

**Bulletin  
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**Report  
on European Union**

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**EUROPEAN COMMUNITIES  
Commission**

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## Covering letter

*Sent by Mr François-Xavier ORTOLI, President of the Commission, to Mr Liam COSGRAVE, Prime Minister of Ireland and President of the Council, on 26 June 1975*

The Commission has the honour to send you the report it has drawn up at the request of the Heads of Government on the transformation of the whole complex of the relations of Member States into a European Union.

In preparing its report it has been alive to the changes which have come about since European Union was first discussed at the meeting of Heads of State or Government in October 1972.

Since then the economic crisis and the changes in international relations, far from strengthening Community solidarity and leading to an assertion of Europe's identity vis-à-vis the rest of the world, have marked a further check, and perhaps a retreat, in the process of European construction. The Member States, tempted by purely national solutions, have faced international discussion divided. The Community institutions have been too weak, and the means at their disposal too meagre, to counteract this tendency.

Yet these troubles do not mean that we must forgo the aim of European Union, or that to take counsel together on the nature, scope, fields of competence and powers of that Union would be premature or meaningless in the present situation.

The Heads of Government meeting in Paris in December 1974, confirmed their desire 'to agree as soon as possible on an overall concept of European Union' and 'the importance they attach to the reports to be made by the Community institutions'.

European unity is not of course the answer to all society's problems. Every country has first to look to itself to find the will and the means to

bring about political, economic and social progress. Likewise our Member States and the Community cannot deny the need for extensive and intensive cooperation with all our partners in the world.

But the problems to be tackled are beyond the capacity of the Member States acting alone; in any case, going it alone is idle in the face of the interdependence of our economies. World-wide cooperation can only be inadequate given the weak structures and the disproportionate strengths involved.

If these efforts to reform our economic and social structures were conducted separately, the implications in terms of costs, and hence of competitive capacity, would very soon be seen to be intolerable, and the efforts would be ended for the sake of economic balance within and without. Europe is the right context in which to achieve certain aspirations of peoples desiring at once security and change.

Internationally, only through European unity can we regain together the independence we have lost on our own—that independence which is vital to any fresh initiatives.

European Union, the overall concept based on these principles, will require efficient structures and appropriate means. These will not be created, as our present difficulties have shown, unless we get back to the basic idea underlying the Community—that of organizing European construction by conferring competences on common institutions in areas where Europe's prosperity, progress and influence in the world can thereby be enhanced.

To that simple idea and its implications, particularly for the institutions, this report is devoted. In studying the idea and formulating the suggestions that arise out of it the Commission has not tried to put down exhaustive, detailed plans. It has limited itself to setting out what should and could be the elements of Union in certain major fields.

The Commission is convinced that European Union must emerge from a political debate involving the Community institutions, Governments, Parliaments and political, economic and social forces representing public opinion in our countries.

now exist and, on the firm foundations laid by our Treaties, draw up common actions to defend our interests and recreate an economic monetary and social situation which can give lasting satisfaction.

But the Commission would stress that it is not only by debate about the detailed nature of this perspective that we will make progress towards its realisation. It is by action to meet the challenges which continually arise that the existing Community can develop towards Union by demonstrating its will to go beyond simple coordination and to carry into effect common policies. Without this there will be no firm foundations for the construction of Union. Without this there will be no foundations for the construction of Union. With it, the men and women of Europe will become more and more aware of the relevance to their own lives and problems of the more ambitious aim of Union.

This remains the perspective in which the Community's immediate action must be viewed and tackled if it is to be acceptable to all the Member States despite the differing degrees of effort and sacrifice they will be called upon to make.

To start with, the Member States must recognize that the Community is the framework in which the battle against inflation and recession has to be fought, and at the same time is the essential means for international cooperation. And they must act accordingly.

Secondly, the Community institutions have to be reinvigorated and made more democratic with all possible speed. The direct election of the European Parliament in the near future will be a shot in the arm for the Community, and will give fresh reasons for interest in it to the political and social forces without whose support no action to speak of is possible.

In mapping out our future path, we must draw fully on the resources of our institutions as they

**Report on  
European Union**

## I. Scope and Nature of European Union

1. At the Paris Conference of October 1972 the Heads of State or Government 'set themselves the major objective of transforming, before the end of the present decade and with the fullest respect for the Treaties already signed, the whole complex of the relations of Member States into a European Union'.<sup>1</sup>

This statement certainly does not go far enough to give a clear and unimpeachable definition of the essential features of European Union. Nevertheless, read in the light of the statements put out at The Hague and Copenhagen and of the Copenhagen document on the European Identity, it offers certain basic ideas which could place further thinking on the right lines.

2. There is at present a series of forms of cooperation in a variety of institutions covering 'the whole complex of the relations of Member States'. There are first of all the Communities, and then the system of political cooperation, the Council of Europe, WEU and a whole range of organizations going beyond the boundaries of Europe. There are also certain types of cooperation (for instance in cultural matters) which are not organized in any special framework, and forms of bilateral cooperation which are more or less permanent.

It is worth asking what meaning should be attached to the expression 'whole complex of relations'. It does not seem logical to assume that European Union must necessarily encompass every type of relation between the Member States. That very general expression would rather seem to suggest a refusal to define from the outset which field would fall within the competence of the Union; definition of these fields will call for an eminently political decision. Outside these fields there will inevitably be areas in which the Member States will maintain various types of relations with each other but which will, for some time at least and

possibly for all time, remain outside the competence of the Union. Nevertheless, it seems reasonable to consider that the Union could well be given responsibility for those fields which are covered or likely to be covered by permanent organized cooperation between all the Member States.

The Commission does not feel that the time is yet ripe for drawing up an exhaustive list of these areas. It has therefore confined itself to dealing with those aspects which are of major political importance for the future of the Union.

3. Since it is necessary to ensure that in the fields of competence allocated to the Union, affairs shall be organized in a coherent fashion, the possibility of a number of independent and parallel organizations must be excluded. This does not mean that within the Union, depending on their nature, different subjects may not be dealt with by different methods or under different legal rules.

4. European Union will naturally rest on certain general principles which are held by all the Member States. These principles, which have repeatedly been reaffirmed, whether in the existing Treaties or in statements approved by the meetings of the Heads of Government, are democracy, freedom of opinion, the free movement of people and of ideas, participation by the peoples through their freely elected representatives, and the protection of human rights. The aim of European Union must be social progress and economic development for the peoples of Europe and the diminution of regional and social disparities.

5. In international relations European Union, working for peace, security, stability and cooperation with the Third World, will be the expression of the European identity defined in the Copenhagen document.

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<sup>1</sup> Point 16 of the final communiqué; Sixth General Report, point 5; Bull. EC 10-1972, Part One, Chapter I.

6. There is one basic aspect of recent developments in our society which no discussion of European Union should overlook: growing resistance to attempts to centralize power. Pressure is being brought to bear throughout our countries in order to bring power closer to the citizen and to confer greater powers on regional and local authorities.

It is neither the purpose nor the ambition of this report to outline a model for the distribution of powers at different levels (European, national, local). However, the Commission believes that any power-transfer process at European level need not and must not be allowed to impede the attainment of a greater degree of decentralization. On the contrary, the establishment of European Union is one aspect of the more general historical process of redistribution of decision-making powers throughout society enabling both the efficiency of public administration to be raised and the involvement of the citizen to be intensified.

### *The legal and geographical coherence of the Union*

7. In theory, two types of system may be envisaged. The European Union could retain, in respect of all matters within its competence, the principle of legal unity already recognized by the present Communities. It is implicit in this principle that the Union institutions would exercise their powers in all fields within their competence in relation to all the Member States. On the other hand the Union could be regarded as a network of special agreements involving all or only some of the Member States depending on the subject.

8. The choice to be made here is important. The Commission feels that only the first alternative is compatible with the political objective of a union and can provide a basis for growing solidarity between different nations. Moreover, it alone can provide the

European Union with the cohesion that will be essential, in particular at the level of its institutions, and that it alone is consonant with the concept of a 'European Identity'.

Naturally, this should not preclude the possibility of the Union's actions and decisions being so constituted as to make allowance for specific situations, whether national, regional or local.

9. The European Union must be given legal personality in international relations.

10. The European Union must, like the present Communities, be open to the accession of other European countries which have a democratic pluralist political system and are able to assume the burdens and responsibilities that go with membership of the Union. It seems reasonable that the conditions for the accession of such countries should be similar in character to those set out in the present Treaties, one of which is the unanimous agreement of the Member States.

### *Division of fields of competence between Union and Member States*

11. Given the dynamic character of the Union and the extremely varied forms of action it may take, it is necessary to distinguish, in the rest of this document, between the 'competence of the Union', which will be used to mean the *areas* in which the Union can act, and the 'powers of the Union', meaning the *ways and means* by which it acts. The nature and scope of its powers may vary with the subject matter and may also develop with the passing of time.

12. No more than the existing Communities have done so, European Union is not to give birth to a centralizing super-state. Consequently, and in accordance with the *principe de subsidiarité*, the Union will be given responsibility only for those matters which the Member States are no longer capable of dealing with efficiently. If the Union is to be given compe-



tence in areas not specified in the Act of Constitution, the Act will have to be amended by a procedure probably entailing ratification by all the Member States.

Hence, the competence of the Union will be limited to what is assigned to it, meaning that its fields of competence will be specified in the Act of Constitution, other matters being left to the Member States. There is nothing new in this. As in the existing Communities, the Union could be given competence of three types: exclusive, concurrent and potential, as explained below. The terms on which competence may be exercised may vary from type to type.

Of course, in deciding on the Union's competence, application of the *principe de subsidiarité* is restricted by the fact that the Union must be given extensive enough competency for its cohesion to be ensured.

13. Thus there will be a number of matters which fall *exclusively* within Union competence; one such, already within the exclusive competence of the Community, is commercial policy.

Between the two there is bound to be an extensive border area in which both Union and States may have competence.

14. An expression which might be used to describe this border area is that of *concurrent* competence, which is to be seen in numerous provisions of the Treaties establishing the European Communities: Article 43 (agricultural policy) and Article 75 (transport) are good examples. Under this arrangement, both Union and Member States are entitled to deal with the problems concerned. The Union would assert its authority only when it felt the need—for instance, by deciding to act only in respect of certain aspects of any given matter. It might also enact outline legislation to cover the whole field, specifying the areas reserved respectively for the Union itself and for the Member States. The Member States would then remain free to act on all aspects on which the Union had not taken action.

Here it is worth asking how consistency can be secured between action by the Union and action by the Member States. The answer is that Union law takes precedence over national law. Clearly, coordination between the two types of action cannot be provided simply by legal texts or by establishing procedures: it must also rest at any given time on the balance of the political forces involved.

15. The Union should be dynamic in character and flexible in structure, so that it can adapt to political reality and to the requirements of a changing society.

16. Concurrent competence can help towards this end, as a list in the Act of Constitution would indicate among other things fields in which the Union would not make immediate use of its competence, but act later, within limits which it would itself determine.

17. There could be areas for which it is agreed in principle that they might in due course come within the competence of the Union, but which it is not felt appropriate to entrust to the Union from the outset.

In such cases, the concept of *potential* competence might be applied, as in the case of Article 84(2) of the EEC Treaty, relating to sea and air transport. The field in question would be placed within the competence of the Union, but a decision on the scope and nature of the Union's powers and the date on which the Union would begin to exercise them could be left to be made later by a special procedure.

18. As to this procedure, it would therefore be reasonable to leave the choice of moment up to the Union institutions, although the actual transfer of powers to the Union would require explicit approval by the Member States in compliance with procedures created for the purpose, offering them the necessary assurances, which, in all important cases, will involve approval of national parliaments or other constitutional procedures applicable in the Member States.

Mention might be made here, though purely as a guide, of Article 84(2) of the EEC Treaty, Article 95 of the ECSC Treaty and Article 201 of the EEC Treaty. It will be remembered that Article 201 requires the Council's decision to be adopted by the Member States 'in accordance with their respective constitutional requirements'. However, the procedure would be quite different from one involving amendment of the Treaty.

As the areas concerned would be those where the Member States had already agreed in principle to confer competence on the Union, they would clearly be bound, once the Union was established, to refrain from any action which in the long term could jeopardize the Union's exercise of its competence.

#### *Exercise of the powers of the Union*

19. In the areas of Union competence, the Union institutions, like the institutions of the existing Communities, will need direct decision-making and supervisory powers; they must also be given financial instruments; finally, a judicial function must be created on the basis of the current jurisdiction of the Court of Justice.

The rules laying down how the Union will use all these powers and instruments will be considered in Chapter III, which deals with the institutions.

20. The exercise of such direct powers and the use of particular instruments does not conflict with the reservation to the Member States of substantial room for manoeuvre. This naturally applies to areas where the Union and the Member States have concurrent competence; but it might also apply in areas of exclusive Union competence where Member States might be considered as being in some way the agent of the Union.

This would be the case if, as would seem reasonable subject to the above reservations, the two following methods were still used:

- (i) harmonization of national legislation, with a view to removing obstacles to competition or to securing healthy conditions for it;
- (ii) coordination of national policies on certain matters as a means of bringing about their convergence.

21. Harmonization of legislation is carried out in the EEC by means of directives, which simply state the results to be achieved while leaving the Member States free to decide on the methods; directives are not addressed to the individuals concerned but to States, which have to implement them within a national legal system. The use of the directive has been criticized on a number of valid grounds. The procedure has been found to be cumbersome, for several years elapse between presentation of the Commission proposal to the Council and implementation of the directive, as a result of the time required by the Member States to translate the provisions of the directive—which are not directly applicable—into national law. Although the objection is less serious in areas where repeated amendments are not the rule, such as company law, more suitable methods should be sought for technical amendments with limited, transient objectives. Extensive use should be made in the Union of outline legislation, delegating rule-making powers on the Executive subject to adequate arrangements for parliamentary control.

A flexible instrument such as the directive should remain in use in the Union, even if it is issued only in areas where binding rules can be confined to important points rather than details.

In any event the Commission feels that it would not be right to reserve whole areas for legislation through directives (as in Article 100 of the EEC Treaty); it would be better to leave it to the Union institutions to choose between a directive and directly applicable law.

22. *The coordination of national policies* raises the question of the conditions in which this can be pursued efficiently when the aim is to bring about a real convergence of policies or to achieve common objectives.

Effective coordination presupposes the adoption of mandatory common principles by the Union institutions, the introduction of appropriate common instruments and the effective checking of national measures for their conformity to the principles and their ability to achieve the aims set by the Union. Where this checking gave a negative result, there should, as in the present Communities, be evident consequences (for example, the Member State forbidden to give effect to the measure, or financial support from the Union withheld, or both). If, then, the coordination of national policies is to go beyond more concerted action and lead to a common policy pursued on a decentralized basis, the Union must have certain powers of its own.

The experience of the Community is illuminating in this connection. In sectors where there were no Community instruments or rules, or where they were inadequate, governments have not been capable on their own of bringing into being and maintaining with the necessary continuity the will to act on their national structures and guide development towards common objectives.

A purely intergovernmental approach may indeed give rise to manifestations of solidarity, but these are necessarily short-lived and lack the requisite political force.

23. To state that the attainment of genuine common policies and action depends on the Union being endowed with its own powers and instruments rather than on mere cooperation between the Member States does not, however, mean that there can be no such cooperation within the Union.

There may be areas which fall within the general competence of the Union but where the Union cannot or need not yet be given powers of its own. Here it would be useful to organize cooperation within the Union. Such cooperation could, moreover, help to promote agreement on certain basic options and so, in appropriate fields, lead at a later stage to the Union being given powers of its own.

There may also be areas where it would not be considered necessary to give the Union its own

powers but to establish organized forms of cooperation subsidiary to the exercise of the Union's own powers.

24. The fact that there are areas of organized cooperation within the Union should not mean watering down its characteristic features and the purpose for which it exists. The originality of the Union (as of the Communities from which it will take over) lies in the fact that it is given and exercises its own powers. The nature and scope of these powers must therefore be broad enough to give the Union the dynamism it needs, and this will exert a positive influence on cooperation arrangements.

25. The Member States will of course remain free to develop the most diverse forms of cooperation either between themselves or with non-member countries in areas which are not within the competence of the Union.

It would nevertheless be necessary to stress that cooperation outside the Union system should in no case be allowed to obstruct the exercise of the Union's powers nor to hamper the development of the Union.

## II. The Fields of Competence of the Union

### *The Construction of an Integrated Economic and Social Unit*

26. Article 2 of the Treaty of Rome lays down clearly the task of the Community, which is 'to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it'.

27. Although this was a very general objective, the powers and the instruments and resources allocated to the institutions to carry it out concerned only some of the factors that determine economic and social development. For the rest, it was not thought necessary to go beyond coordination of national policies.

The Community has the powers and instruments needed to make the common market operate, to implement a common commercial policy and to enforce the rules on competition.

The Community also has a common agricultural policy. The Treaty contains the necessary basis for the introduction of a common transport policy. In the social field, it has *inter alia* the powers needed to ensure freedom of movement for workers. Further, the Social Fund has gradually expanded its role, placing more and more emphasis on structural objectives; it has thus become a first instrument in a European employment policy. In the regional field, too, the recently created Fund should have a significant effect on the employment situation of the Community through the improvement of economic structures. Similarly a number of common instruments are available to the Community in the area of research, though these are largely confined to the nuclear field at present.

The Community has also developed a cooperation and development aid policy based on association agreements and on other instruments such as its generalized preferences scheme.

28. The gradual implementation of the Treaty's objectives in all these fields has resulted in a greater integration and closer interpenetration of the economies concerned and, by creating a large market, has helped to improve welfare and promote economic growth in the original member countries. Once the initial period of adjustment is over, the new Member States will assuredly feel the same beneficial effects as well.<sup>1</sup>

The integration of the member countries' economies and economic developments at international level have, however, brought to light a number of problems that had been tackled only indirectly by the authors of the Treaty, who did not provide any specific instruments for dealing with and resolving such problems. However developments in the economic and social fields have made it essential that these problems be resolved if other objectives laid down in the Treaty are to be attained and if the Community is to be in a position to respond to new needs.

The Community has therefore attached more and more importance to achieving the convergence of national economic policies, the narrowing of differences in economic structures, an industrial policy, an energy policy, an environment policy, a research policy, etc.

29. The results of these attempts to give economic integration more substance have, however, been meagre. Several factors, such as changes in the world economic situation, the

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<sup>1</sup> In the Community of Six, internal trade as a proportion of total trade rose from less than 30% to more than 50% between 1958 and 1972. During the same period trade between the Six rose by 840%; nor did this appear to slow down the expansion of the Community's external trade which grew at the same dynamic rate as world trade overall (350%).

The gross domestic product of the Member States of the Community of Six rose at an annual rate of 5% between 1958 and 1974, compared with 3.9% in the United States.

temptation to seek national solutions in times of crisis, structural disparities and the divergent trends of the Member States' economies, but also the inadequacy of the Community's decision-making process, the weaknesses of its institutional structure and the Community's lack of comprehensive and extensive means of intervention and powers, account for the slow pace of progress in this area. Furthermore the extent—probably excessive—to which Community policies have been viewed in isolation has made it difficult to deal effectively with their implications in other areas (for instance, the effects of the agricultural policy on certain regions).

In particular, experience has shown how fruitless it is to attempt to coordinate national policies without the support of effective means of action at Community level.

While past setbacks are an indication of the scale of the difficulties to be overcome, they do not invalidate the objective of economic and monetary union, which was reasserted by the Heads of Government in Paris on 9 and 10 December 1974, but call for a better definition of this objective backed up by the creation of the necessary facilities.

30. Both internal and external economic developments mean that the public authorities are having to intervene more—not only in matters of a general nature but also in specific fields. If they are not conceived as part of a European approach, their actions may often prove mutually damaging and shift difficulties onto each other's economies.

The difficulties resulting in several instances from the incomplete nature of the common policies must first be resolved by an overall policy.

If the economic interests of the Union and its Member States are to be protected, the interpenetration of the economies concerned must be strengthened and the structural problems with which the States cannot cope individually and

which now hamper a harmonious development of the Community must be tackled and resolved jointly.

The need for Community responses to a number of fresh problems, such as the protection of the environment and the promotion of research, is also making itself increasingly felt.

Finally, the economies of the member countries are by their very nature open economies; they cannot hope to find refuge in isolation to solve their internal problems. None of them is big enough to cope alone with an international economic situation marked by uncertainty, change and ever-increasing competition. On the contrary, experience has shown that by strengthening their internal solidarity and joint action the member countries are better able to defend their interests, make internal structural adjustments and participate more effectively in the field of international cooperation.

31. The Union should therefore continue to aim for the main Community objective: economic and monetary union. This entails giving it competence, powers, and means of action in five main fields:

- (i) monetary policy;
- (ii) budgetary expenditure;
- (iii) budgetary revenue;
- (iv) improving economic structures so as to help reduce imbalances;
- (v) social affairs.

Before these fields are dealt with, consideration should be given to general scope for economic and social action.

#### General features of means of action in the economic field

32. In the effort to confer greater substance on the process of Community integration, an endeavour has been made to develop the possibilities

implicit in the Treaties, particularly in the EEC Treaty, although it should also not be forgotten that adaptations to the EEC Treaty are allowed under Article 236.<sup>1</sup>

For instance, increasing use has been made of certain articles of general application, such as Article 103 for countercyclical measures, Article 100 in connection with the harmonization of national legislation and Article 235 in connection with structural measures. There are, however, legal limits to what can be done in this way, and they can add a further obstacle to the difficulties inherent in the decisions to be taken.

While it is inevitable and even desirable that during an intermediate period efforts to make good use of the possibilities implicit in the Treaties should continue, the conclusion to be drawn from what has been said above is that the creation of European Union should also make it possible to go beyond the present limits by explicitly vesting new powers and new fields of competence in the European institutions.

33. How is this extension of the Union's powers to be defined?

Two lines of approach are possible. The first—typical mainly of the ECSC and Euratom Treaties but in some respects of the EEC Treaty too—is the treaty-law, which would lay down in detail the areas covered by the Union and the ways and means by which it could act in each of these areas. The other line of approach, that of the outline treaty, would give certain general powers to the Union while at the same time setting limits to action by the Union and stating certain fundamental objectives. The experience of the Communities, particularly the difficulties encountered in implementing a treaty-law such as the ECSC Treaty, has shown that this second approach is more in line with requirements. This will be even truer than before as the Union will have to deal with a multitude of matters no longer merely to ensure the free movement of the factors of production, but to render coherent the economic development of the Community as a whole.

34. Intervention by the Union in those fields should always be consonant with the *principe de subsidiarité* already mentioned. The Union's aim, therefore, would be to assume direct responsibility for problems for the solution of which the range of efficient action available to the Member States is insufficient. At the same time, it would endeavour to avoid divergent responses from the Member States which would threaten the cohesion of the Union.

To this end, it is necessary:

- (a) to provide an overall framework for national policies by introducing common rules; and
- (b) to give the institutions of the Union their own instruments and facilities for exerting direct influence on certain structures or certain factors of economic development.

35. So far the Community has tended to rely more on the implementation of action of the first type. but there is a good case for assigning growing importance, in the European Union, to direct action.

Simply to coordinate national policies closely could create constant tension between the need to obey the common rules and the political responsibility of national governments which have to face up to very rapidly changing economic situations, political balances which differ from country to country and social pressures which are sometimes contradictory. In addition, the mere establishment of rules and general machinery would not enable the Union to act on economic realities with the necessary degree of freedom and selectivity. On the other hand, attaching greater weight to the instruments of direct intervention would have a more important advantage: it would allow greater flexibility in coordinating national policies and would, therefore, leave the Member States with the freedom of action they require.

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<sup>1</sup> Resolution of the Council and of the Representatives of the Governments of the Member States of 22 March 1971 on the attainment by stages of economic and monetary union in the Community; OJ C28 of 27.3.1971.

This should not, however, be interpreted as undermining the disciplines which are still necessary, particularly with regard to the free movement of goods, persons, services and capital and to compliance with the rules on competition. On the contrary, as recent experience has shown, providing a greater scope for direct action of a selective nature would facilitate compliance with the common rules.

The powers of the Union and the instruments of intervention with which it will be provided concern only a number of well-defined components of economic and social policy. The authorities in the Member States, whether national or regional, will still, of course, be free to act autonomously in a large number of fields (for instance, in a great many matters concerning tax policy).

#### Powers in monetary matters

36. The achievement in due course of Monetary Union is a precondition for economic integration within the Union and its cohesion in the world at large.

In an economic union, whatever its institutional structure:

- (i) interaction between the Member States in the monetary field is direct and rapid;
- (ii) money, being the vehicle for all economic transactions, determines not only the development of private transactions, but also the possibility of administering at Union level a whole range of policies such as agriculture policy, external trade policy, competition policy, the free movement of capital and so on.

The European Union will thus have to possess centralized decision-making power in the monetary field. In other words, the ultimate objective should be for monetary resources to be an exclusive field of competence of the Union, just as the common customs tariff is already.

37. For this purpose the Union will have to have its own central bank—probably of a federal type—or a common system of central banks (the choice will be determined mainly by political considerations), which will have to manage:

- (i) at home, the liquidity of the banking system and of the economy in general, and
- (ii) policy on exchange rates with countries outside the Union, which means the pooling of reserves.

One of the institutional problems this raises is that of the relations between the central bank (or the Community system of central banks) and the political authorities of the Union. At present, thinking on this problem varies quite considerably from one Member State to another, as does the degree of independence which each central bank enjoys vis-à-vis the government; for instance, in the Federal Republic of Germany the central bank enjoys a relatively high degree of autonomy guaranteed in fact by the Constitution, whereas in France it is much more dependent on the government. In the Union, various forms of organization are still possible, but it none the less seems desirable to aim at a fairly high degree of independence.

38. Once the ultimate objective of exclusive competence for the Union in the monetary field is accepted, the next question to be settled is how this is to be achieved.

In the texts adopted by the Council in 1971, progress towards economic and monetary union was to be achieved mainly by putting the following principles into practice:

- (a) an increasingly more marked and binding coordination of the short-term and medium-term economic policies of the member countries;
- (b) the extension and strengthening of monetary and financial solidarity between member countries;
- (c) the development of a Community exchange system designed first to limit and then to narrow gradually the margins of fluctuation between member countries' currencies. In a final stage,

the national currencies could be incorporated into a common currency or could continue to circulate, in which case, however, they would be convertible at fixed and irreversible exchange rates.

39. This method has not enabled us to make the progress hoped for.

However, without going into the reasons for the setbacks which have beset the coordination of economic policies, it should not be forgotten that a core of monetary stability has been maintained in the Community and that this core, namely the Community 'snake', holds an unquestionable attraction even for non-Community currencies.

Alternative methods do not, therefore, have to be sought: it is more a matter of deciding which new measures could be added to those already adopted so as to ensure that the process of integration is pursued in a flexible and gradual manner.

40. One method which has already been dealt with in numerous studies would consist of gradually developing a new monetary instrument peculiar to the Community.

This new instrument would be issued by the Union's monetary authority and would initially be used solely for transactions between central banks. At a later stage it could be given a role enabling it:

- (i) to serve as a means of settlement for financial operations between the public institutions of the Union;
- (ii) to circulate among banking institutions in connection with certain types of private operations.

In this way, the common instrument could progressively acquire a wider monetary role. An important stage in this process would be reached when the central banks began using the Community instrument to intervene on the exchanges.

The member countries would then have a common currency which, subject to certain con-

ditions, would circulate side by side with the national currencies, just as nowadays foreign currencies are used in the Community side by side with any member country's currency. The national currencies could retain, in relation to each other and to the common currency, the degree of flexibility deemed necessary in view of the differing rates of inflation.

41. If chosen, this method would in no way render obsolete the Community 'snake', and the ultimate objective of stable exchange relationships within the community would be retained. However, the scope for exchange rate adjustments could be narrowed at a slower rate than that initially envisaged as the Community's monetary cohesion would be sustained and stimulated by the existence of a common monetary instrument.

Consequently, intra-Community exchange relationships could retain a certain degree of flexibility even after the creation of the Union and the establishment of its institutions.

42. The choice of the method to be used to get the movement towards monetary union under way again is already a matter of urgency in the Community. The choice should therefore be made in the near future without waiting for the establishment of the Union itself. To this end, the responsibility for introducing the new monetary instrument could be entrusted to the European Monetary Cooperation Fund, a forerunner of the future monetary authority, with the necessary political control being exercised by the institutions of the present Community.

When the Union is established, the monetary authority would be given its definitive structure and its full range of powers. The institutions of the Union would then be responsible for the further development of the monetary instrument.

The decision must be framed in the light of the essential features of the Union. In this respect, the common-currency method, rather than an unduly rapid freezing of intra-Community exchange relationships, seems to be more in line with the future requirements of a European



Union having major powers of its own but allowing for the greatest possible flexibility for national policies.

Experience in the Community has shown the interdependence of monetary problems and problems relating to the Community's economic structures. The common-currency approach would provide more scope for adjusting the rate of advance towards monetary union to the progress made in bringing economic, industrial and regional structures closer into line.

### The budget of the Union

43. The budget has many functions to perform, affecting many fields such as structural policy, social policy, regional policy and short-term economic policy.

Hitherto, efforts to direct the Member States' economic policies towards the common objective of gradually establishing economic and monetary union have concentrated, as regards budgetary policy, on providing an agreed framework for national decisions. The sums earmarked in the Community budget have been relatively small, and their actual utilization is largely determined by built-in mechanisms.

These efforts, which, as we have seen, should be pursued within the Union, have, however, come up against serious limitations, for ultimate responsibility for and the democratic control of expenditure are still in the hands of the individual States while the decisions that could bring about convergence of policies must be taken at Community level. Clearly, for decision-making and ultimate responsibility to be out of line in this way is a constant source of conflict.

44. A more rational idea would be to provide the Union with a larger budget which was sufficiently flexible to allow of prompter responses to changes in the needs of the Union as a whole, both in respect of structures (the energy crisis is a good example of this requirement) and in relation to overall demand management. The budget could be used to influence economic

trends in this way either by direct intervention measures, or by the Union granting Member States loans or subsidies linked to respect for the objectives of the Union's policies.

The Union's budget would thus play an important role in transferring resources between the economies and in redistributing them between social groups so as to eliminate imbalances.

45. The Union budget will probably continue to be primarily an instrument of structural policy, and its role in current economic activity will at first be extremely limited, for the total expenditure of national and local authorities will, for a very long time to come, remain far higher than any expenditure that could be decided on and administered at European level. Overall demand management will therefore remain a very complex process, its key features being the increasing use of common budgetary and monetary instruments and the provision of an agreed framework for national policies in clearly defined areas.

The role of the Union budget as an instrument of general economic policy would of course be strengthened if, at a later stage in the development of the Union, quite new categories of expenditure could be included (e.g. infrastructure programmes, certain social security expenditure, unemployment benefit, etc.).

46. The increase in expenditure from the Union's budget ought not in itself to speed up the rate at which public spending as a whole is growing. Frequently it will make possible economies in national budgets, and a more rational utilization of resources.

### Financing the budget of the Union

47. Transforming the role of the Union budget in this way will also mean refining the system of 'own resources' by creating a European tax system which would be activated by a decision of the institutions of the Union.

As the measures of financial intervention by the Union are expanded, so too will the present range of sources for financing its budget have to be broadened. The aim ought to be a system of own resources which should be as simple as possible and weigh equitably on the several economies. However, the development of the political aspects of the Union will inevitably bring up the problem of a European tax system which took account of the need to ensure a balanced treatment of different social categories. Consequently, there is a case for increasing use not only of indirect taxes but also of certain kinds of direct taxation (for example, corporation tax). The Union should also be able to choose to create specific Union taxes by a special procedure probably entailing action by the national parliaments.

A European tax system with a more varied range of instruments could also become an additional means of achieving redistribution so as to assist the most needy regions and social groups.

48. As regards other revenue, the Union will have to be able to raise loans on the capital markets (particularly for investment and infrastructure expenditure of common interest).

Hence the Union budget would constitute an instrument which, when combined with the instruments of monetary policy, would enable action to be taken not only to improve structures but also, to some extent at least, to influence short-term economic trends.

#### **The improvement of economic structures and elimination of economic disequilibria**

49. Union action in this field will be aimed at strengthening its economic and social structures so as to enable it to face up to international competition, to balance the distribution of its economic activities and to make optimum use of all its human and natural resources. The Union will therefore need legislative power, exercised

flexibly in the light of national or regional situations, and will have to be capable of setting common objectives.

50. As regards legislative power, stress has already been laid on the importance of extending the scope for direct legislation. Whenever the use of national legislation presupposes an advanced degree of harmonization, it would be useful and even desirable for the Union to act directly by legislating. Apart from cases of this type, direct action by the Union would also be desirable where new problems arise directly at Community level, which therefore, in essence, are unsolved at national level, or where policies are being worked out which will be administered by the Community.

51. As regards the provision of finance from the budget, which has already been mentioned in connection with the budget of the Union, two methods have so far been used by the existing Communities.

The first consists of financing national programmes, carried out by the Member States, which are in line with common objectives and are of recognized Union interest. The main idea here is to show active solidarity to Member States with special problems. It will also enable certain national schemes to be related to common objectives.

The second consists of financing schemes or policies which are specifically common in nature. These schemes and policies can be implemented on a decentralized basis and their objectives can be geared to national and local needs, while fundamental decisions on the overall objectives and the choice of operations to be financed would be taken at Union level. This second method enables more coherent policies to be pursued and should be applied more and more extensively in the Union, progressively replacing the first method wherever possible.

52. In addition to the provision of finance from the Union budget, further funds could be raised in the form of loans for financing activities of

common interest. This form of financing, which will be all the more important since a real European capital market will take quite some time to develop, could call for the creation of other public finance institutions in the Union as well as the European Investment Bank.

53. A key area for direct but selective economic intervention is that of regional policy and land use planning. The viability of the Union itself will largely be conditioned by its ability to assist all its regions in attaining an adequate and balanced degree of development. The new resources designed to mitigate regional disequilibria should contribute to making better use of the Community territory, both from the economic angle and from the point of view of that idea of society which the Union must adopt.

An overall framework will be needed for land use planning throughout the Community. It will specify the common approach, the mutual consistency and the links between planning implementation, which in this field will remain very largely free from standardization or centralization.

54. Research policy is another example of direct but selective intervention. The future scale of research and development programmes can no longer be met unless available resources are used in a rational and concentrated way at European level.

### Social measures

55. By coordinating the use of the various economic instruments at its disposal, the Union will be able to play an increasing role, not only in general economic policy and in removing structural imbalances but also in employment policy and the elimination of social inequalities.

It will also require new instruments in the specifically social field. Economic equilibrium can be preserved only if social structures are improved. Moreover, the exigencies of social progress are now raising new problems whose

scale and economic implications are such that joint action must often be taken, or at least national policies must be coordinated. The Union must make an active contribution to social progress, for otherwise it will lose the support of a substantial sector of public opinion in Europe, notably the workers.

This certainly does not mean that the management of the specific instruments of social policy will be centralized. The Union should primarily act as a stimulus, encourage gradual harmonization, and in some cases take direct action.

56. In particular, the Union could gradually introduce uniform systems of minimum social welfare. This would not, of course, prevent the Member States from setting themselves more ambitious objectives.

57. In some fields common policies, financed by the Union and implemented by direct legislation, could prove useful or even indispensable.

This might well be the case for problems (e.g. the protection of migrant workers) which are closely linked to the Union's general economic policy and also to relations with certain non-member countries.

In addition, in areas in which the new problems of modern industrial society are coming to a head (e.g. improving working conditions and the problems of industrial democracy), the Union could, if given the right to adopt legislation itself, speed up and facilitate the development of new values common to European society.

The Commission's proposals on worker participation have already helped to stimulate debate at European level and as a result differences of opinion in this area have become appreciably less pronounced.

58. Finally, by increasing expenditure in the social field (e.g. on unemployment insurance) the Union would be able to exercise a far more effective redistributive function and so help to reduce economic and social disequilibria.

## *Foreign Policy*

59. The inclusion of foreign policy within the competence of the European Union is warranted on a number of grounds.

Firstly, as recent experience has shown in sometimes dramatic ways, the individual Member State are no longer capable individually of asserting this role on the international scene with sufficient weight and efficacy.

But when the Community and the Member States, taking the instruments of the Treaties as a basis, have managed to evolve a common position, as was the case for example with the Lomé Convention, Europe has been able to exert an incontestable influence on international relations and the Community has been able to make an original and active contribution to the solution of a number of world problems.

The security of each Member State intimately affects the security of the other Member States and of the Union as a whole. Moreover, in a political union, solidarity between the States and between the citizens of the Union requires that the security of each State shall be identified with that of the Union as a whole. Hence the need for action at international level to be coherent and so make it possible to protect the interests of the individual and of the whole.

60. The need to ensure, when dealing with the outside world, that the common policies pursued inside the Union are effective also makes it vital in this connection for a common foreign policy of the Union to be developed.

61. By presenting a united front, Europe would at the same time be meeting a need felt by a growing number of our partners, who would already like to be able to deal with Europe as such and regret the slowness and difficulty of our efforts, and our consequent failure to take the initiative.

In view of its geographical position and its commercial and economic power, Europe is right at the centre of some of the most critical and

delicate problems which affect the equilibrium of the world. There would be risks if others tried to fill the vacuum which its lack of initiative has created in so many fields.

62. A foreign policy based primarily on bilateral relations is progressively being replaced by a system of multilateral relations, in which the international organizations and regional groupings are becoming more and more important. For example, the Member States (or most of them) are members of military alliances (such as NATO), belong to international economic organizations (OECD, GATT, IMF, etc.) and are increasingly active in the various organizations of the United Nations.

The extension and reinforcement of this international cooperation is in no way inconsistent with asserting the Union's own role. On the contrary, Community experience has proved that a united Europe can play a constructive part, and sometimes a decisive part, in world-wide cooperation and can serve as a source of equilibrium and a factor for progress.

63. At present, however, matters coming under the head of external relations are dealt with in various institutional frameworks and are governed by different procedures.

Matters related to the attainment of the objectives of the existing Treaties, in particular the common commercial policy, are governed by Community procedures and come within the fields of competence of the Community institutions.

The general political aspects of international relations are dealt with under the system of political cooperation established between the nine Member States of the Community.

Matters relating specifically to defence are dealt with at NATO and in Western European Union.<sup>1</sup>

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<sup>1</sup> These matters are discussed under 'Defence', points 74 to 81.

These various forms of collaboration will have to be organized coherently and given a new dimension in the Union.

64. Union action at international level would call for:

- (i) the definition of a common position and, to this end, a continuous pooling of the Member States' information and views on foreign policy;
- (ii) on the basis of this position, an original and active contribution by the Union to the effective operation of the international system.

65. The development of political cooperation alongside the various instruments available to the Community has already enabled progress to be made in common action. But much remains to be done. Hitherto, political cooperation has seldom led to anything more than the Community reacting to events.

If these objectives are to be achieved, the first thing to be done is to complete the elimination of the frequently artificial distinction between Community activities and matters for political cooperation. This distinction makes it impossible to deal with our problems in context or to act as effectively as we should, while our partners are faced with a multitude of interlocutors none of whom is really in a position to speak for Europe. It is not enough to try and remedy the situation through coordination of the two structures. In the European Union, all questions of common interest must be considered in a single institutional framework.

66. As regards the distribution of fields of competence between the Union and the Member States, the final objective is a common policy with direct attribution of powers to the Union institutions in all areas where the Member States acting alone cannot have as effective a voice as would the Union acting as one, or where the absence of a common policy would make it impossible for the Union to pursue the objectives of its internal development or to contribute to international actions of interest to the Union.

Certain matters will naturally be left entirely to the Member States. However, the fact that the different aspects of international relations are closely interdependent will mean that the Union will have concurrent competence in very many matters. The Union would invoke its competence only when necessary, so that certain matters might, for a very long period and perhaps indefinitely, be dealt with solely by the Member States.

67. Taking those matters which are already covered by the existing Treaties as a basis, it can be seen that the only dealings with non-member countries which are at present clearly defined are those in the commercial policy field, in the specific sector of Euratom, and, within a confined geographical context, the association with certain developing countries or groups of them. There is still a tendency to interpret them narrowly, with the result that Community policy proper is confined within bounds which do not permit coherent action. For instance, the Community's ability to take action in such matters as cooperation agreements, international investment, credit policy and so on is contested in certain quarters. In view of the trend of international economic relations and the very active role played by the governments, it is of the utmost importance to give the Union extended powers in this field, so that it can bring greater political influence to bear.

68. Finally it is clear that the Member States can act more effectively, more meaningfully and with greater freedom in relations with the countries of the Third World when they work together than when they work separately.

Development policy will be one of the areas of action peculiarly appropriate to integrated action by the Union, whether the terms of direct financial and commercial action with the Group of 77, of its special relationship with certain of them (ACP, Mediterranean, Declaration of Intent countries, etc.) or of its direct contribution to international organizations dealing with development where the Member States will have to present a common approach.

69. The Union's field of competence in dealing with the outside world must cover the same areas and be of the same nature as those it exercises internally. For the Communities, this principle has now been enshrined by the Court of Justice in its 'AETR' judgment.<sup>1</sup> It will have to be ensured that the Member States are unable to emasculate, through international commitments, an internal policy still in course of elaboration.

70. Provision will also have to be made in a fairly general manner for the Union to be able to act in certain fields connected with economic integration where the establishment of a policy vis-à-vis the outside world would itself be justified, even if there were no compelling reasons for establishing a common policy within the Union (for example, matters relating to sea and air transport, already touched on in Article 84 of the EEC Treaty).

71. Apart from these matters, and leaving aside for the time being any analysis of the problems connected with defence, there is a broad area of international activities which are more strictly of a political nature and which constitute a large part of the diplomatic activities of the States. They include the recognition of States, routine diplomatic contacts, moves to bring about international action on specific matters, and various forms of dialogue. They are all based on a certain assessment, sometimes political, sometimes ethical, of the international order and its evolution. The general function of these activities is to assert, or even ensure, the place which States hold in the international order. They are therefore very closely linked with economic matters and security. In this field the Union will have to play a role commensurate with its international personality.

72. If a common foreign policy is to be established the Treaty of Union must lay down procedures for the progressive exercise of their powers by the institutions on terms clear enough to avoid any doubt as to the situation as between the Union and the Member States in relations

with non-member countries and international organizations.

How the problem is handled will obviously depend on the international situation and the way it develops. It will depend also on the degree of internal solidarity which the Union may build up as a result of economic integration and the permanent dialogue between political forces within the institutions.

73. In the light of this analysis, the Union's institutions will have the task of preparing and implementing joint positions and actions.

This common policy will have to be reflected in and carried into action by diplomatic activity in foreign capitals and international organizations. This poses a problem of organization of the diplomatic machinery of the Member States and of the Union. Already, even with the present limited development of the Community's unity in external matters, the common attitudes of the Member States decided at central level are not effectively carried through in the field due to lack of adaptation of the Member States' diplomatic techniques. These difficulties will have to be overcome before the Union will be able to take full advantage of its capacities in the external relations field.

Initially at least, there will be no need for the Union to have its own large-scale diplomatic service, although it will be able to appoint representatives to certain countries and international organizations, where necessary, with responsibility in particular for representing the Union's own interests and maintaining permanent close contacts with the Member States' missions for the implementation on the spot of common decisions. Other possible improvements will need to be examined, e.g. arrangements for sending common instructions and possibly even for a degree of common representation.

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<sup>1</sup> Case 22/70: [1971] Recueil, p. 263; Fifth General Report, point 586.

## Defence

74. The gradual development of a foreign policy for the Union, together with the growth of its influence and the increasing part it plays in international economic relations will, without doubt, contribute effectively to the maintenance of peace and help guarantee the security of the Member States.

This will, however, have an impact on external relations over and above the aspects already mentioned—particularly in due course in the field of defence.

The Atlantic Alliance plays and will continue to play a decisive role in the security of Western Europe, but the security of the Union, its long-term cohesion and solidarity between its peoples cannot be truly guaranteed if defence matters are purely and simply left on one side when the Union is being established.

75. All the Member States are not at present in the same situation as regards existing defence organizations. Ireland, for instance, is a member neither of the Atlantic Alliance nor of WEU. Denmark is not a member of WEU. France, a member of the Atlantic Alliance, no longer participates in its military organization. The attitudes of the several Member States of the Community to the Non-Proliferation Treaty are not identical.

76. The working out of common positions in the field of defence will have to be based on a common view of international problems and on the achievement of a common foreign policy in certain important areas.

A European defence policy to be considered and accepted by the peoples of the Union, the European institutions will have to be recognized as authoritative and representative of a sufficiently high degree of solidarity between those peoples.

77. A period of strengthening the Union will be necessary before all these conditions can be met. One way of taking account of defence

matters when establishing the Union would be to make defence a field of potential competence for the Union, which would thus not be endowed with powers and means of action in this field from the outset. This could only be decided under a special procedure in which the competent institutions of the Member States would participate in accordance with their respective constitutional rules.

78. Such an undertaking in principle would have some immediate repercussions.

As a potential competence would be involved, the Member States would be bound not to engage with non-member countries in actions which might endanger the security of another Member State or compromise the Union's long-term cohesion. Thus, for example, those Member States which are signatories to the Non-Proliferation Treaty have interpreted it to mean that their obligations under this Treaty shall not prejudice the rights of a future European Union.

79. Alignment of the Member States' defence policies would be desirable even outside the framework of the Treaty of Union and might even facilitate the creation of the Union. Among the actions which could be the first tangible signs of such an alignment could be periodic discussions on defence problems and the defence effort held in a truly European framework with the participation of all the Member States.

80. In addition, to pave the way for a common policy, there could be a systematic comparison of the strategic planning of the various countries with the aim of arriving at a common view, taking account of the specific interests of Europe.

81. Another major step forward would be the development of a common policy on arms and equipment, possibly involving the setting up of a 'European Arms Agency', which would bring about a more rational use of available funds and the industrial and technological potential of the Member States. Experience has shown that the lack of a common policy in this field has meant

that a number of industries are excessively dependent on sources outside the Community.

This situation not only adversely affects the production of military equipment, and hence Europe's scope for independence, but also certain non-military industries.

### *Protection of Human Rights*

82. The democratic nature of the European Union, which should be explicitly stated in the Treaty of Union, means that the protection of human rights is a fundamental element in the new political edifice and in the operation of its institutions.

The existing Treaties make no explicit reference to human rights. However, the Court of Justice has been able to fill in this gap by treating fundamental freedoms as forming part of the general principles of Community law. For instance it recognized that 'the observance of basic rights is an integral part of the general principles of law which the Court of Justice enforces' and that 'these rights must be safeguarded in the structures and objectives of the Community, having regard to those constitutional traditions which are common to all Member States'.<sup>1</sup> 'In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories can supply guidelines which should be followed within the framework of Community law'.<sup>2</sup>

The general political vocation of the European Union and the extension of its competence to include fields more and more closely connected with the life of the citizen argue in favour of a formal affirmation of human rights. They should be given the force of rules of law which can be applied by the courts and which the

Union institutions will have to observe when exercising their powers and indeed promote by adopting positive standards for their effective implementation (this applies particularly to economic and social rights).

### **The human rights to be protected**

83. Although in the Europe of the Nine there is a general consensus on the 'traditional' fundamental rights of the individual—civil and political—this is not entirely the case with the rights of 'groups of individuals' (for example, the status of foreigners) and with 'economic and social' rights. The indications offered by international law are far from consistent.

It would seem, therefore, that the most suitable approach, offering the best assurances, would be to incorporate a list of specified rights in the basic act on which the Union will rest.

Another, but much more limited, possibility would be simply to include a general obligation to respect human rights and fundamental liberties. This idea, which is the one the Court would prefer, would ensure the development of a structure of judgments, but it would scarcely assist in the exercise of economic and social rights, where implementing measures of a legal nature are necessary.

A mere reference to the provisions of the European Convention for the Protection of Human Rights is also a possibility, but it would not cover economic and social rights and would be difficult to apply in practice.

### **How are these rights to be safeguarded?**

84. In extension of what is already to some extent possible in the Community, provision will have to be made for a wide individual right of

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<sup>1</sup> Judgment of 17 November 1970 in Case 11/70: [1970] Recueil, p. 1125.

<sup>2</sup> Judgment of 14 May 1974 in Case 4/73: [1974] ECR, p. 508.



appeal against any act which violates the fundamental rights protected.

The Court of Justice will necessarily have a key role to play here.

85. Moreover, the inevitable growth of the array of purely administrative measures taken by the Union's institutions means that there ought to be a system of mediation which could contribute to the settlement of conflicts between the administrative authorities of the Union and those under its administration.

### III. The Institutional Structure of European Union

#### *The nature of the institutional system*

86. It is essential to consider the institutional implications of the common policies suggested so far.

Institutional systems reflect political realities: it is therefore difficult at this stage to make any concrete suggestions in this area since the solutions eventually adopted will depend on developments of which it is now difficult to assess the consequences, notably the direct election of the European Parliament. In this chapter a number of approaches are examined as a contribution to future discussions.

Two possibilities can be envisaged for the institutional system of the Union:

(a) A single institutional structure covering all the fields of competence vested in the Union. In this setup, each function (governmental, legislative, etc.) would be carried out by the same body, whatever the field of action.

(b) Partially or totally separate bodies with competence in the various areas or groups of areas covered by European Union. Under this scheme, a central body or arrangements for coordination would ensure overall coherence.

87. The arguments in favour of the first model are decisive.

Community experience shows how parallel organizations, such as the Community and the political cooperation arrangements, can lead to conflict and overlapping, and this has obvious drawbacks.

In the field of external relations, only a single organization is capable of guaranteeing the necessary degree of consistency between the various aspects of a policy of international cooperation. In addition, it would make the Union's own personality stand out more clearly at international level.

Within the Union, effective action will depend in large measure on the possibility of always having an overall picture of the problems of society and of choosing the most suitable instrument in each circumstance—and this would be difficult in too diversified a structure.

If the second possibility were accepted, the need for coordination would be so pressing that the coordinating body or machinery would inevitably become the political pivot for the entire structure of the Union.

Support for the case in favour of a single structure can also be found in the way the Community system has developed. After the establishment of the European Economic Community, the need to merge the institutions of the three existing Communities very quickly became evident although the actual operation was delayed by political difficulties.

It should again be recalled that the choice of a single structure does not mean that the institutions of the Union act in all their fields of competence in accordance with the same legal rules.

### *The functions of the institutional system*

88. The previous chapter sought to define what would be the fields of competence and the scope of the powers of the European Union. It is now appropriate to consider how this definition of competence and powers will be translated into the tasks to be carried out by the institutions of the Union. The list below specifies the various functions which will fall to them:

(a) *Legislative acts defining and organizing the exercise of certain powers of the Union (where this is not settled in the Treaty of Union)*

(b) *Legislative acts which may create rights and obligations for individuals*

For example, social legislation, legislation on protection of the environment, transport legislation; legislation on the protection of individual rights, etc.

(c) *Legislative acts addressed solely to the Member States*

For example, directives on the harmonization of national legislation; outline laws aimed at providing a frame of reference for certain national policies (e.g. government borrowing policies).

(d) *Decisions concerning the finances of the Union*

For example, approval of the budget; decisions to allocate part of national taxes to the Union (e.g. VAT); decisions on the creation of the Union's own taxes; decisions on the floating of loans by the Union.

(e) *Authorization to ratify certain treaties*

(f) *Exercise of the right of initiative in legislative matters*

(g) *Executive decisions on the utilization of the Union's own instruments*

For example, directives addressed to the central monetary authority; decisions on expenditure under the budget; implementing decisions in connection with the economic legislation of the Union.

(h) *Non-legislative decisions on the supervision of or provision of a framework for national policies*

For example, the 'guardian of the Treaty' function; authorization to governments to adopt protective measures; supervision of aids.

(i) *Exercise of the Union's own competence on foreign policy matters*

Definition of a Union position or of a common position of the Member States; negotiation and ratification of treaties; participation in international organizations and conferences; diplomatic relations.

(j) *Organization of cooperation between Member States in areas not covered by a common policy but included within the competence of the Union*

(k) *Judicial acts*

(l) *Decisions on the use of the Union's potential competence*

(m) *Decisions on the accession of new members*

(n) *Decisions amending the basic act*

89. This list of varied tasks shows the need for the institutional system of the Union to include the fundamental functions of a state-like political organization, i.e. a legislative function, a governmental function, a judicial function, procedures for revision of the constitution. Moreover, the structure of the Union must make it possible to organize and implement cooperation between Member States.

It is to be noted here that this list of tasks to be carried out by the institutions does not claim to set out precise criteria for the detailed separation of powers between the different bodies. Although the principle of the separation of powers is one held by all the Member States and thus one to be embodied in the European Union, its practical application in the different constitutional systems concerned has varied markedly. This is particularly true as regards the division between legislative and governmental functions.

Consequently, the Commission's intention in this document is not to set out the framework for a constitution but merely to highlight the major characteristics of an institutional system for the Union.

The task of laying down detailed criteria for the separation of powers in the Union with regard to past experience in the different Member States but also in the light of the original features of the European Union will fall to the future constituent members of the Union, and this will be one of their most difficult tasks.

90. There are some major differences between the institutional problems of the European Union and those of the EEC, or at least those which arose during the creation of the common market. The main task during this period was the attainment of specific objectives, a process which has been described as 'passive integration', i.e.

the removal of barriers to the free movement of factors of production. A great many provisions of the Treaty had this as their sole objective.

The establishment of European Union, by contrast, will occur when the main aim will be to implement common policies and action—a process of 'active integration'.

91. The institutional system informing the EEC Treaty is based essentially on the combination of the Commission's right of initiative and the Council's decision-making power. The Commission is further responsible for seeing that Community rules are respected and also has certain executive tasks. The Parliament has so far played a mainly advisory role.

The Council, with a certain ambiguity, has both legislative and governmental responsibilities, while other governmental functions are carried out by the Commission. In the Community system, then, there is no separation between legislative and governmental functions.

92. European Union will not dispose of the need for dialogue between institutions responsible for the common interest and institutions representing national interests, which has been a feature of the Community.

If the institutions of the Union are granted powers of their own which are greater than those of the Communities (and it is recognized that this will be one consequence of the implementation of economic and monetary union), this will mean that the decision-making institutions must be given a maximum of democratic legitimacy—with greater powers being vested in a directly elected European Parliament, for instance.

At the same time the legislative and governmental functions of the European Union will have to be defined in a more rational manner; this would be in line with the more political character of the Union and increase the effectiveness of the institutions. One reason for the lack of effectiveness of the present institutions is the ambiguity surrounding the role of the Council.

93. This then prompts consideration of the real meaning of the passage in the Paris communiqué<sup>1</sup> stating that the European Union must be set up 'with the fullest respect for the Treaties already signed'. It does not seem reasonable to construe this as meaning that the creation of European Union should not involve any institutional changes. On the contrary, the political discussions at the Paris Summit and the reference in the same communiqué to the need to transform the relations of Member States would suggest that the creation of European Union must be accompanied by institutional changes.

The Commission interprets 'the fullest respect for the Treaties' as expressing concern that the European Union should not be a step backward compared with the existing institutional structure but rather a reinforcement. It also implies that the institutional system of the Union should be based on the existing institutions.

#### *Setting-up the institutional system*

94. Two approaches are possible:

(i) Establishment of the European Union would not involve immediate and far-reaching institutional reform, but the institutional system would be changed step by step as the fields of competence of the Union were gradually enlarged.

(ii) From the very outset, there would be institutional reform, on a scale sufficient to ensure that the new institutions provide a structure in which the Union can exercise and gradually increase its powers and guide developments over a fairly long period.

Although evolution by stages is conceivable in well-defined areas (such as tariff dismantling), it seems hardly possible to apply it to so complex a phenomenon as an institutional structure.

If the institutional system of the Union is to constitute a structure within which political forces will develop a truly European dialogue, it will have to have a certain stability and not be subject to frequent change.

The second approach, that of the qualitative leap forward, has a number of advantages. This was the method chosen by the authors of the Rome and Paris Treaties when they provided for the new institutions to be set up once the Treaties entered into force.

However, the setting up of a complete institutional structure from the outset does not mean that the structure itself must be definitive. The aim would be to set up the political organs required to enable the Union over a period which will, of necessity, be rather long, gradually to assume effective responsibility in its various fields of competence.

This period of time will allow real political relations, which will be determined by the balance between the political forces, to develop between the various organs. After the initial stage, and depending on political developments, there is no reason why the institutions of the Union should not be reviewed as fully as necessary.

#### *The institutional structure*

95. The institutional debate within the Community has revolved around two major problems. First, the election of a European Parliament by universal suffrage and the conferment upon it of legislative powers. Second, the organization of the executive function.

European Union means nothing if it does not involve the development of a European governmental executive. The Commission sees the European Government as an executive body with political authority, room for manoeuvre and powers (in the sectors where the Union has powers of its own) comparable with those normally possessed by a Government—a body which would carry out its activities under the supervision of a Parliament to which it would be responsible.

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<sup>1</sup> Point 16 of the final communiqué; Sixth General Report, point 5; Bull. EC 10-1972, Part One, Chapter I.

96. Consequently, the Commission feels that it would be appropriate at this stage to concentrate on the problems raised by the organization of the executive and legislative powers and by their interrelationship. A number of considerations will also be set out concerning the judicial power of the Union.

The Commission is aware that other major problems exist. At present, in particular, the need for the two sides of industry to be more closely involved in economic and social decision-making is becoming more and more evident and has already been acknowledged in the present Community. Consideration will have to be given to how this can be done in the Union, with particular emphasis on whether it should be provided for in the basic texts of the Union, and whether this requirement can be satisfied by a legislative act, or in the context of the day-to-day functioning of the institutions, or even by creating bodies on the lines of the Committee on Employment. The Commission does not, however, consider the time ripe for formulating any precise ideas, particularly while labour and management themselves have not made their views known. It will take special interest in the suggestions which will doubtless be set out by the Economic and Social Committee in its Opinion addressed to Mr Tindemans.

97. The various formulas possible for the organization of the executive and legislative powers can be reduced to three main models.

#### *First model*

98. The governmental organ of the Union would consist of ministers from the national governments who would devote themselves to European affairs. The European Government would therefore develop out of the present Council, without its legislative functions, and would of course have to operate on a permanent basis.

The executive and administrative responsibilities of the Commission would be transferred to the European Government, as would the corres-

ponding administration. The existence of such a Government would lead to the disappearance of the existing Commission as an independent political institution (without, however, precluding the existence of an autonomous body to reflect on and make suggestions concerning European affairs).

99. Legislative power would be exercised by a Parliament, which should probably be bicameral ('Chamber of Peoples' and 'Chamber of States'). The Chamber of Peoples should be elected by direct universal suffrage.

100. In this model each member of the European Government would derive his constitutional status from the national governments. There would be no problems as to the relationship between the executive's and the legislature's responsibilities, as each institution of the Union would have a completely independent constitutional basis.

#### *Second model*

101. The governmental organ would be a collegiate body whose members would be independent of the national governments.

A European Government of this type would naturally absorb all the executive functions of the Council and the executive and administrative functions of the present Commission, as well as its power of initiative. The Commission would thus cease to exist.

102. For the legislative power, a bicameral system seems indispensable (Chamber of Peoples and Chamber of States). The Chamber of States should be designated by the national governments.

103. As regards relations between the executive and the legislature, consideration should first be given to how the executive is to be appointed. This involves guaranteeing its legitimacy, authority and homogeneity.

There are three main possible systems.

Under the first system the Chamber elected by universal suffrage would be chiefly responsible for appointing the Government (or Head of Government).

Under the second system, however, this responsibility would be given to the Chamber of States, although the European Government would be responsible to the elected Chamber and could therefore be censured by it.

Under the third system the two Chambers would choose the Government jointly. For instance, the Chamber of States could appoint the Head of the European Government, the appointment to be confirmed by the elected chamber (which means that the Chamber of States would have to take account of the political composition of the elected Chamber). The Head of Government would then appoint his own team, which would be responsible to the elected Chamber (right of censure).

The first system is very similar to the constitutional practice of several Member States. It is doubtful, however, whether at the present stage of European integration it would be possible to eliminate entirely the influence of Member States' representatives in the formation of the Government.

The second system, which would give the national governments prime responsibility for the formation of the Government, could lead to the same lack of legitimate authority with which the present institutions are often reproached. Furthermore, the Chamber of Peoples' right of censure would lose much of its significance if the Chamber were not allowed to participate in forming the government.

The aim of the third system is to establish a balance between the role of the two Chambers, in other words between the elected representatives on the one hand and the Member States on the other.

In assessing the various systems a number of other factors should be taken into consideration, for instance the duration of the Government's

term of office, the compatibility of membership of the Government with membership of the European Parliament, the possibility of Parliament being dissolved if a motion of censure against the Government were adopted, and so on.

104. As regards the exercise of legislative powers, the problem of defining the respective roles of the two Chambers arises.

The establishment of a bicameral system does not necessarily imply that both Chambers would have the same responsibilities and powers in all fields. Even if, for a number of matters, a system of joint decision-making seems desirable, there will be matters (e.g. budgetary powers, foreign policy) on which, for reasons of efficiency or other political desiderata, the respective roles of the two Chambers would have to be differentiated.

This could be done in several ways: for instance, by granting one of the Chambers sole competence or by giving it the final say in certain fields, or by laying down rules governing the power of amendment and the majority required for taking decisions.

It is not expedient here to analyse the possible solutions and the fields in which the different procedures would be applied. This is a task that will fall to those who will have to draw up the constitution of the Union, and the report by the European Parliament will naturally be of considerable importance in this respect.

### *Third model*

105. The structure of the executive and legislative organs of the Union would be as in the second model, but there would be an additional body—the 'Committee of Ministers'—in which the representatives of the governments would have a seat and whose duties would include taking part in the procedure by which certain decisions of the European Government were adopted.

106. The creation of this body, which had already been envisaged in the draft treaty establishing a European Political Community,<sup>1</sup> would be justified by the fact that the European Government will only gradually develop the real substance of its legitimate authority, that is to say an efficient political contact with the forces of political life and with public opinion. Moreover, while the Union was at an early stage in the development of its fields of competence, the Committee of Ministers would have to act in spheres where the Member States would still wield considerable powers and retain wide responsibilities.

107. However, the activity of this body must not be such as to cancel out the progress achieved by the setting-up of a European Government as a political institution with its own powers and its proper constitutional background.

Mandatory intervention by the Committee of Ministers could perhaps be limited to specific problems and might possibly be no more than a transitional arrangement. The European Government would always be able, on its own initiative, to seek the opinion of the Committee.

108. The rules on intervention by the Committee of Ministers could vary with the subject matter. A number of systems can be envisaged on the basis of the experience of the Communities. Formulas could thus be adopted such as the ordinary opinion or the assent of the ECSC Treaty, or else the procedure used in the Management Committees and other similar Committees which have been developed in the EEC.

109. One may be inclined to think that, in this model, a role in the elaboration of government decisions could be entrusted to the Chamber of States in order to avoid an unduly ponderous institutional structure. This solution, although apparently simpler and more efficient, would however mean that the Chamber of States would have at once both legislative and governmental functions.

110. The first model, if adopted, would have several drawbacks and would not herald any real improvement on the current situation. The Government of the Union would in substance be an intergovernmental body. When it is remembered that within the Union it is in this body that cooperation between Member States would have to be organized, it seems clear that it would be very difficult for this European Government to develop the characteristics of an institution capable of exerting a common political resolve with the continuity and efficiency required for action by a genuine government. Consequently, this first model seems more suited to a Union which is based primarily on cooperation and the approximation of national policies than to a Union which, developing and improving on the existing Communities, would be based primarily on the pursuit of common policies and the exercise of its own powers.

111. The second and third models therefore seem more in keeping with the basic characteristics of the Union as they seem to emerge from the political intentions so far expressed by the institutions, as set out in Chapter II.<sup>2</sup>

The second model has the advantage of greater clarity with regard to the distribution of powers. It does, of course, imply a very ambitious development as regards the transfer of powers from the Member States to the institutions of the Union. Moreover, it would require an appropriate place to be found in the Union's institutional structure for the organization of cooperation between the Member States.

The third model would require a less ambitious change in character and provide a more satisfactory solution to the problem of organizing cooperation. However, it involves a more ponderous institutional structure. It also involves a risk that intervention by the Committee of Ministers might undermine the effectiveness of government action.

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<sup>1</sup> Adopted by the *ad hoc* Assembly in March 1953.

<sup>2</sup> Points 26 to 85.

The choice between the second and third models is essentially political.

The Commission considers that the second model would be the one best suited to the needs of the fully-fledged Union. The third model is however appropriate for a limited transitional period.

112. On the other hand, the possibility must be rejected of other mixed formulas with regard to the composition of the European Government, in which, for instance, some of its members would represent the national governments while others would be elected on an independent basis. This type of formula would lead to a hybrid organ which would be subject to constant internal strains as a result of the varying status of its members, and there would therefore be the risk of a permanent political impasse.

113. A number of specific problems raised by the institutional structure of the Union are discussed below.

#### *The initiative in legislation*

114. The governmental body should obviously have power to initiate legislation. But should these powers be extended to the parliamentary bodies and perhaps to the States? And, if so, in what fields?

115. For the Parliament, it would be reasonable to grant members of the Chamber of Peoples the right to initiate legislation, subject to appropriate reservations as regards new expenditure.

If the Parliament were to include a Chamber of States designated by the national governments, the question would arise whether the right to initiate legislation should be granted to the delegations of individual Member States. Since the Communities have had no experience in this area the Commission would advocate caution here.

116. The Commission decided not to go any further into this issue pending an opinion from the European Parliament.

#### *The Court of Auditors*

117. The European Court of Auditors, to be set up once existing proposals to amend the Treaty are approved, would obviously continue to function in liaison with the institutions of the Union to allow both Chambers to exercise democratic control over Union spending.

#### *Organization of cooperation between Member States in the Union*

118. The organization of cooperation should vary with the model adopted.

119. In the first model, the structure of the planned governmental organ suggests that it could be an appropriate framework in which to organize cooperation. However, this would have the drawback of stressing the fact that the members of the governmental organ were national ministers, whereas the organization envisaged in this model should bring out the European aspect of their duties.

120. In the second model, the simplest formula would be for the governmental organ to arrange, case by case, the requisite meetings between representatives of the Member States (ministers or senior officials) with a view to organizing the desired cooperation. It will be noted that the Chamber of States, although designated by the governments, would not be an appropriate framework because of its legislative function and because its fixed composition would not necessarily enable it to deal with the matters arising under cooperation arrangements.

121. The Committee of Ministers for which the third model provides would seem to be the ideal framework for cooperation activities.



### *The 'European Council'*

122. The Heads of Government have had to play an increasing role in European decision-making because of the weakness of the present structures and the need for political agreement at the highest level on ambitious objectives which in many cases go beyond the terms of the Treaties.

The creation of new institutions and the definition of new aims should inject new dynamism into the structures of the Union.

However, the role of Heads of Government will be even more crucial during the Community's advance towards European Union. Once new institutions have been set up meetings of Heads of Government should be limited to dealing with the most difficult political problems which will continue to arise.

### *Constitutional procedures*

123. The Act of Constitution should obviously lay down special constitutional procedures for the reform of that act and for the accession of new members. These procedures should provide for participation by all the institutions of the Union and by the Member States in accordance with their respective constitutional procedures.

### *The judiciary and the review of legality and constitutionality*

124. The Commission has noted with great interest the views on European Union expressed by the Court of Justice in its report of 15 July 1974. The Court recalls that the Community is governed by the rule of law and emphasizes that any future development of the Community must likewise satisfy this condition; a genuine system in which the rule of law applies requires 'binding rules which apply uniformly and which protect

rulings. It has been found that the national courts and tribunals of some countries make use of this procedure much more frequently than those of other countries.

Two lines can be taken to find a remedy for this:

(a) laying down an appropriate penalty against any judgment delivered by national courts which failed to refer the matter to the Court in breach of a rule requiring them to do so (obligatory action for default or a direct application to the Court of Justice by the parties concerned): this is the solution favoured by the Court;

(b) allowing the parties concerned a right of appeal to the Court from judgments of national courts which have ruled on a point of Union law without referring the matter to the Court (whether or not this is compulsory).

The first solution is more stringent since it penalizes any infringement of the Article 177 procedure, but it is confined to cases which national courts are bound to refer to the Court of Justice. The advantage of the second is that it gives the final word to the Court of Justice in all cases, not merely cases which national courts have omitted to refer.

126. In view of the broad scope of the Union's authority, even fuller consideration should be given to the role of the judiciary in the Union than has been done in the existing Communities. There is indeed a case for making a judicial system peculiar to the Union itself solely responsible for administering at least part of the law deriving from the Union institutions. If this thesis were accepted, there would be no need to decide once and for all which sectors of Union law should be withdrawn from the jurisdiction of national courts. The Union's constitution could provide that the legislature of the Union settles this question itself when legislation is being drafted.

The Court's report does not contain any suggestion of this kind. It should be pointed out, however, that the suggestion does not conflict with the requirement of a single supreme court put forward by the Court. A single Union

Court could ensure unity of interpretation both in the fields left to the national courts and those entrusted exclusively to the Union's own Court.

### *Review of legality and constitutionality*

127. In the Communities of today, the powers of the Court of Justice already include some that are similar to those of a Council of State or a Constitutional Court. When the Community institutions, the Member States or, within certain limits, private persons bring an action before it, the Court has the power to declare invalid both administrative and legislative acts of the Community which are not in conformity with the Treaties;<sup>1</sup> moreover, it has the power to declare whether or not the Member States have failed to fulfil their obligations under the Treaties, in which case the State is obliged to comply with the judgment of the Court.<sup>2</sup> At the request of a national court, it also has jurisdiction to give preliminary rulings on the validity and the interpretation of Community law, thereby enabling the national court to put aside any Community acts that are invalid or any national acts which are incompatible with Community law.<sup>3</sup>

As this system has proved its worth it should be confirmed and developed. The constitutional aspect of the Court's power to review the legality of acts would obviously come more clearly to the fore in respect of the Union's legislative acts once these came from an elected parliament. The Court shares this view.

128. The present system is marked by an obvious imbalance between the wide power vested in the Court to declare Community acts invalid and the more limited powers which it has in respect of acts of the Member States under Articles 169 to 171 and 177. It seems logical to restore the balance by conferring on the Court the power to declare invalid acts of the Member

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<sup>1</sup> Articles 173 to 175 of the EEC Treaty.

<sup>2</sup> Articles 169 to 171.

<sup>3</sup> Article 177.

States which are contrary to Union law when an action is brought before the Court by the institutions of the Union or the other Member States or when national courts request preliminary rulings.

On the other hand the Court, with the same aim of strengthening its judgment against a defaulting State, proposes that:

- (a) the judgment specify those steps which that State is invited to take;
- (b) enforcement of the judgment be subject to systematic control;
- (c) 'any advantages sought by the State concerned should be conditional upon its rectification in the future'.

The second suggestion is certainly acceptable; the way in which the other two are formulated poses a number of problems and would need some clarification. It should be emphasized, however, that the above suggestion also meets the ends pursued by the Court.

129. The present system is also at fault because of the limits imposed on actions brought by private persons.

(a) It is perfectly understandable that the right to bring actions before the Court in order to have *Community* acts of a general character declared invalid should be limited to the Community institutions and the Member States and that private persons should as a rule only be able to institute proceedings against decisions which are of individual concern to them. In a European Union it would be necessary to distinguish between a review of the constitutionality of legislative acts passed by an elected parliament, for which this limitation would be maintained, and a review of the legality of regulations issuing from the executive, which, as suggested by the Court, could, like individual decisions, be the subject of actions brought 'by private parties having a direct interest, as is the case in the legal systems of several of the Member States'.

(b) To the extent that private persons have under national law the right to ask the courts to

set aside *national* acts contrary to Community law, it would seem that it is not essential to grant them this right before the Court of Justice.

(c) One point in the future Union which is not very satisfactory for private persons is the absence of a guarantee that the Court of Justice would intervene in the matter of the *validity* under Union law of Community or national acts invoked during proceedings before national courts. At present such matters are brought before the Court only in the form of requests for preliminary rulings, and the national court has the exclusive right to decide whether or not it is necessary or advisable to refer the question to the Court. Moreover, the Court cannot deal with the claims of private persons who invoke Community provisions which are not 'directly applicable'.

In a model where the balance will of necessity be a delicate one between the Union and its Member States, the demarcation of spheres of action will not come about without some degree of trial and error for a long time to come. This being so it would be useful, in order to help the situation settle down more rapidly, to give private persons broad access to the courts to challenge the constitutionality of the acts of the Union and of the States in the light of the Treaty of Union not only in national courts of law or administrative tribunals but also by appeal to the Court of Justice, irrespective of whether or not the rules of Union law concerned are directly applicable.

The Court also favours a strengthening of the right of appeal for private persons.

#### IV. Moving Towards Union by Reactivating the Building of Europe

130. The scale of the effort required if European Union is to be achieved becomes all the more clear when one compares the magnitude of the objective with the difficulties that the Community is currently experiencing.

In spite of the undeniable successes which followed the first years of the Community and which led to its enlargement, and in spite of the growing interest shown by a large number of non-member countries in establishing increasingly close cooperation with the Community, the idea of Europe seems to have lost much of its strength and initial momentum.

131. Too many ambitious programmes have been announced only to be followed by all too modest achievements or even by failure.

Sometimes, in spite of the efforts made, it was found that disagreement on basic issues was insurmountable. Sometimes the programmes envisaged came up against the structural differences between the Member States which, in some cases, proved a serious obstacle to progress.

Often, however, failure was due to unwillingness on the part of governments, although fully aware of the need for joint action, to give the Community institutions the necessary means of action, thus lapsing into mere intergovernmental cooperation.

Deprived in this way of its inner driving force, the Community has been unable to keep up effectively with changes in European society.

Public opinion, while still generally in favour of Europe as a unity, has gradually ceased to regard the Community as a political venture in its own right and has become increasingly sceptical.

Moreover some sections of the public still have reservations about the way the Community has developed.

132. European Union will never be achieved unless vigorous action is taken to convince social and political forces of its necessity and of the benefits it will bring.

The first priority must be to restore credibility and relevance to the common venture.

This will involve a new drive to demonstrate the practical advantages of common policies to the Member States as a whole and the institutional changes that will be needed for those policies to be properly framed and carried out.

133. The need now is to resume and intensify this effort by measures which, without a complete upheaval of the present structures, will help give them a new impetus within the perspective of European Union.

Development in this direction could be furthered by:

(a) the election of the European Parliament by direct universal suffrage which, by enhancing the democratic legitimacy of the Community venture, would also prepare the way for further progress in the institutional field; ratification of the Convention approved by the European Parliament,<sup>1</sup> an election campaign which should be brought forward as much as possible, and the activities of the elected European Parliament would spark off a continuing debate between political, economic and social forces, national governments and the European institutions to define the basic objectives and content of European Union;

(b) fresh steps taken to reactivate common policies are also an important part of the desired development.

#### *The election of the European Parliament and the other related institutional measures*

134. This objective is laid down in the existing Treaties. Most of the Member States agreed in principle at the Conference of Heads of Government held in Paris last December that it should

be attained by 1978. The European Parliament put forward a new draft Convention in January 1975.<sup>1</sup>

The Commission considers that those States which maintained their reservations should now lift them and that work on the Convention should begin without delay, so that elections can be held as soon as possible.

135. The introduction of this new factor of direct legitimacy into the institutional system would take on even greater importance if it were supplemented by further measures, as regards the powers of the European Parliament which, by strengthening the latter's role, would increase the interest in direct elections of both politicians and public opinion.

136. The Commission feels that the most promising of the various conceivable measures would be to expand the consultation procedure agreed between the European Parliament, the Council and the Commission for acts having financial implications. This procedure could be extended to other fields of legislative activity in the way suggested by the Vedel Working Party.<sup>2</sup>

#### *The 'European Council'*

137. Pending the setting-up of new institutions for the European Union, the 'European Council' will be increasingly called on to act in the context of the present institutions as a driving and a guiding force and as a decision-making body on matters of major importance. It will also be its task to guarantee, by its political authority, the common will to attain the objectives of reactivation.

#### *The reactivation of common policies*

138. The Commission feels that efforts to strengthen the Community should concentrate in the first instance on existing common policies, all the facilities provided by the Treaties being exploited to the full. It attaches great impor-

tance to pressing ahead with the task of adapting the common agricultural policy to changed circumstances.

Externally the Community must play a full part in international negotiations, act with greater cohesion and take the initiative more frequently than hitherto on problems which are of vital interest to it as for example, economic development and stability in the Mediterranean. It must pursue and expand its policy towards developing countries, taking the Lomé Convention as a starting point.

Obviously a detailed programme for the reactivation of common policies cannot be included in this report. The Commission has confined itself to outlining a number of initiatives which, while remaining within the framework of the existing Treaties, would constitute important political steps towards European Union.

#### *Economic and social matters*

139. The Community's most urgent task is to restore confidence and stability at a time when most managements, unions and consumers are baffled by present developments and are anxious as to what the future may hold in store.

In the short term, the first priority is to strengthen and improve the mutual consistency of national policies, for it is essentially at this level that solutions must be found at the present stage of the Community's development.

140. Short-term policies are frequently hampered by the unstable relationships which have developed between Community currencies. Ways and means must be found of reducing this instability; and this means that the Community monetary system needs revising in

<sup>1</sup> Bull. EC 1-1975, point 2501.

<sup>2</sup> Report of the Working Party examining the Problem of the Enlargement of the Powers of the European Parliament (Vedel Report); Supplement 4/72 — Bull. EC.

such a way as to enable all the Member States' currencies to participate in complete safety. Not only intervention facilities, but also financing mechanisms must be reviewed. Short-term financial support and medium-term financial assistance, and the Community loan arrangements, will also have important roles to play.

It is also essential that the widest possible use be made of the European unit of account, not only in the Community's financial transactions but also on world financial markets.

The aim of greater monetary stability will call for effective control of liquidity growth and of budgetary policies, which means that the role of the European Monetary Cooperation Fund will have to be extended.

141. Yet monetary instability is merely a reflection of more deep-rooted economic differences. Only when these can be reduced can the Community hope to achieve really stable exchange rates. More active steps will have to be taken to narrow down these differences, which could well be aggravated further at the present juncture by uncoordinated industrial policies. This entails Community action through the budget to mitigate structural imbalances. In this context existing agencies, such as the Social Fund, the Regional Fund and the EIB, could be used, and new ones set up.

142. Some of these agencies can help the Community to speak with one voice in its response to problems in the field of energy. The key problem here is how to define and encourage the required investment in Community energy resources and in new industrial schemes to reduce energy consumption. Investment here will be on such a scale that Community financing will be needed, either through existing channels (especially the ECSC and EIB) or new channels still to be opened (e.g. Euratom loans). In some cases, the Community may have to give general guarantees that will ensure the profitability of investment. Action along these lines will allow the Community to develop

its potential in a vital sector of the economy and thus enhance its ability to adopt other measures required for transition to European Union.

143. There is another specific area—export credits—where there is a need to speed up harmonization. A specifically Community instrument may also prove necessary here. Differing principles and practices in the Member States constitute an obstacle to a coherent Community policy in this field and reduce the effectiveness of support which can be given to Community exporters.

144. The elimination of imbalances will take time. A medium-term strategy will have to be evolved to provide a more ordered view of the future.

When this strategy is being defined, consideration will have to be given to the possible and desirable rate and nature of economic growth and the best way of restoring the fundamental equilibria.

This overall policy, which will include social and structural measures, will have to be formulated within the framework of a Community medium-term policy programme.

Another point is that facilities for research into and analysis of economic and social structures will have to be further developed at Community level.

145. Given the efforts and sacrifices entailed by this medium-term programme, it is essential that the two sides of industry should be more closely involved in the preparation of decisions on social and economic issues. There is a real need to set up a general framework for the purposes of ensuring permanent dialogue between governments, institutions and the two sides of industry. Without impinging on the role of the Economic and Social Committee, the role of the Committee on Employment should be strengthened.

### *External relations*

146. The Community currently faces a series of major problems—particularly as regards energy, raw materials and the general relationship between industrialized and developing countries.

The Community should make immediate use of the powers it already holds to strengthen its action in tackling these urgent problems while bearing in mind the objectives of Union in an external relations context.

147. A first need is that the Community's powers should not be interpreted in a restrictive way, as is often tried at present. The Community must be permitted to express itself fully in fields where its role is now contested.

The Community must also be given new instruments with which to act. In view of the change in international economic relations, the Community as such should be in a position to conclude economic cooperation agreements where appropriate.

These agreements, such as the one which the Commission has proposed to negotiate with Canada, would not rule out the possibility of national agreements but in fact place them in the frame work of a coherent policy.

They would prevent a situation arising where uncoordinated policies implemented at national level neutralized the efforts of the various individual countries or even led to harmful repercussions on economic interpenetration within the Community. The implementation by the Community of cooperation agreements would on the other hand represent a further reinforcement of internal solidarity and economic interpenetration. As a case in point, it is probable that concluding agreements with countries which produce raw materials would in certain cases facilitate stable supplies for Europe as part of a system of reciprocal benefits.

148. Subsequently, greater effort will have to be devoted to defining and upholding common positions and to speaking with a single voice in

international negotiations. This is particularly important in the monetary and financial negotiations, as in the forthcoming international talks on the whole complex of relations with developing countries, energy and raw materials. Only in this way will the Community be able to play its full role in determining the new balance between industrialized and developing countries.

149. Finally, the process of political cooperation should be strengthened to enable the Nine to take common initiatives in the international field.

### *Procedure for the attainment of European Union*

150. The attainment of these objectives is neither a transitional phase nor a first step towards European Union.

Commitment to these objectives is however a precondition for the major step that the creation of European Union represents. The achievement of European Union will require the definition of new objectives, the transformation of the institutional system and the explicit granting to the institutions of new competences and new powers.

151. While the Commission would like to see the institutional issue settled and competences defined from the outset, it recognizes that the Union will only exercise its new powers and implement its new policies gradually, with an evolution over a relatively long period.

All these changes and commitments should however be enshrined in the Act of Constitution, in the form of a new Treaty. In this context consideration must be given to procedures for drafting and approving the new Treaty with a view to subsequent ratification by the Member States in accordance with their respective constitutional requirements.

152. A number of methods are conceivable, but they can be reduced to two main formulas depending on which body is given the politically determining role.

These are discussed below but the Commission reserves the right to review its ideas as the debate on European Union develops.

153. In the first formula, the central role in the preparation of the new Treaty would be given to a conference of representatives of the Member States.

In this case, it would be possible to follow the procedure under Article 236 of the Treaty, which provides for a proposal from the Commission, consultation of the European Parliament and preparation of a final draft by a conference of representatives of the Member States.

154. In the second formula, this central role would be played by institutions representing the Community and our countries. The Union Constitution might, for instance, be drafted, on the basis of general guidelines laid down by the 'European Council', by an elected European Parliament. The Constitution, in Treaty form, would be referred by the Member States' governments to the national Parliaments for ratification in accordance with each country's own constitutional requirements.

During the drafting process the national governments and the Commission would, of course, be able to contribute to the debate in Parliament either at their own initiative or at Parliament's request.