, which may either approve it (in which case the Council finally adopts it), or reject it after a conciliation procedure has been followed, or amend it (by an absolute majority of its members);
- (ii) if, after also considering the Commission's opinion, the Council accepts all the amendments proposed by Parliament, it finally adopts the amended common position. Otherwise a Conciliation Committee is jointly convened by the Presidents of the Council and Parliament;
- (iii) the Conciliation Committee brings equal numbers of representatives of the Coun-

cil and Parliament together with Commission representatives to reach agreement on a common text, requiring approval by qualified majority of Council representatives and an absolute majority of Parliament's representatives. This common text is then laid before the full Council and Parliament for adoption by the same majorities. If one of the institutions rejects the text, the proposal is lost and the procedure is over;

- (iv) however, there is one more clause that was heavily contested by Parliament: if the conciliation procedure fails, the Council may confirm its common position, incorporating some of Parliament's amendments if it wishes. The proposal then stands adopted unless Parliament, by an absolute majority of its members, rejects it.

Instruments adopted under the co-decision procedure are signed by the Presidents of Parliament and the Council and published in the *Official Journal of the European Communities*.

The Treaty imposes binding deadlines for the various stages of the procedure to be observed by all the institutions.

As soon as the Maastricht Treaty was signed, Parliament began preparing internal procedures to ensure that full advantage was taken of the new possibilities. One of its chief concerns was to see that the final clause allowing the Council to enact the instrument unilaterally unless Parliament rejects it is used as little as possible. In all likelihood, it will ask the Commission to withdraw its proposal if the conciliation procedure fails, and then there will be no proposal to vote on.

When the Single Act was adopted, Parliament already changed its Rules of Procedure and its internal organization so as to keep to the deadlines imposed in the cooperation procedure, which has functioned well as a result. It can safely be assumed that the same successful result will be attained with the co-

decision procedure, so that this procedure can be extended to new areas when the next round of Treaty reforms scheduled for 1996 takes place.

Parliament's power of assent, the first stage on the way to the co-decision procedure, was conferred by the Single Act in relation to applications for accession by new Member States and association agreements with non-member countries, notably in the Mediterranean. The Maastricht Treaty substantially extended this procedure, which now applies to decisions affecting the right of residence of Community citizens, the organization of the Structural Funds, the establishment of the Cohesion Fund, certain institutional matters in the context of Economic and Monetary Union, all international agreements of sufficient importance and the adoption of uniform voting procedures for European Parliament elections. These are questions of considerable political and economic significance and Parliament's status in the debates on them is likely to be very strong. There are abundant precedents for a high-profile approach. Parliament has repeatedly withheld or deferred its assent to agreements with countries whose human-rights' record leaves much to be desired and has asked, sometimes successfully, to be associated with work on negotiating briefs and even the negotiations themselves.

The cooperation procedure established by the Single Act was the testing ground for the co-decision procedure that followed in the Maastricht Treaty. The implementation and management of the internal market was one of the main areas covered by the procedure under the Single Act and is now, as we have seen, covered by the co-decision procedure. But the cooperation procedure, known as the Article 189c procedure in the Maastricht Treaty, has also been extended to new areas, such as social policy, education and training, the environment, legislation for Economic and Monetary Union and to implementing measures for the Structural Funds, the trans-European infrastructure networks, etc.

The cooperation procedure can be summarized as follows:

- (i) The Council, on a proposal from the Commission and after obtaining the opinion of Parliament, adopts a 'common position'. This is then referred to Parliament, which has three months in which to endorse it (expressly or implicitly), reject it or amend it. The Commission has one month in which to decide whether or not to accept any amendments proposed by Parliament.
- (ii) The Council then proceeds to a second reading.
- (iii) If Parliament has rejected the Council's 'common position', unanimity is required. If Parliament has proposed amendments, the Council votes by qualified majority where the Commission has endorsed them and unanimously where the Commission has been unable to do so.
- (iv) If the Council fails to reach a decision within three months, the Commission's

proposal is deemed not to have been adopted.

The cooperation procedure leaves the Commission with a substantial role to play (in the co-decision procedure, as we have seen, it plays more of a supporting role). Parliament directly influences the Council's decision, even if the Council retains the final say. A large number of amendments by Parliament, often of no mean significance, have been adopted by the Commission and the Council at second reading, and Parliament has frequently been able to express satisfaction at the outcome of its involvement.

The cooperation procedure has strengthened relations between Parliament and the Council. The co-decision and assent procedures, and in particular the Conciliation Committee, will take this process a stage further. In the 1990s, a true dialogue between the two institutions will gradually develop into a vital new component of the Community system.

■ PARLIAMENT AND THE COMMISSION

The Treaty of Paris and subsequently the Treaties of Rome established that the Commission is answerable only to Parliament; this was taken to be a guarantee of its independence and impartiality. Parliament has attached great importance to its role as watchdog over the Commission and has been at pains to ensure that it acts genuinely as the guardian of the Community interest; it has always been ready to intervene if it thought the Commission was too inclined to bow to the wishes of one or more of the governments of the Member States.

But the balance in relations between Parliament and the Commission was imperfect as long as Parliament had no influence over the Commission's appointment. Progress in recent years remained somewhat symbolic. Parliament's Bureau was informed officially when a new Commission President was designated, and the House could then express an opinion after the event. The first thing the Commission did after taking office was to appear before Parliament and present a policy statement on which a motion of confidence was then taken.

The Maastricht Treaty has rectified the balance here. Following the next elections to Parliament in June 1994, it will be involved in the procedure for appointment of the new Commission (and its President) due to take office in 1995. The Commission's term of office is to be aligned on Parliament's five-year term. The elected Parliament will have been consulted before the governments designate the future Commission President, and the full Commission itself will require parliamentary approval before it can finally be appointed by agreement between the governments.

These parliamentary votes, both on the President and on the full Commission, will be the key element in the procedure for appointing the Commission. The final decision by the governments of the Member States will tend to be of greater formal than substantive

significance. The Commission's political status will be correspondingly reinforced, for it will in effect be an elected rather than an appointed body. Parliament will be all the more demanding in its control over the Commission, and the possibility of a motion of censure will be real and no longer just theoretical when Parliament is actively involved in designating a successor to a Commission that it can vote out of office.

THE COURT OF JUSTICE

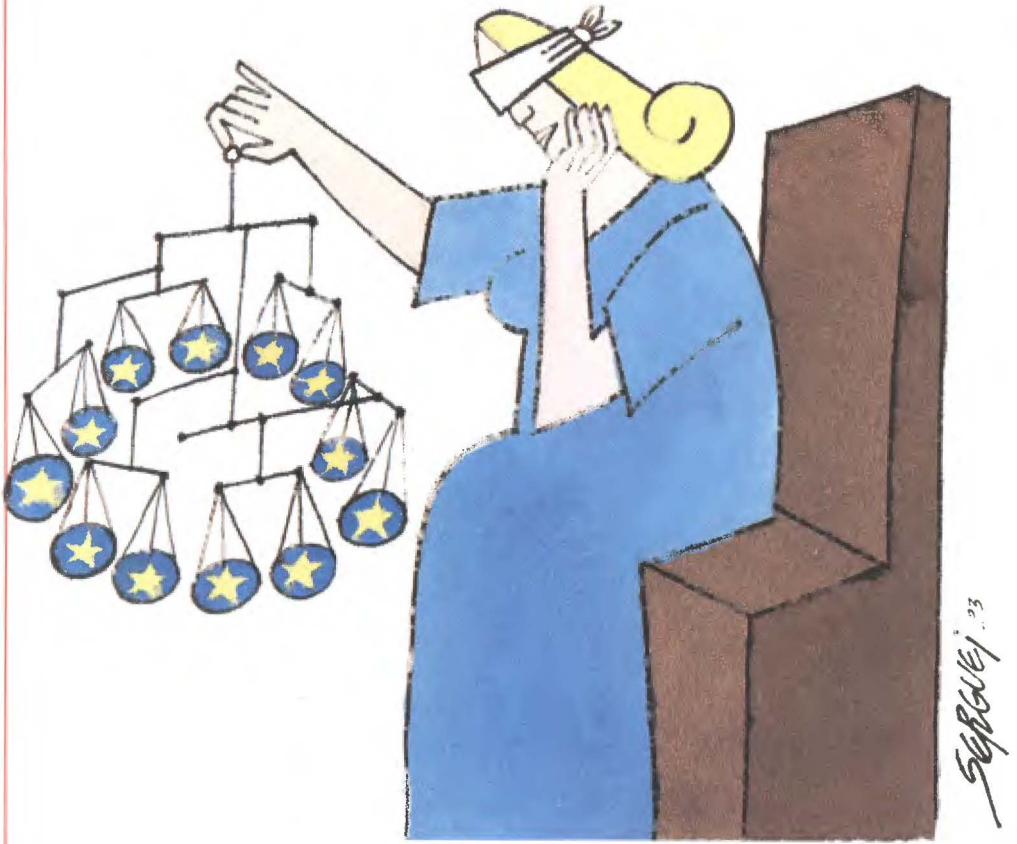
Because of the substantial direct enforcement powers vested in the High Authority under the ECSC Treaty, the ECSC Court of Justice was mainly called upon to handle appeals to it by coal and steel enterprises. In 1958 the Rome Treaties replaced it by a single Court of Justice of the European Communities. Since application of the Rome Treaties, and the EEC Treaty in particular, called for a considerable measure of government action, the first cases coming before the new Court were brought by the Commission

against governments for infringements of the Treaties. These were followed in due course by actions brought by governments against decisions of the Commission and actions brought by individuals.

The Court's procedure for dealing with cases of this kind is broadly similar to that of the highest courts of appeal in the Member States. Both institutions and individuals (natural and legal persons) must comply with the Court's judgments, which not only settle



The Court of Justice is composed of 13 Judges and six Advocates-General. It ensures that in the implementation of the Treaties, the law is observed. This photo was taken at the ceremony to mark the Court's 40th Anniversary on 4 December 1992.



the particular matters at issue, but also spell out the construction to be placed on disputed passages in the Treaties, thereby affording clarification and guidance as to their implementation.

In recent years, over and above this function of ensuring that Community legislation is good law, the Court has increasingly been called upon to give preliminary rulings on questions referred to it by national courts. Community law, made up of the Treaties and the corpus of legislation based on them (secondary legislation), is becoming more and more interwoven with the national law of the individual member countries. Its implementation is therefore attracting more and more of the national courts' attention.

Several thousand judgments have been handed down relating to Community law by national courts under the EEC and ECSC

Treaties (but none under the Euratom Treaty because of its special structure).

Referrals to the Court of Justice are requests to it to rule on the interpretation or to assess the validity of particular portions of Community law (in the ECSC context, the validity of Commission and Council legislation only). The steady rise in the number of such referrals bears witness to the closer working cooperation between the European Court and national courts, permitting Community law to be uniformly enforced in all the member countries and helping to build up a consistent body of European case-law.

The Maastricht Treaty has further strengthened the authority of the Court by giving it the power to impose fines or penalties on Member States which fail to comply with its judgments.

A Court of First Instance was established under the Single European Act. It took up its duties in October 1989 and has jurisdiction in cases relating to matters covered by the ECSC Treaty, enforcement of the rules on competition and disputes between the Community institutions and their staff. In June 1993 its jurisdiction was extended to all actions brought by individuals or companies against Community institutions and agencies, except in cases relating to the protection of trade. Appeals against its decision may be brought before the Court of Justice, in which case the latter may give judgment only on points of law.

A few figures may serve to indicate the extent of the Court of Justice's work. Between 1952, when the ECSC Treaty came into force, and the end of 1992, 5 405 cases were brought (this figure excludes administrative actions and further appeals by Community officials in connection with the Staff Regulations). Of this total, 4 828 related to the EEC Treaty: of

these 2 547 were preliminary rulings (including 87 actions brought under the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters), 917 were actions by the Commission, 229 were actions by governments, 35 were by institutions against another institution and 1 099 were actions by individuals. In all, 22 appeals were lodged against judgments given by the Court of First Instance. Of the 544 ECSC cases brought between 1952 and 1992, 500 were instituted by individuals and enterprises and 32 by governments, five were preliminary rulings and two were appeals. Twenty actions, of which three were preliminary rulings, have been brought with respect to Euratom.

By the end of 1992 a total of 446 cases had been brought before the Court of First Instance, including 299 relating to the Staff Regulations, 133 the EEC Treaty and five relating to the ECSC Treaty.

THE COURT OF AUDITORS



Headquarters of the Court of Auditors in Luxembourg. The Court checks that the Community budget (ECU 59.5 billion in 1992) is correctly spent. It also verifies its budgetary income.

The Court of Auditors was set up by the Treaty of 22 July 1975 and held its constituent meeting in Luxembourg (its headquarters) on 25 October 1977.

The Court took over from the EEC and Euratom Audit Board and from the ECSC Auditor as the body in charge of external auditing of the Community's general budget and the ECSC's operating budget. Internal auditing is still a matter for each institution's financial controller.

In setting up the Court the governments and institutions (particularly Parliament) showed

that they wanted a qualitative change in the style of budgetary auditing, given the size of the Community's budget. Not only does the Court have more political authority than its predecessors, but, more important still, it is a permanent body with a relatively large staff. It can extend its investigations to operations carried out in and by the Member States on behalf of the Community (such as expenditure on agriculture or the collection of customs duties) and in non-member countries which receive Community aid (under the Lomé Convention for example). It can ad-

dress observations on its own initiative to the institutions on operations undertaken by them and it can deliver opinions at the request of an institution.

The Maastricht Treaty strengthened the authority of the Court of Auditors by giving it the status of an institution and broadening the range of its duties.

At the end of each financial year the Court draws up a report on its work. This is published in the Official Journal with the institutions' replies to its observations. In addition to this, it produces a large number of special

reports on individual and sometimes major issues (e.g. the operation of the EAGGF Guarantee Section or food aid to developing countries).

Parliament, which had attached enormous importance to the establishment of a Court of Auditors, makes full use of the opportunities offered by the Court's investigatory powers, opinions and annual report to reinforce its own control over Community expenditure and give full weight to its annual decision granting a discharge in respect of implementation of the Community budget.

THE ECONOMIC AND SOCIAL COMMITTEE



The Economic and Social Committee in plenary session. The ESC represents employers, workers and other categories of citizen in the Community. It is consulted on most Community legislation, especially where economic and social interests are affected.

The Economic and Social Committee provides institutional representation for the various categories of economic and social activity: employers, workers and interest groups covering the other forms of activity, including agriculture, transport, commerce, crafts, the professions, small businesses, consumer affairs, protection of the environment and cooperatives, are all represented on the Committee.

The Committee has 189 members drawn from the most representative national organizations; they are appointed in a personal capacity by the Council (after consulting the Commission) for a term of four years.

The number of members from each country is as follows: Belgium: 12; Denmark: 9; France: 24; Germany: 24; Greece: 12; Ireland: 9; Italy: 24; Luxembourg: 6; Netherlands: 12; Portugal: 12; Spain: 21; United Kingdom: 24.

Members are divided into three groups: employers, workers, and various interests. Opinions delivered in plenary session are drawn up by specialized sections, whose members may be accompanied at meetings by assistants appointed as experts.

Instituted by the Treaties of Rome, the Committee has to be consulted by the Council on Commission proposals in certain areas specified in the EEC and Euratom Treaties. It

also delivers opinions at the request of the Council or the Commission and — since 1972 — on its own initiative.

The Committee also cooperates with the European Parliament along the lines set out in a resolution adopted by Parliament on 9 July 1981, which provides for the organization of exchanges of information between parliamentary committees and specialized sections as well as for liaison between chairmen and rapporteurs.

The activities of the Committee have increased steadily (from seven opinions in 1968 to 156 in 1992). In most cases, the Committee reaches a consensus on opinions which are an amalgam of the positions of the various groups and as such are of considerable value to the Commission and the

Council, highlighting as they do the desiderata of the groups most affected by the proposal. Some of the Committee's own-initiative opinions have been of major political importance; a particular example was its opinion of 22 February 1989 on fundamental social rights in the Community, which provided the basis for the Commission's proposal for a 'Social Charter' (accepted by eleven of the Member States).

The Single European Act has increased the involvement of the Committee in the drafting of texts relating to completion of the single market. The Maastricht Treaty gave the Committee greater autonomy (it now decides on its own Rules of Procedure) and enabled it to intervene in several new areas falling within the Community's competence.

THE COMMITTEE OF THE REGIONS

The Maastricht Treaty set up a Committee of the Regions in response to several Member States' insistent demands that regional and local authorities should be directly involved in deliberations at Community level. In many countries these authorities enjoy wide-ranging powers, either because of the federal structure of the country concerned or by virtue of legislative or constitutional measures adopted over the last few decades.

The Committee of the Regions consists of 189 members, each with an alternate. The number of members per country is the same as for the Economic and Social Committee.

The Committee has still to make its presence felt in the Community context. Provision has been made for it to share the 'organizational

structure' of the Economic and Social Committee so that it can benefit from the experience it has accumulated over the years. The Committee of the Regions will probably be anxious, however, to play a more political role. The regional and local authorities of several countries have stressed that it is for them to designate their representatives on the Committee even if formal appointment will be by the Council on the Member States' recommendation. Although it need only be consulted on Commission proposals with a direct or indirect regional impact, the Committee may deliberate on any proposal sent to the Economic and Social Committee and may issue opinions on its own initiative. This new Community body can thus be expected to exert a strong influence on events.

WORKING METHODS

From this brief account of the main tasks of the institutions, their relationship to each other and the balance of powers between them, let us now turn to their working methods.

■ THE COMMISSION'S DEPARTMENTS

The Commission's departments comprise a Secretariat-General, a Legal Service, a Statistical Office, 23 Directorates-General, and a number of specialized services.

In December 1992 the staff totalled 13 780, of whom 3 933 are in administrative and executive grades. Another 1 619 are engaged in translation and interpretation. There are nine official Community languages, hence the size of the Language Service.

Officials are divided between Brussels and Luxembourg (some 2 600 are based in Luxembourg). Around 3 200 other staff are engaged in research work; most of them are assigned to the Joint Research Centre's establishments.

In 1992 administrative expenditure by the Commission and the other institutions was in the region of ECU 2.9 billion, or 4.66% of the total budget.

Each of the Members of the Commission has been given special responsibility for one or more portfolios or broad areas of Community activity (competition, agriculture, social affairs, etc.). He has one or more Directors-General reporting to him.

■ HOW THE COMMISSION WORKS

Under the Treaties, the Commission is bound to act collectively. This means that the Commission, as a body, must adopt the various measures — regulations, decisions, proposals to the Council, etc. — incumbent on

it under the Treaties or implementing regulations. It cannot delegate powers to a Member in his particular area which would give him a measure of independence comparable to that enjoyed by, say a national minister in his department.

Various procedural devices have been adopted to ensure that this system does not create log-jams in Commission business. Discussion of particularly important or complex matters is prepared by *ad hoc* groups of the Members most concerned.

The Commissioners' *chefs de cabinet* or other members of their staff meet regularly to prepare the ground for the Commission's discussions and simplify decision-making either by considering matters of a particularly technical nature in depth or, at the start of each week, by discussing all the items on the agenda for the Commission's weekly meeting.

Straightforward matters are largely dealt with by 'written procedure', a device taken over from the EC Commission: the Members are sent the dossier and the proposal for a decision, and if they have not entered reservations or objections within a given period (usually one week) the proposal is deemed to be adopted.

The written procedure was used 2 200 times in 1992.

Lastly, the Commission can empower one of its Members to take decisions on routine matters on its behalf and under its responsibility. Powers are delegated only if the margin of discretion is narrow and no political issues are involved. Many recurrent agricultural regulations are adopted under this procedure. In 1992 about 7 000 measures (including some 4 400 agricultural regulations) were taken in this way.

Only matters of some importance actually appear on the agenda for the Commission's weekly meeting, which usually lasts at least one day.

When particularly delicate matters are being discussed, the Commission sits alone, the only official present being the Secretary-General. In other cases, the officials responsible may be called in. Although its decisions can be taken by a majority, many are in fact unanimous. Where a vote is taken, the minority abides by the majority decision, which becomes the position of the full Commission.

■ HOW THE COMMISSION REACHES ITS DECISIONS AND DRAWS UP PROPOSALS FOR SUBMISSION TO THE COUNCIL

The Commission proceeds quite differently depending on whether its aim is to establish the broad outlines of the policy it intends to pursue in a particular field, or to define the practical details of that policy or measures which tend more towards the technical than the political.

When it is formulating policy, the Commission, following extensive consultations with political circles, top civil servants and employers' and workers' organizations, works out its final position with the assistance of its own departments. This involves a series of meetings, often numerous and prolonged, with a period of careful consideration between one reading and the next. It is along these lines, for instance, that the Commission prepared its opinions on applications for Community membership, its annual farm price proposals, its reports on reform of the common agricultural policy and the Structural Funds, its proposals on new own resources and documents such as its White Paper on completing the internal market, the 1987 Delors I package, 'Making a success of the Single Act' and the 1992 Delors II package.

By contrast, once the main lines of policy have been agreed, the Commission normally consults national experts to work out the practical details of arrangements to be adopted or proposals to be submitted. The Commission's departments convene meetings of government experts at which a Commission official takes the chair. These experts do not commit their respective governments, but as they are sufficiently well informed as to the latter's wishes and general position, they can guide their Commission counterparts in their search for suitable technical formulas which will be generally acceptable to the governments.



As these meetings of experts proliferate, more and more national civil servants are receiving what can fairly be called a European training. At the same time, a departmental-level dialogue is being conducted between Community and national officials. In addition, Members of the Commission or their departments have regular meetings with leading representatives of trade unions, employers' federations, farmers' associations, traders' organizations, etc., grouped at European level.

The increase in the Community's areas of competence and the intensity of its legislative activities have attracted to the institutions large numbers of spokesmen for sectoral, regional and private interests. This particularly applies to the Commission and Parliament, which have drawn up framework rules to ensure that all ap-

proaches made or steps taken by such spokesmen are above board.

Some committees have been formally institutionalized by the Council or Commission. Examples of this are the Economic Policy Committee, the Committee for Scientific and Technical Research, the agricultural advisory committees and the Consumers' Consultative Council. Some of these committees comprise high-level government representatives, others bring together leading members of the professional and trade associations concerned. Still others have a mixed membership of government experts and delegates from the interest groups concerned.

In due course the results of these preparatory proceedings are laid before the Commission, which then adopts its position. This, then, is

the process by which the Commission frames not only its proposals to the Council, but also regulations or decisions which it is responsible for itself, but which it thinks preferable to prepare with the help of national civil service expertise.

■ THE COUNCIL IN OPERATION

When it receives a general policy paper ('memorandum') or a specific proposal from the Commission, the Council refers it to the Permanent Representatives Committee (there is, however, a special committee for agriculture). The ground for the Committee's deliberations is prepared by a host of working parties or committees, some of which are permanent.

The Commission is represented at all meetings of the Permanent Representatives Committee, special committees and working parties so that the dialogue begun with national experts can continue with ambassadors and government representatives.

The Council's decisions must be taken by the Ministers themselves. However, on less important matters, decisions are adopted without debate if the Permanent Representatives and the Commission's representative are unanimously agreed. This procedure has been extended to certain decisions adopted by a qualified majority where the delegations in the minority do not request that the matter be debated in the Council.

By contrast, important questions and issues with political implications are discussed in detail by the Ministers and the Members of the Commission, who attend Council meetings as of right. It is at this stage that the dialogue described earlier comes into play.

Council meetings are not mere formalities, as ministerial meetings in other international organizations sometimes are. They are down-to-earth working sessions of serious and sometimes heated debate, where the outcome may hang in the balance until the very last. They are, incidentally, frequent and often lengthy.

In 1992, the Council held 89 meetings including the three European Councils. The Permanent Representatives Committee met 48 times.

When a decision has to be taken on a particularly thorny issue, the Council may have to hold a 'marathon' session. Brussels still remembers the marathon on the agricultural market mechanisms at the end of 1961 and beginning of 1962. This meeting, which lasted nearly three weeks after the Council 'stopped the clock' holds the record, but there have been others... .

■ THE INSTITUTIONS' APPROACH

Apart from these details of the way the institutions function, there are three points to be made about their general approach.

Firstly, the institutions, and Parliament and the Commission in particular, do not live in an ivory tower. On the contrary, they provide an open forum for exchanges of views between governments and civil services, Members of the European Parliament, national members of parliament and represen-

tatives of trade unions and professional associations.

Secondly, although strict legal rules must be faithfully obeyed, the necessary flexibility is guaranteed by the constant dialogue which creates a team spirit and fosters mutual confidence.

Last but not least, economic interest groups, Parliament, national civil services and ministers have genuine confidence in the Commission's impartiality (though it does not claim to be above criticism) and absolute respect for the authority of the Court of Justice.

SUMMING-UP

The EEC and Euratom have been in existence for 35 years now; the ECSC even longer. After several crises and the accession of six new Member States, it can be said that the Community system has proved its durability.

Through its institutions the Community has succeeded in attaining most of the Treaties' objectives, and in many areas it has progressed even further. But integration remains incomplete, and worse still, unbalanced. Substantial progress must still be made, otherwise ground will be lost.

The 1969 Hague Summit of the six Heads of State or Government gave birth to two major plans: economic and monetary union and greater political solidarity.

At the prompting of Pierre Werner, the Luxembourg Prime Minister, an ambitious project for economic union was presented to the national governments, but progress towards it was slowed and eventually halted by the economic crisis of the 1970s.

Then, in the autumn of 1977, the President of the Commission relaunched the idea of monetary union. Following initiatives by a number of governments and by the Commission itself, and thanks to the active efforts of the European Council, the European Monetary System came into effect on 13 March 1979, with eight of the nine Member States as full participants (at the time the United Kingdom opted to remain outside the exchange rate mechanism). In the following years the EMS weathered several storms. A hard core of participating countries kept it on an even keel. It strengthened monetary cooperation remarkably: exchange rates have become a matter of mutual interest and changes (both devaluations and revaluations) are discussed and agreed on at special meetings of Finance Ministers. This has also engendered tighter economic discipline and a gradual alignment of the Members' economic policies.

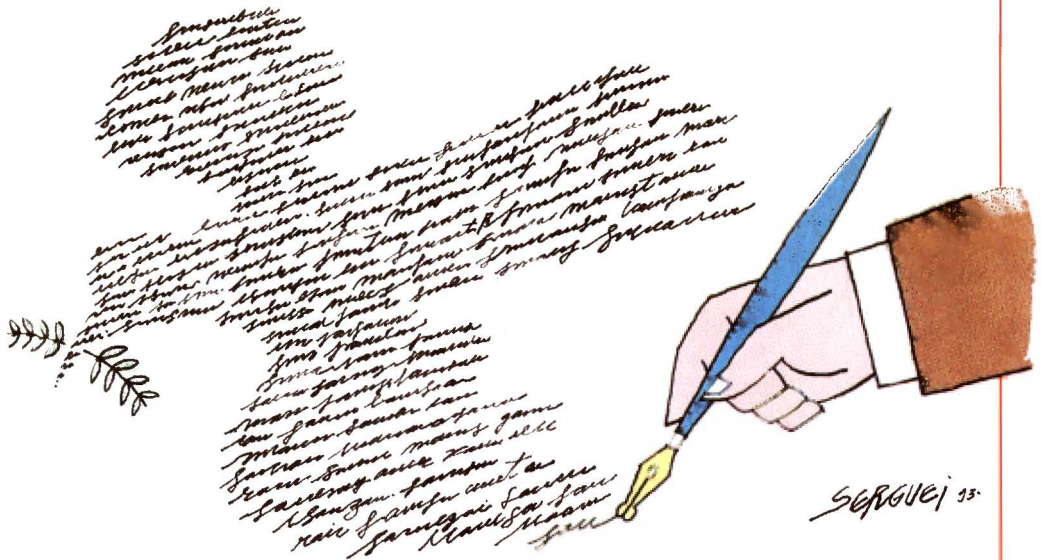
Some Member States have at times responded to economic difficulties (and currency

speculation) by withdrawing from the exchange rate mechanism. However, full participation in the EMS leading to economic and monetary union remains the publicly stated objective of most of the Twelve.

In today's world, economic solidarity is inseparable from political solidarity. In this respect, the conclusions of the Hague Summit did have a tangible impact: a system of political cooperation was brought into operation by the governments of the Member States. This has been gradually extended to almost every area of foreign policy, including the political and economic aspects of security, and was made legally binding by the Single European Act. It operates on a consensual basis. Although it has its own structures, it has functioned in increasingly close harmony with the Community institutions. Its President reports regularly to Parliament and the Commission is involved in all meetings.

In the autumn of 1972, when the United Kingdom, Denmark and Ireland were about to join the Community, the Heads of State or Government set themselves the ambitious goal of transforming relations between the Member States into a European Union by the end of the decade. However, that date was to mark the beginning of a long and painful crisis for the Community. Yet it led to a political leap forward which bears witness to the deep-seated trend towards European integration — the adoption of the draft Treaty on European Union (the Spinelli draft) by the European Parliament in February 1984, and the opening in June 1985 of negotiations which culminated in the Single European Act (which came into force on 1 July 1987). This gave the Community the means to complete the internal market by the end of 1992 while at the same time making significant improvements in its internal operations.

The signing of the Maastricht Treaty and its entry into force represent completion of a major new stage in the Community's march towards the goals it fixed in 1969 and 1972.



We have described the major institutional changes this entails. A detailed programme has been drawn up to bring about economic and monetary union before the end of the century while a single operating structure has been set up for intergovernmental cooperation (foreign affairs, internal affairs and justice). The Member States (subject to derogations for Denmark) have undertaken to establish a common external and security policy (which could lead in time to a common defence policy). Intergovernmental cooperation will be administered by the Council with the assistance of the Commission and in consultation with Parliament. It is regrettable that involvement of the institutions was not accompanied by the adoption

of Community rules for the administration of these areas, but it is a significant step forward all the same.

Implementation of the Maastricht Treaty was linked to further enlargement of the Community to include four new members — Austria, Finland, Norway and Sweden. Following the collapse of the communist system, countries in Central and Eastern Europe and several Mediterranean countries have expressed their wish to join the Community as soon as possible. Further enlargement will entail the need for a radical review of the Community system; this is to begin in 1996 (the date laid down in the Maastricht Treaty) and will undoubtedly spill over into a general debate on how the greater Europe

should be organized. The scale of the chances is already the subject of widespread debate in the countries concerned, member and applicant countries alike. It is not only for the representatives, ministers or experts

but also for the citizens themselves to confirm in the years to come their commitment to pursuing together a 'destiny henceforward shared' which they were invited to do by the founding fathers in 1950.

European Commission

WORKING TOGETHER — THE INSTITUTIONS OF THE EUROPEAN COMMUNITY

by Emile Noël

Luxembourg: Office for Official Publications of the European Communities

1994 — 58 pp. — 16.2 x 22.9 cm

European Documentation series — 1993

ISBN 92-826-5064-2

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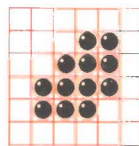
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Emile Noël, Honorary Secretary-General of the Commission of the European Communities and President of the European University Institute, Florence, from October 1987 to the end of 1993, began as Executive Secretary of the EEC Commission in 1958 under its first President, Walter Hallstein (1958-67), and continued as Secretary-General of the Commission of the European Communities following the merger of the three Community executives, serving under Presidents Jean Rey, Franco-Maria Malfatti, Sicco Mansholt, François-Xavier Ortoli, Roy Jenkins, Gaston Thorn and Jacques Delors. From the very outset, then, Emile Noël had a hand in shaping every major development in the Community's history.

Born of French parents in Istanbul in 1922, Emile Noël was educated at the Ecole Normale Supérieure, graduating in physics and mathematics. However, he soon became involved in European affairs. He was appointed Secretary of the General Affairs (political) Committee of the Consultative Assembly of the Council of Europe (1949-52) and Director of the Secretariat of the Constitutional Committee of the *Ad Hoc* Assembly charged with working out plans for a European Political Community (1952-54). From there he went on to become *chef de cabinet* (chief personal political aide) to Guy Mollet when he was President of the Consultative Assembly of the Council of Europe (1954-55), continuing as his *chef de cabinet* and later *directeur adjoint de cabinet* (Chief of staff) during Mollet's term as Premier of France (1956-57), before becoming Executive Secretary of the EEC Commission.

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