

HOW THE EUROPEAN ECONOMIC COMMUNITY'S INSTITUTIONS WORK

S P E E C H

made by Mr Emile NOEL,
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My purpose this evening is to explain to you how the Institutions of the European Communities, and particularly of the Common Market, work. I shall try to be as precise as possible and talk as a technician rather than a jurist, that is to say as a technician in institutional procedure, since it is my daily job to see that this procedure is applied correctly and smoothly.

It is difficult to say to what order the institutional system of the Community belongs. The Community is much more than an inter-governmental organization. Its institutions have a personality of their own and have extensive powers. Nor does the Community form a "federal government" to which, in its spheres of competences the national Governments and Parliaments might in some way be subordinated. In fact, we in Brussels have refrained from putting our institutional system into any one of the categories defined by specialists in international law, leaving it to future historians to do so. And if we are asked to define in a word the institutional system of the Communities, we prefer to say no more than that it is a "Community" system .



The Rome Treaty lays down that the tasks entrusted to the Community shall be carried out by four Institutions: the European Parliament, the Council of Ministers, the Commission, and the Court of Justice.

The Parliament consists of 142 members appointed by the six national Parliaments from among their own members.

Each member Government is represented in the Council by one of its Ministers. The composition of the Council may thus vary according to the subjects on the agenda. Though the Foreign Minister is to some extent regarded as his country's chief representative on the Council, the Ministers of Agriculture, of Transport, of Finance, etc. often take part in meetings, either alone or accompanying the Minister for Foreign Affairs.

The Commission consists of nine Members appointed for four years by unanimous agreement of the six Governments. During the whole of their period of office, the Members of the Commission must act in complete independence both of their Governments and of the Council of Ministers. The Council has no power to terminate the mandate of a Member of the Commission. Only the Parliament could procure the automatic resignation of the Commission by passing a vote of no confidence.

The Council and the Commission are assisted by the Economic and Social Committee, a consultative body composed of representatives of business and industry, farming, trade unions, etc. In many matters the Council and the Commission must consult the Committee before they can take a formal decision. The Committee also ensures that professional and business circles play their part in the development of the Community.

Lastly, the Court of Justice, consisting of seven judges appointed for six years by common accord of the Governments, ensures the rule of law in the implementation of the Treaty.

I should like to supplement this brief description of the institutions by indicating to you how the Council and the Commission can act for the achievement of their aims under the conditions provided for in each case, by the Treaty.

In the first place they can adopt Regulations. Under the Treaty, the Regulation shall have a general application; it shall be binding in every respect and directly applicable in each Member State.

They can also issue Directives to one or more of the Member States. A Directive shall bind any Member State to which it is addressed, as to the result to be achieved, while leaving it to the national authorities to decide on the form and the means to be employed.

They can take Decisions, to be addressed either to a government, a firm or an individual. A decision shall be binding in every respect on those to whom it is addressed.

Lastly, they can formulate Recommendations or Opinions, which have no binding force.

Let me concentrate on the internal operation of the Commission and the Council and on the way in which their mutual relations are organized. These two bodies - Commission and Council - in fact constitute the power house of the entire institutional system of the Communities, and their relationship is perhaps the most original aspect of the system.

Let me start with the Commission. The Treaty gives it extensive responsibilities which can best be outlined as follows :

The Commission is the guardian of the Treaty. The Commission is the executive organ of the Community. The Commission initiates Community policy and gives expression to the interests of the Community.

First of all, the Commission is the guardian of the Treaty

The Commission sees to it that the Treaty's provisions and the decisions taken by the Institutions are correctly applied. It is responsible for maintaining an atmosphere of mutual confidence. If the Commission does its job of "watchdog" properly, everyone can fulfil his obligations without mental reservations, knowing that his partners are doing the same and that action will be taken against any breach of the Treaty. Conversely, nobody can plead any shortcoming of his partners as an excuse for not fulfilling his own obligations. If there are any shortcomings, it is up to the Commission as an impartial body to make inquiries, to give an objective judgment and to prescribe what measures the State at fault must take to right the situation.

The Treaty lays down a strict procedure for putting a stop to breaches. If the Commission considers that there has been any such breach, - and it can reach this conclusion either as a result of ex officio inquiry, or at the request of a Government, or by investigating complaints from private persons - it can call on the State concerned to submit its comments or justify its action within a specified period (a month or a month and a half). If the Member State continues the practice in question and if its comments do not induce the Commission to modify its view, the Commission issues a reasoned Opinion (i.e. "avis motivé"), which the Member State is obliged to comply with within the time limit prescribed by the Commission. If the Member State does not do so, the Commission may put the case to the Court of Justice, whose decision is binding both on the Member State and on the Institutions.

These provisions, which give considerable power to the Institutions, are in fact fully applied. Since 1958, the Commission has made a statement on 38 cases. In 12 of them the State concerned came into line from the beginning, that is, as soon as the Commission asked for its comments. In 10 cases, the Commission has had to issue a reasoned opinion, with which Member States have complied in five cases. In five other cases, the Commission has had to lay the matter before the Court of Justice. The Court has already given its verdict in two of these cases, upholding the Commission's viewpoint and requiring the Government in question to do as the Commission asked. In one case, the Commission's complaint was withdrawn, the Member State having meanwhile agreed to take the steps required by the Commission. Two cases are still sub judice.

Proceedings are still being taken in sixteen fairly recent cases. In addition, thirty files on suspected breaches are at present being examined by the Commission, which has not yet made any pronouncement on them.

You will see these are large figures in comparison with the thirty-eight cases brought since 1958. This is because the provisions of the Treaty become more stringent as the stages of its implementation progress, while the extension of Community legislation multiplies opportunities for mistakes. Most of the cases during these first four years of the Community's existence were concerned with customs duties and quotas. In the near future there will be quite as many cases in respect of the agricultural regulations and of the regulations on restrictive practices. So there is not much chance of the Commission's "police actions" become fewer ...

Be that as it may, the measures that have given rise to those proceedings had been of very limited economic significance. The breaches of the Treaty have been more in the nature of mistakes - almost inevitable when we are adapting national administrations to Community procedures - than deliberate attempts to escape the obligations of the Treaty. After analyzing all such cases, the Commission came to the conclusion, in a recent report on the first stage of the Treaty, that the breaches committed in these four years have had no perceptible effect on the correct implementations of the Treaty's clauses.

The Commission is the executive organ of the Community

Considerable executive powers are already vested in the Commission, and they will increase in the future.

Both the Treaty and Regulations pursuant thereto entrust the Commission with the task and power of drawing up the texts (we might call them "administrative decrees") which give effect to the "European laws" contained in the Treaty or adopted by the Council. In recent months the implementation of the common agricultural policy has led to a considerable increase in this regulation-making activity of the Commission. For instance, if on July 1, 1962 out of a total of 57 Community Regulations only 11 had been adopted by the Commission acting alone, fifteen new Regulations of the Commission must be adopted by next September.

The Commission must also take most of the individual Decisions prescribed by the Treaty or the regulations pursuant to it. These Decisions may be addressed to a Government in order, by example, to grant or to refuse tariff quotas, or to adjust or prohibit a State aid, or to authorize some departure from the Treaty under the safeguard clauses. They may also be aimed directly at a firm or individual: the Regulation on Monopolies and restrictive Practices gives the Commission exclusive power to authorize "good agreements".

The Commission also has direct supervisory powers. For instance, in matters of restrictive practices or transport rates it can institute on-the-spot inquiries, sampling or checks in the firms themselves on behalf of the Community.

In the beginning of the Community, the Commission has had relatively little occasion to take such "individual decisions". - Since 1958, they total no more than two hundred - and most of these relate to tariff quotas. In this field also, the Regulations recently adopted on agriculture and restrictive practices involve a considerable extension of the Commission's executive role; it will now have to undertake some measure of direct administration and will in fact constitute the beginnings of some kind of "federal civil service". Some of the Commission's departments will have to be gradually transformed with this end in view.

The Commission initiates Community policy and gives expression to the interests of the Community

This is no doubt the Commission's most important and perhaps most original task. The Commission carries it out in close co-operation with the Council, so that if I describe this aspect of the Commission's activities to you I will at the same time be explaining the greater part of what the Council has to do and how it does it.

The Common Market Treaty is frequently defined as an "outline Treaty" - "un Traité-cadre" - as distinct from the Euratom Treaty and the Coal and Steel Treaty, which may be called "law-establishing treaties" - "des Traités-lois". Whereas the latter two Treaties specify exhaustively the general regulations to be applied within relatively narrow sectors, the Treaty establishing the Common Market (apart from its "automatic" clauses on customs and quota disarmament) confines itself to indicating the general lines of Community policy in the main spheres of economic activity, leaving it to the Community Institutions - and particularly the Council and the Commission - to elaborate the provisions to be applied by the Community.

In a way, everything connected with the economic union was left blank in the Treaty, but these blanks can be filled in by the Community's Institutions without any new treaties being concluded or new parliamentary ratification being obtained. The measures that the Institutions are empowered to take are real "European laws" that can be directly applied in all Member States and may bring about far-reaching changes in the branches of the economy they concern. The European laws on agriculture adopted by the Council six months ago form a whole of as great a significance perhaps as for instance, the entire Coal and Steel Treaty.

Let me just touch upon a comment that is often made - that the Common Market Treaty is less "supranational" or more intergovernmental than the Coal and Steel Treaty. In my opinion, this is really a case of an optical illusion. The Coal and Steel Treaty laid down in full detail the implementing powers entrusted to the High Authority. On the other hand, we shall have to wait for the common policies to be framed before we know what powers of implementation the Common Market Commission will have in all the spheres affected by the Rome Treaty. We know this already as far as restrictive practices and agriculture are concerned, and everyone can see that these powers are at least as extensive as those of the High Authority. In fact, the two Treaties of Paris and Rome are based on the same principles and set up equivalent institutional systems. But as the Common Market is in process of continuous creation and leaves scope for solutions to be found pragmatically and adapted individually to a given sector or situation, the Treaty is less alarming even to those people who have most reservations with respect to the structure of the Community, and at the same time it makes the balance between the powers of national Governments and those of the European Institutions more evident to those who are just beginning to familiarize themselves with the Communities.

These considerations can help us to a greater understanding of the role of the Institutions in putting the Treaty into effect. First of all, they have to create the structure of economic union in Europe out of nothing. The Treaty provides the foundations, but the house itself has still to be built. Once the structure is there, the Institutions will also have to frame Community policy and apply it from day to day. To guide the whole of this process the Treaty makes the Commission today the architect of the new building and to-morrow the initiator of the common policy.

All provisions of a general scope or of a certain degree of importance must in fact be passed by the Council of Ministers, but with one or two specific exceptions, the Council can only come to a decision on a proposal of the Commission, so it is always incumbent upon the Commission to take the initiative. If the Commission does not submit any proposals, the Council is paralysed and the Community's progress halted. And this is equally true in agriculture, transport, commercial policy, or approximation of legislation.

The submission of a proposal initiates the dialogue between the national Governments represented on the Council (which express their national points of view) and the Commission - a "European" body that is called upon to give expression to the interests of the Community as a whole and to seek "European" solutions to common problems. It might be feared that this dialogue could be distorted if the Commission were in too weak a position vis-à-vis the Governments - strong in their authority and the attributes of sovereignty. The Treaty balances the situation quite ingeniously.

By the very fact of formulating the proposal on the basis of which the Council is to hold its discussion (and it is only on this basis that the Council can discuss) the Commission already acquires real influence. But there is more to it than this.

Article 149 of the Treaty, which is perhaps one of the keys to our institutional system, stipulates: "When, pursuant to the Treaty, the Council acts on a proposal of the Commission, it shall, where the amendment of such proposal is involved, act only by means of a unanimous vote."

Provided it is unanimous, the Council of Ministers can therefore take a sovereign decision even against the Commission's proposal. And this is only reasonable, since the Council then expresses the common standpoint of all the member Governments. On the other hand, when the Treaty provides a majority decision and the Member States are not unanimous, they are bound by the Commission's proposal. In fact, they can adopt by majority vote only the actual proposal submitted by the Commission without amendment. In such a case, only the Commission can amend its own proposal. The Council can do nothing but reject it, if a majority is against it, or adopt it as it stands. Thus, the Commission has real powers of negotiation in the Council. Discussion can be joined and is in fact joined on ground chosen by the European body.

You will realize how important these provisions are, when I tell you that from the beginning of the third Stage, i.e. from January 1, 1966 (as things are at present), the Council will have to take nearly all its decisions by simple majority (a majority of the Members of the Council) or by a qualified majority (a two-thirds majority, the vote of each Member being weighted).

What are the consequences of this system? On the practical plane, it puts the Commission in a central position within the Council, where it can permanently play the role of an "honest broker", of a mediator between Governments, and also give an impulse and exert pressure to reach the agreed formulae.

The political consequences are still more important. The Commission's proposals are the expression of a policy it has framed with no other consideration in mind than the common interest of the Community as a whole. The permanent status of the Commission during its four years in office ensures the continuity of this policy, and the Council can only decide on texts submitted by the Commission, which are the means of putting the policy into effect. It is therefore not possible for the Council to adopt contradictory proposals on different subjects - by means of changing majorities or at the whim of pressure groups or struggles for influence between Governments.

It is also impossible for a majority of the Council without the consent of the Commission to impose on a State in the minority any measure that would do grave harm to its vital interests. If the Commission really fulfills its obligations, it cannot be party to such an action. Its intervention is therefore an important guarantee to individual States.

For a system such as this to work efficiently, the independence of the Commission must be guaranteed. To this end, as I have just indicated, the Treaty prescribes that the Commission shall be responsible to the European Parliament and to that Parliament alone. The composition of the Parliament makes it essentially a Community body, completely integrated. There are no national divisions, but only political groups organised at the European level. The Parliament exercises permanent control over the Commission, making sure that it respects its role as representative of the Community interest, and always prepared to call it to order should there be any reason to suspect that it is yielding to canvassing by one or more of the Governments. Furthermore, the Parliament must be expressly consulted on the Commission's main proposals before the Council takes any decision.

The parliamentary committees play an important part in this field. The Parliament can hardly hold more than eight sessions per year, each lasting a week. Between these sessions, most of the parliamentary committees meet once or even more often. Whatever subject it is dealing with, a parliamentary committee invites the responsible Member of the Executive to explain his standpoint - whether on decisions taken by the Executive or submitted to the Council or on the attitude adopted by the Executive in the Council.

The committees deal with matters in detail, and as their meetings are held in private they can be given fuller and even confidential information. Their work, which I think is considerably different in nature from that of the committees of the British Parliament, has contributed much to extending the influence of the European Parliament on the current progress of affairs.

The written questions that the Members of the European Parliament can put to the Commission (and to the Council of Ministers) are also a means of parliamentary control that is being used more and more. During the last three months, fifty written questions have been put to the Common Market Commission.

The widening of the Community's responsibilities will make it absolutely necessary in the near future that the powers of the European Parliament should also be widened and that its representative character should be strengthened - for instance through election by direct universal suffrage. We in Brussels are convinced that such a development is inevitable whatever reservations may have stood in its way up to now.

Parliamentary control thus ensures the independence of the Commission, thanks to which the Council enjoys the advantages of the majority rule while being preserved - as far as is possible - from its few attendant risks.

During the first stage of the Treaty, of course, unanimity was required for most Council decisions, so the procedure I have just described could not be applied.

However, the undeniable Community spirit of the Members of the Council and the personal authority of the Members of the Commission meant that the dialogue between them was carried on satisfactorily. The Commission has always given real impetus to the Council's work and has played a vital part in its deliberations, guiding them and helping towards the necessary compromises. Moreover, the majority rule was already applicable in some fields - few in number but important - such as restrictive practices and the free movement of workers.

Experience has shown (though the conclusion is rather paradoxical) that the majority rule made it much easier to come to unanimous decisions. Provided a minimum of concessions are made to its arguments a Government likely to find itself in the minority often prefers to come round to the majority opinion. In this delicate interplay, the role of the Commission has always been decisive.

Now that I have analysed the main tasks of the Institutions, the nature of their inter-relations and the way in which their powers are balanced, I should like to give you some indication of the working methods practised in the Community.

Let us first see how the staff of the Commission functions. It consists of nine Directorates-General, the Executive Secretariat (which has a co-ordinating role) and the Spokesman's Group. There are also three departments - the Legal Department, the Statistical Office, and the Information Service - which are common to the three Communities.

The total staff of the Commission at present numbers about 2,200, almost 600 of whom are officials in responsible positions (what we call category A). Together with the staff of the European Parliament, the Council of Ministers and the Court of Justice, the total employed by the Common Market is something like 3,000 people.

The Community's budget for 1962 is about \$58,000,000 (£21,000,000). Half of this sum is earmarked for assistance granted by the European Social Fund for the retraining or resettlement of unemployed workers; the other half (£10,000,000) covers the operating expenses of the Commission and the three other institutions.

As for the Commission itself, each of its nine Members has special responsibility for one of the main spheres of the Community's activity (external relations, agriculture, social affairs, etc.) and has the corresponding Directorate-General under his authority.

The Treaty lays down, however, that the Commission must act as a collegiate body with cabinet responsibility. In other words, all the acts that the Treaty or its implementing regulations entrust explicitly to the Commission (Regulations, Decisions, proposals to the Council, etc.) must be performed by the Commission as a whole. The Commission cannot therefore delegate to one of its Members powers in the sphere of his special responsibility that would give him a degree of independence comparable, say, with that of a Minister in his own department.

In order that this collegiate system should not paralyse the Commission, generous use is made of what we call in our own jargon the "written procedure". The Members of the Commission receive the dossier and the draft decision; if they have not submitted reservations or objections within a fixed period (generally a week), the proposal is deemed to have been adopted. To give you an idea of how this works out, I may tell you that in this way eight hundred and fifty decisions of all kinds were reached in the course of 1961.

Consequently, it is only questions of some importance that appear on the agenda for Commission meetings, which take up one whole day every week.

For the most delicate questions the Members of the Commission meet alone, no official being present except the Executive Secretary and his deputy. For ordinary matters - or those of a technical nature - the responsible officials can be called in. Although Commission decisions can be taken by a majority vote, most of them are unanimous. The solidarity of the Members of the Commission and the underlying unity of their views, which transcend differences in character and background, make quite a considerable impression on anyone who follows the activities of this body. It is therefore rather rare for matters to be put to the vote in the Commission, and when this has happened the minority has always considered itself bound by the majority decision.

How does the Commission draw up its Decisions or the proposals it submits to the Council? Two very different cases can be distinguished: first, defining the main lines of the policy the Commission intends to follow in a given sphere, and secondly, choosing the ways and means of putting such a policy into practice or preparing measures of a more technical than political nature.

When the Commission has to lay down the main lines of policy, it first enters into consultations on the broadest possible basis, seeking the opinions of Governments, permanent officials and private organizations; then it decides its attitude with the assistance of its staff but of no one else. This process takes place in the course of often numerous and lengthy working meetings, with weeks of reflection between one draft proposal and the next. This is how the Commission prepared documents as important as its first Memorandum on European problems after the breakdown of the Free Trade Area negotiations, the proposal to speed up the implementation of the Treaty, the Memoranda on the common agricultural policy and on the transport policy, the proposals on the renewal of the Convention of Association with the African States and Madagascar.

On the other hand, when the Commission must prepare the ways and means of applying a policy previously defined, or decisions of a mainly technical nature, it regularly calls on technical experts from the Six Governments. In such a case its responsible departments convene and preside over meetings of government experts appointed by each of the national administrations concerned. These experts do not formally commit their Governments, but as they are adequately informed of the interests and opinions of those, they perform a useful function in guiding the Commission in its search for solutions that are technically accurate and generally acceptable to the six Governments.

These meetings of experts are held very frequently. In 1961, for instance, rather more than a thousand meetings of this kind were organized by the Commission on the most varied subjects connected with the implementation of the Treaty. May I say that every year this provides an increasing number of civil servants from the various countries with a truly European education.

These meetings also enable some contact to be made at the administrative level between European officials and Government officials. They are supplemented by many consultative meetings that the Members of the Commission or the various departments of the Commission regularly organize with leaders of the trade unions, employers' associations, farmers' unions, traders' associations, etc., of the Six which have organized themselves at Community level.

The results of all this preparatory work are finally laid before the Commission which has to take the final decision. This, then, is how proposals submitted to the Council by the Commission are drawn up - and also, very often, Regulations or Decisions that the Commission itself can adopt but in the preparation of which it endeavours to ensure that the national administrations are involved.

To turn to the Council . When this body has before it a Commission Memorandum of general scope or a proposal on a well-defined subject, it entrusts the preparation of its discussions either to an ad hoc committee of senior officials (e.g. the Special Committee for Agriculture) or to one of its permanent working parties (of which there is one for each main branch of the Community's activities). The work of these bodies is co-ordinated by the Committee of Permanent Representatives, which functions rather like a committee of ministerial deputies.

The Commission is represented at all meetings of working parties, of special committees, and of the Committee of Permanent Representatives, so that the dialogue begun at the level of national experts can be carried further with officials duly appointed by their Governments.

Council decisions may only be taken by the Ministers themselves, though on less important questions and where unanimous agreement had been reached between the six Permanent Representatives and the Representative of the Commission, the decision is taken by the Council without any discussion.

On the other hand, all questions of any importance or of political significance are thoroughly discussed in the Council by the Ministers and the Members of the Commission, which indeed take part in the Council meetings as of right .

It is at this point that the rules of Article 149, which I have described above, are applied.

These meetings are not a pure formality, as is sometimes the case with ministerial meetings in other international organizations, but working meetings at which discussion is often prolonged and fierce and the final result long uncertain. Council Decisions, moreover, are becoming more and more frequent: since the beginning of 1962 there have been nearly three sessions a month, of one or two days each. And everyone in the Community remembers the marathon session on the agricultural regulations that went on for nearly three weeks at the end of last year.

In all that I have said, I have tried to stick to the facts and remain completely objective. These are the rules and the facts that seem to me most characteristic of the basis on which the Common Market Council of Ministers and Commission and - more generally - the Community as a whole are built. If I had to go further and describe the style of our institutions in Brussels, I would make no more than these three remarks :

First the institutions, and particularly the Commission, are not inward-looking. On the contrary, they are focal points for the constant interchange of opinions and suggestions of Governments and civil servants, of European parliamentarians, and of representatives of labour and management. Secondly, there are strict legal rules that must be rigorously respected, but at the same time the maintenance of permanent contacts creates that common spirit and mutual confidence which ensure the necessary flexibility. Finally private organizations, parliamentary circles, national civil servants and Ministers have, I believe, confidence in the impartiality of the Commission, and the Commission has no doubt that Governments are resolved to play the Community game according to the rules.

After four and a half years' experience of the Common Market, and an even longer one of the European Coal and Steel Community, everyone working in Brussels is convinced of the efficacy of the Community system, is convinced that it can be extended to any number of new problems, is convinced, finally, that there are no difficulties - however great - that cannot in the last analysis be resolved in order to bring the Common Market to its full fruition. At a time when negotiations for your country's membership of the Community are entering a decisive phase, is not this conviction the most encouraging thought that I can offer you ?
