

# **How the European Community's Institutions work**

**by Emile Noël, OBE**

Secretary General of the Commission of the European Communities

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The institutional system of the European Communities is difficult to classify. The Community is much more than an inter-governmental organization: its Institutions have a definite legal status and extensive powers of their own. But nor, on the other hand, has it a "federal government" with the national governments and parliaments subordinate to it in the spheres of its jurisdiction. It is perhaps safest to be non-committal and leave it to future historians to fit the system into one or other of the international lawyers' categories, ourselves saying simply that it is a "Community" system.

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**Note:** the values in dollars shown in this document refer to periods mainly prior to the devaluation of the US dollar. They should therefore be taken in terms of the parity of that currency before December 1971, and are formally equivalent to the European Community's unit of account defined as 0.888671 grammes of fine gold.

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# The four Institutions

The merger of the Institutions of the three Communities, from July 1967, did not appreciably affect the structure and competence of the European Parliament and the Court of Justice, which already served all three. On the other hand, a single Commission superseded the High Authority of the ECSC and the Common Market and Euratom Commissions, and a single Council of Ministers the ECSC, Common Market and Euratom Councils. The single Council and single Commission exercise all the powers and responsibilities formerly vested in their respective predecessors, in the same way and in accordance with the same rules, as laid down in the three Treaties.

The merger of the Institutions is no more than a first step towards the setting-up of a single European Community, governed by a single Treaty which will replace the Paris Treaty (establishing the ECSC) and the Rome Treaties (establishing the Common Market and Euratom).

The work of the Communities is thus discharged by four Institutions – the European Parliament, the Council, the Commission and the Court of Justice.

**The Parliament** consists at present of 142 members, appointed by the six national parliaments from among their own members.

**The Court** consists at present of seven judges appointed for terms of six years by the common consent of the governments, who see to it that the action taken to implement the Treaties is in accordance with the rule of law.

**The Council** is made up of the representatives of the governments of the member states, each government sending one of its ministers. Its membership may thus vary according to the matter up for consideration: the Foreign Minister is regarded in a sense as his country's "main" representative on the Council, but Council meetings are often attended by the Ministers of Agriculture, Transport, Finance, Industry and so on, either on their own or alongside the Foreign Minister.

The merger of the Councils was a very limited operation, to a great extent merely endorsing a state of affairs already existing in practice: the EEC and Euratom Councils had been acting pretty well as one ever since 1958, with a single Secretariat-General serving both them and the rather more separate ECSC Council. The merger consisted merely in unifying the rules of procedure and, in a handful of cases, laying down unified rules for the passing of a number of decisions henceforth to be taken by the merged Council on behalf of all three Communities (as for instance changing the number of judges making up the Court of Justice).

One development of note, however, was the institutionalization of the Committee of Permanent Representatives.

The Coal and Steel Community had had none, only a Co-ordinating Committee (popularly known as "Cocor") of civil servants from the various capitals who did the advance staff work for each Council meeting. Even that was not specifically provided for in the Paris Treaty. In contrast, the Permanent Representatives and their committee do, of course, play a notable part in connection with the operation of the Common Market and Euratom Treaties – though there, too, all that the two treaties actually say on the subject is that the Council's rules of procedure "may" provide for the establishment of such a committee.

The Merger Treaty explicitly institutes a "committee of the Permanent Representatives of the member states", with specified terms of reference. The Committee's powers and responsibilities remain unchanged, however, as the terms of reference in question are word for word the same as those earlier embodied in the Councils' rules of procedure.

**The Commission** consists at present of nine members. Throughout their tenure of office the members must act in full independence both of the governments and of the Council. The Council cannot remove any member from office; only the Parliament can if it wishes, by passing a vote of censure, compel the Commission to resign in a body.

The Commission is appointed on the basis laid down in the Rome Treaties, that is, by agreement among the governments: the more complicated arrangement under the Paris Treaty, whereby one member in two was appointed in this way and the other co-opted by the sitting members, has been scrapped. Answerability to the Parliament is in accordance with the Common Market and Euratom rules, which assign a greater role to the Parliament than do the ECSC rules.

The Council and Commission are assisted by the **Economic and Social Council** for Common Market and Euratom matters and the **Consultative Committee** for ECSC matters. These advisory bodies consist of representatives of the various sections of economic and social life (e.g. trade associations, unions, farmers). They have to be consulted in advance of many decisions, and they are also of help in associating the employers and workers with the progress of the Community.

## How the Council and Commission work

In implementation of the Treaty of Paris, the Commission can issue decisions, recommendations and opinions. **Decisions** are binding in every respect; **recommendations** are binding as to ends but not as to means; **opinions** are not binding.

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

The Commission's ECSC decisions are mostly individual

in scope; sometimes, however, they enact general rules, as the Commission has power to do this in the same domains as are under its jurisdiction for the purposes of individual decisions.

In implementation of the Rome Treaties, the Council and Commission issue regulations, directives, decisions, recommendations and opinions. **Regulations** are of general application, they are binding in every respect and have direct force of law in every member state. **Directives** are binding on the member states to which they are addressed as regards the result to be achieved, but leave the mode and means to the discretion of the national authorities. **Decisions** may be addressed either to a government or to an enterprise or private individual; they are binding in every respect on the party or parties named. **Recommendations** and **opinions** are not binding.

This discrepancy in terminology between the Paris Treaty and the two Rome Treaties is possibly somewhat confusing. An ECSC "recommendation" is a binding enactment corresponding to the EEC and Euratom "directive", whereas an EEC "recommendation" is not binding and ranks in this regard as no stronger than an "opinion".

The operation of the ECSC Treaty is centred principally on the Commission (though the Council's role in connections of special importance must not be underrated). In EEC and Euratom, *the teaming of the Commission and Council in double harness provides the driving force, and perhaps the most original feature, of the whole institutional set-up*. The Commission's political authority, without which the Commission could not properly fulfil its function in relation to the Council, derives from the fact that it is answerable to the Parliament alone. Lastly, the Court of Justice, as well as affording the member states and individuals the assurance of full compliance with the Treaty and the enactments implementing it, plays a notable part in ensuring uniform interpretation and enforcement of Community law.

### Financing the Community

On the Commission's proposal and following the political guidelines agreed upon at The Hague Conference of Heads of States and Governments (December 1969), the Council of Ministers gave their approval in 1970 for a system to be set up granting the Community certain financial resources of its own. Owing to its unusual character, the six Parliaments of the member states had to approve this decision, in accordance with the EEC Treaty, before its entry into force on January 1, 1971.

This new system is being introduced gradually between 1971 and the end of 1977. During a first period (1971 to the end of 1974), only a part of Community expenditure will be covered by revenue of its own. This revenue will consist of levies on imported agricultural products, which since the beginning of 1971 without exception have formed part of the Community's own resources, and of an increasing proportion of customs duties. The remaining amount of revenue necessary for a balanced budget is still met by

national contributions calculated on the basis of an overall scale taking account of each country's gross national product (GNP).

From January 1, 1975, the budget will be financed entirely by Community resources. These will include the total amount of levies and customs duties, and also revenue corresponding to the product of a fraction of the value-added tax (VAT) up to the equivalent of a one per cent rate of that tax. The value-added tax will at that time be governed by Community rules.

A certain framework has been provided to enable this system to be introduced gradually. During the first period (1971-74), each member state's relative share in financing the budget may only fluctuate from one year to the next between +1 per cent and -1.5 per cent. This framework will be extended for a three-year period once the financing is entirely ensured by Community resources, but at this point the fluctuation from one year to the next may not exceed 2 per cent either way. From January 1, 1978 the system will be applied in its entirety without any restrictions.

### Enlargement of the Community

Enlargement of the Community through the entry of four new member states will not alter the structure of the Community's institutions and the rules governing their functioning, but will necessarily change their composition.

The Commission of the enlarged Community will contain 14 members instead of nine, representing the addition of two British members and one member from each of the other three applicant countries (Ireland, Denmark and Norway).

Each of the new member countries will be represented on the Council of Ministers. The four large member countries (United Kingdom, France, Germany, Italy) will have ten votes each, Belgium and the Netherlands five each, Ireland, Denmark and Norway three each, and Luxembourg one. This makes a total of 61 votes. For a proposal to be passed by a qualified majority vote 43 votes will be required in the enlarged Community and 19 will form a blocking minority. In the Community of Six, 12 out of 17 votes are required for a qualified majority.

The number of judges in the European Court of Justice will be increased to 11, with three advocates general.

The European Parliament's membership will be increased from 142 to 208, comprising 36 from each of the large countries, 14 each from Belgium and the Netherlands, ten each from Ireland, Norway and Denmark, and six from Luxembourg.

The new member countries will adopt the Community's financing system by stages. As far as the United Kingdom is concerned, the proportion of the Community's annual budget to be provided will rise from 8.64 per cent in 1973 to 18.92 per cent in 1977. In the years 1978 and 1979 the British contribution will also be subject to limits, but in 1980 and after the full Community system will operate in the case of the United Kingdom, as it will have done from 1978 onwards for the Six.

# The Commission

The European Treaties assign the Commission a wide range of duties which may be roughly grouped as follows. The Commission is the guardian of the Treaties; it is the executive arm of the Communities; and it is the initiator of Community policy and exponent of the Community interest to the Council.

## **Th Commission as the guardian of the Treaties**

The Commission sees to it that the provisions of the Treaties, and the decisions of the Institutions, are properly implemented, and that a climate of mutual confidence prevails. If it does this watchdog work well, all concerned can carry out their obligations to the full without a qualm, knowing that their opposite numbers are doing the same and that any infringement of the Treaties will be duly penalized. Conversely, no one can plead breach of obligation on the part of others as a reason for not doing his own part: if anyone is in breach, it is for the Commission, as an impartial authority, to investigate, issue an objective ruling, and notify the Government concerned, subject to verification by the Court, of the action required to put matters in order.

The ECSC Treaty too, before the others, required the Institutions to discipline infringements, but the procedure involving governments was a complex and cumbersome one which fortunately has seldom had to be invoked. Partly in the light of ECSC experience, the provisions written into the Rome Treaties were simpler and stronger, and it is with these, of which a good deal of use has been made in the EEC, that the following account is concerned.

Where the Commission concludes that the Treaty has been infringed – which it may do either on the strength of an investigation by its own officials, or at the instance of a Government, or following complaints from individuals – it requests the state in question to submit its comments or counter-arguments within a specified period (usually a month or a month and a half). If the member state allows the arrangement complained of to continue and its comments do not cause the Commission to change its mind, the Commission issues a reasoned opinion with which the state must comply by the date set; if the state fails to do so, the Commission may refer the matter to the Court of Justice, whose judgment is binding on both the state and the Institutions.

These provisions, which give the Institutions a considerable measure of authority, are in fact enforced in all respects. Thus, for example, during 1970 the Commission instituted proceedings for infringement in 50 cases, and decided to refer to the Court two cases.

Most of the arrangements proceeded against in the first few years for infringement of the EEC Treaty related to

customs duties and quotas. Nowadays there are cases under a great many other Treaty provisions – notably the application of the agricultural regulations – and the variety is likely to grow as time goes on and more common policies come into effect. There is little prospect, therefore, of any diminution in the Commission's "police" activities.

The economic impact of the actionable arrangements themselves was inconsiderable: for the most part they were not deliberate attempts to evade the Treaty, but the result either of differences in interpretation between the Commission and one of the member states, which were settled by the Court, or of the kind of mistake that is pretty well bound to crop up here and there when national civil services have to adjust to Community procedures. It can reasonably be considered that the infringements committed up to now have not interfered to any real extent with the proper implementation of the Treaties.

## **The Commission as the executive arm of the Communities**

The Commission is directly invested by the Treaties with wide executive powers; in addition, it now possesses substantial extra powers conferred on it by the Council, mostly in connection with EEC matters, for securing the implementation of enactments based on the Treaty (this is termed "derived Community law").

Both sets of powers, those stemming direct from the Treaties and those made over by the Council, can be subdivided under two or three main heads.

### **1. Preparation of the implementing orders with respect to certain Treaty provisions or Council enactments.**

The ECSC Treaty gives the Commission particularly extensive rule-making powers: its function is declared to be "to assure the achievement of the purposes stated in this Treaty within the terms thereof", and practically every article invests it with a fresh responsibility and corresponding powers.

The Rome Treaties also give the Commission direct rule-making authority, especially the EEC Treaty with regard to all matters connected with the establishment of the customs union in accordance with the Treaty timetable. Nevertheless, it is mainly the powers conferred by the Council in connection with the common policies – and more especially common agricultural policy – that have so notably enlarged the Commission's responsibilities in the last few years. Figures speak louder than words: during 1970 alone, the Commission enacted 2,448 regulations, mostly relating to the common agricultural policy.

### **2. Application of the Treaties' rules to particular cases (whether concerning a government or a firm) and the administration of Community funds.**

Here again the Commission plays a particularly prominent role in the ECSC: it deals direct with the coal and steel enterprises, closely superintends certain aspects of their activities, and can promote and co-ordinate their capital spending, assist miners and steelworkers facing redundancy, grant

loans and so on.

Under the EEC Treaty, it has many similar powers, especially with regard to competition (keeping cartellization and market dominance within bounds, similarly setting limits to, or doing away with, state subsidization, discouraging discriminatory fiscal practices, etc.); in addition, it has been given various powers by the Council with respect to the common policies, notably on agriculture and transport.

Under the Euratom Treaty it has supervisory responsibilities comparable with those it bears in the coal and steel sector, concerning such matters as supplies of fissile materials, protection against radiation, inspection of nuclear plant, and dissemination of technical information.

Again, the Commission is the Institution responsible for the administration of Community funds. The lead was given by the ECSC. A levy paid in direct to the Commission on coal and steel production assures it of sizeable financial resources, part of which is expended on the tiding-over, retraining and redeployment of redundant workers, and another part held in reserve as backing for the borrowings from which the Commission relends towards the modernization of mines and steel plants and the redevelopment of areas affected by declining coal or steel production. Between 1952 and the end of 1970, the High Authority and its successor, the Commission, in this way borrowed and relent in all some \$1,033 million.

On the Euratom side, the Commission is in charge of a Community research and training programme. The first five-year programme (1958-62) represented an outlay of \$215 million, the second (1963-67) an outlay of \$430 million. The many projects carried out include the construction of four nuclear research stations: at Ispra in Italy, Karlsruhe in Germany, Mol in Belgium and Petten in the Netherlands, with a total staff of over 2,000.

As a result of the major changes which have taken place in nuclear research in the last few years, Euratom's joint research centre is being reorganized and its aims redefined.

These are substantial sums, but they are no means all. First of all, the European Social Fund, which helps to retrain and redeploy workers, has been given a more decisive role in the development of social structures. At present it is allocated some \$60 million a year and this budget (to be financed by the Community's direct revenue) is likely to increase considerably.

Then there is the European Development Fund for the overseas countries and territories associated with the Community: the first Development Fund (1958-63) disbursed \$580 million, while the second (1964-69) had an appropriation of \$730 million, of which \$680 million was set aside for grants and \$50 million for exceptionally advantageous loans. The third EDF (1971-75) provides a total of \$900 million, including \$810 million in grants and \$90 million in loans.

The European Agricultural Guidance and Guarantee Fund disposes of much larger amounts still. Under the 1971 budget, for instance, it received \$3,652 million, to enable it to cover the agricultural market support costs and

to furnish assistance of \$758 million towards farm modernization schemes.

### **3. Administration of the safeguard clauses in the Treaties.**

These, the so-called "escape clauses", provide that authorization may be given to waive the Treaties' requirements in exceptional circumstances. This places a very heavy responsibility on the Commission. Had it been left to the individual states themselves to decide whether special problems or circumstances entitled them to by-pass the rules laid down in the Treaty or the implementing orders, sooner or later interpretations would have differed, and before long each would have been doing as it pleased. The Treaties wisely provide that the Commission and the Commission only, in the strictest independence and objectivity, may authorize waivers ("derogations") at the request of a member state, having considered all the circumstances and seeking in each case to ensure that the operation of the Common Market is interfered with as little as possible. The Council has given it similar powers in the enactments relating to the common policies.

Waivers may be of many kinds, ranging from the fixing of tariff quotas to the exemption of whole sectors of the economy from the Treaty's requirements. Most of the cases in which the escape clauses have been invoked have concerned the ECSC and the EEC. However, High Authority and Commission action has enabled the waivers to be kept strictly limited in scope, so that they have only marginally impaired the operation of the Common Market.

The main safeguard clauses which were inserted in the Treaties themselves had a general scope, but were valid only during the transitional period, i.e. until December 31, 1969. The only exception is Article 115 of the EEC Treaty, which authorizes member states to take measures against deflection of trade.

On the other hand, the Community rules which have developed in many sectors have, in certain cases and in a more restrictive manner, provided for exceptional measures. These are generally more concerned with relations between the Community and non-member countries than with relations between the member states themselves. The Commission has been entrusted with the responsibility for these measures, and in most cases the Council may be asked to modify or confirm the measures taken by the Commission. Recourse to these exceptional measures has become less and less frequent and the Commission has always insisted on granting waivers only to the extent that they are necessary and implemented in such a way that they do not substantially affect the functioning of the Common Market.

### **The Management Committees**

We have seen how much Council decisions have done, as regards the EEC, to extend the field of the Commission's management and administration work by giving the latter additional responsibilities in the enforcement of derived Community law. In many cases, the Council was anxious

that the powers so conferred should be exercised in close consultation with the member governments, and accordingly various committees of government representatives are attached to the Commission. Some are purely consultative in character, but the most original, and in the event the most valuable, part of the system is the array of "Management Committees" concerned with agricultural marketing, one committee for each main category of products.

The procedure is that the implementing measure the Commission intends to enact is submitted in draft form to the appropriate Management Committee, which then gives its opinion, arrived at by voting weighted in the same way as in the Council.

The committee's opinion is not binding on the Commission, which notes the contents but remains entirely free to decide for itself; the measure once enacted by it thereupon has direct force of law. However, if the opinion has been given by qualified majority (12 votes out of 17) and the Commission nevertheless takes a different stand, the matter goes before the Council, which may within one month reverse the Commission's decision. If on the other hand the Commission's decision is in line with the committee's opinion, or if no opinion has been forthcoming (the committee having failed to muster a qualified majority one way or the other), that decision is final and no appeal can lie to the Council.

The Management Committee procedure is extensively employed, and works extremely well. In 1970, some 300 meetings of the various Management Committees were held, following which about 1000 Commission regulations and decisions were adopted.

This is eloquent of the atmosphere of co-operation and mutual confidence which has developed in the committees between the Commission's departments and the national departments which subsequently enforce the Commission's enactments.

The function of the Management Committees is to act as a kind of alarm mechanism. When the Commission differs from an opinion given by a qualified majority – that is, voted for by most of the Government representatives – this is a clear indication of a difficult situation or a serious problem, which it is only right and proper that the Council should deliberate itself. That it is seldom called upon to do so is proof that the system works and the parties to it are substantially in agreement.

The Management Committees having been such a success, similar arrangements have been introduced in the last few years in other fields also. Thus, three committees of government representatives have been set up to help manage different aspects of the implementation of the common customs tariff following the establishment of the customs union on July 1, 1968. Others have been set up, in particular to control technical and health standards, especially in the food and animal-health fields. Basically, the system is the same as for the agricultural Management Committees, though the conditions under which the

Council may be called upon to act will be different, according to the particular features of each case.

A formula which has already been applied in several cases provides that when the provisions envisaged by the Commission conflict with the committee's opinion, or when there is no opinion, the Commission may make a proposal to the Council on the measures to be taken. The Council decides by a qualified majority vote. If the Council reaches no decision within a certain time (normally three months) after the matter has been referred to it, the Commission takes the decision itself.

### **The Commission and the coherence of Community policy**

The Commission is the initiator of Community policy and exponent of the Community interest, and is responsible for seeing that Community policy forms a single consistent whole.

In the more limited fields of ECSC and Euratom, the High Authority and the Euratom Commission had more to do in the way of administration and supervision and less in the way of framing common policies, it being peculiarly difficult to hammer out such policies for Communities having jurisdiction only over specific sectors. The merged Commission made it one of its first concerns, now that the relevant powers and responsibilities had been concentrated in its hands, to reactivate a number of common policies – industrial policy, energy policy, research and technological policy – which despite valuable achievements in the early stages had been hanging fire in consequence of the fact of there being three separate Executives.

The initiating of common policies will thus be the single Commission's most important function, just as, and indeed still more than, it was the EEC Commission's. This it is doing in the closest cooperation with the Council, so that any account of this facet of its work is at the same time in effect an account of the function and operation of the Council also.

Why did the EEC Commission devote itself from the outset primarily to the framing of common policies? Quite apart from the dictates of economics, because the Common Market Treaty is what may be termed an "outline treaty", unlike its ECSC and Euratom counterparts, which are "code-of-rules treaties". For, whereas the latter two lay down in careful detail exactly what rules are to be applied and what tasks performed in their respective spheres, the Common Market Treaty, apart from its "automatic" provisions on the dismantling of tariffs and quotas, confines itself to sketching out in general terms the policy lines to be pursued in the main areas of economic activity, leaving it to the Community Institutions, and more especially the Council and Commission in conjunction with the Parliament, to work out the actual arrangements the Community is to establish.

In a sense, everything to do with the economic union has been left blank in the Treaty, but the blanks can be filled in by the Institutions without need for fresh treaties or fresh

parliamentary ratification. The measures the Institutions are empowered to bring in are full-scale "European laws", directly enforceable in all the member states and capable of producing radical changes in the sectors concerned. To give an example, the great corpus of "European laws" on agriculture, promulgated from 1962 onwards, is comparable in scope to the corpus of rules contained in the ECSC Treaty.

It is worth pausing a moment to consider the view frequently voiced that the Common Market Treaty is less supranational, or more intergovernmental, than the ECSC Treaty. This is to a great extent a mistaken approach. The "code-of-rules" Coal and Steel Treaty laid down the High Authority's powers of implementation in detail, but not until the requisite common policies have been agreed can it be known what powers of implementation the Commission holds in each particular sector covered by the EEC Treaty. Experience with regard to cartels and agriculture has shown us that these powers are similar to those stemming from the ECSC Treaty. It should be added, however, that the Paris Treaty did, right from the start, assure the High Authority, and now assures the Commission, of an independent income from the ECSC levy, with the aid of which the Executive has been able to do a good deal on the financial and social side, whereas the corresponding provision in the EEC Treaty entered into effect on January 1, 1971 (under the system of independent revenue described on page 3).

Actually, the Paris and Rome Treaties are based on the same principles and purport to set up parallel institutional systems. But the EEC Treaty, evolving as it goes along and allowing its makers to work out empirically when the time comes the arrangement best suited to a particular sector or situation, has jarred the less on those not fully converted to the Community idea, while the balance which it represents between the powers of the national Governments and the powers of the European Institutions is more clearly apparent to those who are just beginning to know and to learn to live with the Communities. For all the difficulties the EEC has encountered, this is none the less a fact.

## The Commission-Council dialogue

The merged Institutions have taken over from their predecessors the work of building up the fabric of European economic union: the Treaties laid the foundations, but the structure had still to be erected. In addition, once the fabric is in place for a particular sector, they have to formulate and implement day by day the Community policy that is to take the place of the six national policies.

Under the ECSC Treaty, the dialogue between Commission and Council existed, but on a limited scale only. The Commission (or the High Authority, as it then was) bore a great deal of the responsibility for the implementation of the Treaty, but the Council's endorsement – in some cases its unanimous endorsement – was required neverthe-

less for certain particularly important decisions, as for instance in the event of "manifest crisis" or if it was desired to amend the Treaty. The form is of course not the same as in the Rome Treaties. In the ECSC, the High Authority (now the Commission) decides with the Council's endorsement; in the EEC and Euratom, the Council decides on the basis of the Commission's proposal. The difference is not without its implications from the policymaking standpoint, but in both cases the two Institutions have their part to play before a decision can be finally adopted.

Under the Rome Treaties, any measure of general application or of a certain level of importance has to be enacted by the Council of Ministers, but except in a very few cases the Council can only proceed upon proposal by the Commission. The Commission has thus a permanent duty to initiate action. If it submits no proposals, the Council is paralysed and the forward march of the Community comes to a halt – in agriculture, in transport, in commercial policy, in harmonization of laws, or whatever the field concerned may be.

As an indication of the volume of the Commission's and Council's work under the three Treaties, it may be mentioned that in 1970 the Commission laid before the Council 390 proposals and 376 memoranda and other documents of various kinds.

During 1970 the Council, in addition to dealing with purely procedural matters and with budgets and financial regulations, adopted 249 regulations, 25 directives, 71 decisions and the important second medium-term economic programme.

As is apparent, the Rome Treaty procedure is of far the commoner occurrence in the dealings between the merged Commission and the merged Council. A few further particulars as to its operation may therefore be in order.

A proposal having been lodged, a dialogue begins between the Ministers of the Council, putting their national points of view, and the Commission, in its capacity as the European body upholding the interest of the Community as a whole and seeking European solutions to common problems.

There might seem to be some risk of the dialogue being distorted by the Commission's being less strongly placed than the governments with the weight of their sovereign authority behind them. However, the Rome Treaties contrive rather ingeniously to ensure that the two are evenly matched.

In the Commission's favour there is, for a start, the fact that it draws up the proposal the Council is to deliberate – and only on the basis of that proposal can the Council deliberate at all. But its position is buttressed in other ways too.

Article 149 EEC (119 Euratom), one of the key components in the institutional structure, provides that "when, pursuant to this Treaty, the Council acts on a proposal of the Commission, it shall, where the amendment of such proposal is involved, act only by means of a unanimous vote".

If the Ministers are unanimous, they can therefore decide



on their own authority, even should their decision be counter to the Commission's proposal. This is fair enough, since the Council is then expressing the united view of all the governments together.

On the other hand, they can decide by a majority only if their decision is in line with the Commission's proposal. In other words, if the member states are not at one, they cannot take a majority decision unless it entails accepting the proposal *in toto*, without amendment: only the Commission itself can amend it. Thus, in cases where the majority rule applies, the position is that either the Council adopts the Commission's proposal as it stands, by a majority, or it decides against the proposal, unanimously, or it fails to come to a decision at all. So the Commission does in fact have genuine bargaining power in the Council. Dialogue *can* be conducted, and is indeed conducted on the Commission's own ground.

Now this dialogue has a momentum of its own. The application of the majority rule, as fairly substantial EEC experience has shown, does not mean that a state is liable to find itself outvoted at the drop of a hat. The Commission in drawing up its proposal will have been careful to take into account the often widely-varying interests of the individual states and seek to establish where the general interest lies. As is usual in a club of so few members, both the members of the Council and the Commission like to be in agreement if they can. Hence, if faced with the prospect of being outvoted, a minister may feel it best to abandon an extreme or isolated position, while for the sake of good relations the Commission, and those of the Council who are in favour of its proposal, may make the necessary efforts to help secure a rapprochement. The result – a trifle paradoxical, but amply confirmed in practice – is that the majority rule makes for much easier and quicker arrival at unanimity. In this delicate interplay of forces, the Commission is always in a position to sway the outcome.

The Commission is thus centrally placed in the Council, able regularly to act as "honest broker" among the Governments, and to apply the prompting and pressure required to evolve formulas acceptable all round.

The implications for policymaking are more important still. The Commission's proposals embody a policy prepared by it on the basis purely of the interest of the Community as a whole. The fact that the Commission is there to stay throughout its term of office ensures the continuity of that policy, and the Council can pronounce only on the Commission's proposed enactments for putting the policy into effect. There is therefore no danger that the Council might adopt conflicting proposals on different issues in consequence of shifting majorities arising out of alliances of interests or contests of influence among Governments.

Nor can it happen that a majority of the Council, unbacked by the Commission, can impose on a recalcitrant state a measure gravely deleterious to that state's essential interests. If the Commission does its job properly, it can be no party to such a proceeding. Its role thus affords an

important safeguard, more especially to the smaller member states, and they in particular have always set great store by this.

### **Unanimity and majority voting**

Under the Paris Treaty, as we have seen, the Council's endorsement is required only in a limited number of cases; in some it has to be unanimous, but in most it can be given by a majority vote. This system has been duly adhered to since the Treaty came into force. When the Council, in May 1959, refused its consent to the High Authority's plan to declare a state of "manifest crisis" in the coal sector (ECSC was then going through one of its periods of greatest difficulty), the case was, it should be noted, one calling for a majority and not a unanimous endorsement: the Council's refusal was due therefore not to a solitary veto but to the fact that there was not a majority in favour.

In the EEC, during the first two stages of the transitional period, from 1958 to the end of 1965, most Council decisions had to be unanimous, so that the procedure described above was not often needed. Nevertheless, thanks to the Community spirit of the members of the Council, and to the collective authority of the Commission and the high personal repute of its members, the dialogue invariably went off smoothly and the Commission was able to play its part of instigator and conciliator to the full.

The scheduled move into the third stage, on January 1, 1966, was to have brought a major extension in the scope for majority decisions, but at this point the majority principle became the focus of a Community crisis. Was it tolerable, one of the governments demanded, that a member state should be overruled by the rest where one of its essential interests was at stake?

This is not a question that can be answered merely by citing the relevant provisions, nor indeed is it possible to define objectively what constitutes an "essential interest". Besides, if for the sake of argument the matter is viewed purely in terms of interests, it could well be that in fields where all the member states had forgone their freedom of action for the benefit of the Community, the vetoing of a Community decision for the sake of a national interest would prejudice the essential interests of other member states, which would be harmed by the paralysis of the Community. On the other hand, a state accepting the Community system and relying on its inner logic, its Institutions and their rules and traditions can be assured that these will furnish all reasonable safeguards.

The general interest of the Community must of necessity take account of any essential interest of one of its members. It is the Institutions' bounden duty, therefore, to consider such an interest to the full. The close union of the six nations which the Community exists to bring about would in any case not be feasible if one of those nations suffered grave injury to its essential interests. Moreover, the system of deliberation in the Council just described is calculated to achieve the broadest possible measure of agreement. Con-

versely, even where unanimity is the rule, no member of a Community can disregard the general interest in assessing his own: unanimity in a Community cannot be equated with an absolute right of veto.

Thus, in a living Community, abuse of majority voting – and probably abuse of unanimity too – is a theoretical risk which, with the Community's inner bonds drawing ever closer as it moves forward, is becoming less and less likely to materialize, while the possibility of majority decisions renders the whole system more flexible and more dynamic.

To have faith in the future, faith in the Institutions' and governments' good sense and desire to work amicably together, is the only possible answer. After all, the six Foreign Ministers in session in Luxembourg on January 28, 1966, after months of crisis and difficult debate, had in the end to acknowledge that failure to agree on the application of the majority rule was no reason for not continuing with the joint venture.

## The European Parliament

For the dialogue between Commission and Council to be a genuine one, it is necessary that the Commission should be genuinely independent. To this end, the Treaties make it answerable to the European Parliament alone.

The Parliament is so constituted as to be in fact truly Community in character, fully integrated. There are no national sections; there are only European-level political groups. The Parliament keeps constant watch on the Commission's doings, making sure that it faithfully represents the Community interest, ready at any time to call it to order if it gives the impression of yielding to blandishments from the governments or from a particular government. In addition, the Parliament has to be expressly consulted on the Commission's more important proposals under the Rome Treaties before these go to the Council.

The Parliament's various committees play a notable part in this connection. The House itself normally meets in ordinary session only six times a year, for a week at a time (plus, on occasion, a number of extraordinary sessions of a day or two). Between sessions, each of the parliamentary committees meets at least once, and usually more, and the appropriate member of the Commission appears before it to give an account of the decisions taken by the Commission, the decisions referred to the Council, and the position adopted by the Commission *vis-à-vis* the Council.

The committees thus follow developments in detail, and as they meet *in camera* they can be told a great deal, including even confidential matter. Their work has done much to increase the Parliament's influence in the day-to-day handling of affairs.

The written questions which Members of Parliament can put to the Commission (and also to the Council) offer another means of control which is being increasingly resorted

to. During the parliamentary year 1970-71, 526 written questions were put to the Commission and 57 to the Council, while one question was put jointly to both institutions.

By means of oral questions put in plenary session of the House (which may or may not be followed by a debate), the Parliament is enabled to keep a careful eye on developments in European policy, both generally and with respect to particular sectors, and to comment direct at the time, sidestepping the sometimes rather unwieldy procedure of statements by the Commission, sending to committee, and reports to the full House. The Parliament has in the last few years been making more and more use of this very flexible and effective device, putting oral questions both to the Commission and to the Council (though it does sometimes happen that the Council is not able to reply by the time indicated).

In the parliamentary year 1970-71 a total of nine oral questions, with or without ensuing debate, were put to the Commission, and eight to the Council.

With the Community's responsibilities growing as they are doing, it is becoming absolutely essential that steps should be taken in the near future to give the Parliament wider powers and to make it more representative, for example by causing it to be elected by direct universal suffrage. This is bound to come, despite the hesitations that have prevented it up to now.

The control exercised by the Parliament thus underpins the independence of the Commission, thanks to which the Council has the advantages of the majority principle and is shielded as far as may be from such risks as it entails.

### Increased powers

At the same time as the Council decided to grant the Community a system of financial resources of its own, the member states signed a Protocol on April 22, 1970, to alter the Community Treaties in order to increase the Parliament's budgetary powers. This increase of powers applies to the "free" part of the budget, i.e., basically, the part which deals with the functioning of the Community's institutions. In 1971 the Parliament received considerably increased powers over this "free" part, although the Council may still amend its proposals. On the other hand, from 1975 onwards the Parliament will have the last word and will take the final decisions on this part of the budget.

The sums in question may seem limited in comparison with the total amount of the budget (they are often reckoned to amount to about 5 per cent), but the power to control them assumes great political importance, because they determine the means whereby the Community's institutions may work and carry out inquiries and studies, i.e. everything which guarantees their independent functioning. Not only will the Parliament be able to alter the contents of the budget, it will also be able to increase it within certain limits.

The appropriations in the other part of the budget, which

might be called the "intervention" part, mostly represent the virtually automatic consequence of Community rules (e.g. rules about agricultural markets). The Parliament has not been given the last word in this field. It may only propose amendments to the Council, which has undertaken to give its reasons to the Parliament if it does not accept such amendments.

The agreement giving these increased powers to the Parliament came into force on January 1, 1971, after being ratified by the six Parliaments. The Parliament exercised its new powers for the first time when it adopted a revised version of the 1971 budget in order to take account of the introduction of the system of Community resources. The Commission has undertaken to make proposals before the end of 1972, on the basis of the experience obtained in applying the new procedures, for amending the Treaties to increase the powers of the Parliament.

The increase in Community activities after The Hague summit conference and the decisions on the Community's own financial resources, together with the increase in the powers of the Parliament, have made it possible to make new efforts to enlist the support of public opinion and of the Community's institutions for the direct election of the European Parliament. In addition to many moves made by political organizations or parties (in particular, bills have been tabled in several national Parliaments for the delegates from these countries to the European Parliament to be elected by direct universal suffrage without waiting for a general election for the European Parliament), the European Parliament has, by its insistence, induced the Council to renew its work on the draft convention for the direct election of the Parliament which was referred to the Council in 1960. Such pressure by the Parliament can be expected to increase further in the months to come.

An increase in the powers of the Parliament and a strengthening of its representative character, by, for example, its election by direct universal suffrage, will be absolutely essential in the near future, by the very fact of the extension of the Community's responsibilities. Such a development is inevitable, whatever the reservations which have been able to prevent it up till now.

Parliamentary control would ensure the independence of the Commission, and enable the Council to benefit from the advantages of majority voting, while being preserved as far as possible from its various risks.

## The Court of Justice

By reason of the substantial powers of direct enforcement vested in the High Authority for the operation of the common market for coal and steel, the ECSC Court of Justice was mainly called upon to handle appeals to it by coal and steel enterprises. In 1958, the Rome Treaties

instituted in its stead a single Court of Justice of the European Communities: since they, and particularly the EEC Treaty, required for their implementation a considerable measure of government action, the first cases coming before the new Court were brought by the Commission against the governments for infringements of the Treaties. Later there came also appeals by governments against decisions of the Commission, and appeals by individuals.

The Court's procedure for dealing with cases of this kind is broadly similar to that of the highest courts of appeal of the member states. Its judgments not only settle the particular matters at issue, but also lay down the precise construction to be placed on disputed passages in the Treaties, thereby affording clarification and guidance as to their implementation.

In recent years, over and above this function of making sure that Community enactments are good law, the Court has increasingly been called upon to sit on interlocutory appeals from national courts. Community law proper as contained in the Treaties, and the corpus of enactments based on the Treaties (derived Community law), are becoming more and more interwoven with the municipal law of the individual member countries, and consequently their implementation is occupying a growing part of the national courts' attention. By the end of 1970, the national courts had handed down over 331 decisions having to do with Community law under the EEC and ECSC Treaties. (So far there have been none concerning the Euratom Treaty, owing to its rather special character).

Interlocutory referrals to the Court of Justice are requests to it to rule as to the interpretation or applicability of particular portions of Community law (in the ECSC, the applicability of Commission and Council enactments only). Their steadily-growing numbers bears witness to the closer interaction in matters of litigation between the European Court and the national courts, which is enabling Community law to be uniformly enforced in all the member countries and a consistent body of European case law built up.

A few figures may serve to indicate the extent of the Court of Justice's work. Between 1952, when the ECSC Treaty came into force, and the end of 1970, 489 actions were lodged, not counting administrative actions by Community officials in connection with staff rules and regulations. Of this total, 209 related to the EEC Treaty: of these just under half were pre-judicial rulings, one quarter were actions by individuals, and the remainder actions by the Commission or by governments. Of the 278 ECSC cases brought between 1952 and 1970, 256 were instituted by individuals and enterprises, 21 by governments, and one by the former High Authority. Two actions had been brought with respect to Euratom.

# Working methods

From this brief account of the main duties of the Institutions, their relation to one another and the balance of powers among them, we now turn to their methods.

## How does the Commission work?

### Departments of the Commission

The merged Commission's departments consist of the combined departments of the High Authority of ECSC and of the EEC and Euratom Commissions. There are a Secretariat-General, a Legal Department, a Statistical Office, 18 Directorates-General, and a small number of specialized services. Most of the scientific activities are grouped in a Joint Research Centre. The staff numbers some 5,000, including 1,400 in the Administrative grades and 450 translators and interpreters. They are divided between the two provisional seats of the Community, Brussels and Luxembourg, about 1,000 officials working in the latter. In addition there is the Euratom research budget's establishment of approximately 2,400, most of them in the various units of Euratom's Joint Research Centre.

The operating expenses of the departments of the Commission and the other three Institutions are at present running at about \$120 million a year.

Each of the nine Members of the Commission has been made specially responsible for one or more of the Community's main fields of activity (external relations, agriculture, social affairs and so on), and has under him the Directorate or Directorates-General dealing with these.

### Operation of the Commission

By the terms of the Treaties, the Commission's operation is "collegiate": that is, the Commission must itself, as a body, adopt the various measures – viz. regulations, decisions, proposals to the Council, etc. – incumbent on it under the Treaties or implementing orders, and cannot, therefore, delegate to a member in his particular sphere powers giving him a degree of independence comparable to that of, say, a minister in his department. Only very limited delegations of powers are granted, for the issuance of strictly technical implementing measures in line with the Commission's agreed approach, such as the day-to-day fixing of certain agricultural levies.

Various procedural devices have been adopted to ensure that the system does not allow log-jams to build up in Commission business. A number of working parties of members of the Commission have been set up to do the groundwork for the Commission's proceedings in matters where the responsibilities of two or more members and departments interlock, as for instance the industrial affairs group and the external relations and development aid group.

The more technical items on the Commission's agenda are considered at a weekly meeting of the members' immediate subordinates, the Chief Executive Assistants, in order to simplify and speed up the proceedings. Fairly straightforward matters are to a great extent dealt with by means of "written procedure" earlier employed by the EEC Commission: the members are sent the particulars and the text of a proposed decision, and if within a given period (usually one week) they have not entered reservations or objections the proposal is taken as adopted.

In 1969 the written procedure was undertaken 3,412 times and 3,579 times in 1970.

Only issues of some importance, therefore, actually figure on the agenda of the Commission itself, which meets each week for at least one whole day.

When discussing particularly delicate matters, the members of the Commission sit alone, with no officials present except the Secretary-General and Deputy Secretary-General. In other cases, the officials responsible may be called in. Although its decisions can be taken by a majority, many are in fact unanimous. Where a vote is taken, the minority always abides by the majority decision, which thereupon constitutes the stance of the whole Commission.

### How the Commission draws up its decisions and proposals

The Commission proceeds in two quite different ways, according as it is concerned to establish the broad outlines of the policy it intends to pursue in a particular field, or to fix the practical details of that policy as well as of various measures of a more technical nature, not so much connected with policy as such.

In establishing actual policy, the Commission, after extensive consultations with political circles, top civil servants and employers' and workers' organizations, settles down to working out its final position with the assistance of its own departments only. This involves a series of meetings, often numerous and prolonged, with weeks of careful consideration intervening between one reading and the next. It was on this basis, for instance, that the merged Commission prepared its opinion on the British and other applications for membership, its report on Community nuclear policy, and its proposals on the reform of Community agriculture.

Once the main lines of its policy have been agreed, on the other hand, the Commission has systematic recourse to the cooperation of experts in the member countries in the working-out of the practical particulars of the arrangements to be adopted or the proposals to be submitted. The appropriate Commission departments convene meetings of the experts designated by the national civil service departments concerned, with a Commission official in the chair. The experts' contributions do not commit their respective Governments, but as they are sufficiently well-informed as to the latter's wishes and general position, they can give their Commission counterparts all relevant guidance in their efforts to arrive at formulas calculated to meet the

requirements of the case and to be generally acceptable to the six governments.

There are a very great many of these meetings of experts, and consequently more and more national civil servants every year are receiving what can fairly be called a European training, while at the same time a departmental-level dialogue is being carried on between European and government officials. In addition, members of the Commission or officials from their departments have regular meetings with leading representatives of trade unions, employers' federations, farmers' associations, groups of dealers and so on, formed in sets of six within the Community.

Some of these meetings have been institutionalized: thus the Council, at the Commission's proposal, has set up, among others, a Short-Term Economic Policy Committee, a Budgetary-Policy Committee, a Medium-Term Economic Policy Committee and a Nuclear-Research Advisory Committee, consisting of high-level government representatives, and a Committee on Vocational Training and a Committee on the Free Movement of Workers, consisting of both government experts and representatives of workers' and employers' organizations. The Commission itself has established a number of advisory committees of the heads of all the representative bodies for a particular sector, to deal for example with the main agricultural production sectors or with certain specific social problems.

In the final stage, the results of these various preparatory proceedings are laid before the Commission, which then takes up its stand. Such is the process by which the Commission frames its proposals for sending to the Council, and also, in many cases, regulations or decisions which it could issue on its own but has thought well to prepare with the cooperation of the member countries' own civil servants.

## How does the Council work?

Upon receiving from the Commission either a memorandum of general scope or a proposal on a particular point, the Council first has the matter gone into either by a special committee of senior officials (such as for instance the Special Committee on Agriculture) or by one of its permanent working parties (of which there is one for each of the Community's main fields of activity). The work of these bodies is coordinated by the Committee of Permanent Representatives to which reference has already been made. The member countries' Permanent Representatives to the Communities have the rank of ambassador.

The Commission is represented at all meetings of the working parties, the special committees and the Permanent Representatives' Committee, so that the dialogue begun at national-expert level can there be carried on higher up the scale, with accredited officials holding instructions from their governments.

The Council's decisions can be taken only by the ministers themselves. However, on less important matters, where the six Permanent Representatives and the Commission's repre-

sentative are unanimously agreed, the decision will be adopted without debate. On the other hand, all important questions, and those having political implications, are discussed in detail in the Council between the ministers and the members of the Commission, who attend as of right: it is then that the procedures just described come into play.

The Council's meetings are not merely a matter of form, as ministerial meetings in other international organizations sometimes are: they are working sessions in which ding-dong debate is frequently the order of the day and the outcome may well hang long in the balance. They are constantly being held, and often last some considerable time.

In 1970, the Council held 41 meetings, taking 75 days in all. Similarly in 1970, the Permanent Representatives' Committee was in session for 154 days altogether, at 44 meetings.

When decision is impending on a particularly difficult problem, the Council may have to hold a "marathon". Everyone in the Communities remembers the marathon on the agricultural regulations at the end of 1961 and beginning of 1962, which lasted nearly three weeks. This was the longest occasion of its kind, but not the only one.

Such then is the operation of the Council of Ministers and the Commission, and the Community generally. Broadly summed up, the mode of approach of the Community Institutions may be said to be characterized by three outstanding features.

- Firstly, the Institutions, and the Commission in particular, are no ivory tower. On the contrary, they are a forum for constant exchanges of views and suggestions from governments and civil services, members of the European Parliament and representatives of associations and federations in the different sectors of the economy.

- Secondly, there are strict legal rules in force which have to be faithfully obeyed, but at the same time the ongoing dialogue in progress creates the necessary Community-mindedness and mutual trust to ensure the proper degree of flexibility.

- And lastly, the economic operators' groups, the Parliament, the national civil services and the ministers have genuine confidence in the Commission's impartiality.

Now that the Common Market and Euratom have been in being for ten years, and the European Coal and Steel Community for longer still, and have successfully weathered a number of crises, it would seem clear that the Community system is in fact an effective one, and that its Institutions are firmly established and have taken root among the six nations. How fast it develops has of course always depended on how fast the member governments and nations wish it to develop. Nevertheless, for so long as fulfilment of their Treaty obligations remains basic to the policy of them all, we may rest assured that whatever difficulties, of whatever magnitude, may arise in the future can in the end be solved, and the full and final establishment of the European Communities at long last achieved.

## Community Topics

An occasional series of documents on the current work of the three European Communities. Asterisked titles are out of stock, but may be consulted at the London and Washington information offices of the European Commission.

- \*12. **The Common Market: inward or outward looking**, by Robert Marjolin (August 1964)
- \*13. **Where the Common Market stands today**, by Walter Hallstein (August 1964)
- \*14. **ECSC and the merger**, by Dino Del Bo (September 1964)
- \*15. **Initiative 1964** (December 1964)
- \*16. **The Euratom joint nuclear research centre** (January 1965; revised May 1966)
- \*17. **Some of our "faux problèmes"**, by Walter Hallstein (January 1965)
- \*18. **Social security in the Common Market**, by Jacques Jean Ribas (May 1965)
- \*19. **Competition policy in the Common Market**, by Hans von der Groeben (June 1965)
- \*20. **Social policy in the ECSC** (January 1966)
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  - 30. **Harmonizing taxes - a step to European integration**, by Hans von der Groeben (November 1968)
- \*31. **Economic union: the second phase of European integration**, by Jean Rey (November 1968)
- \*32. **How the European Community's Institutions work**, by Emile Noël (Topic 27 revised February 1969)
- \*33. **Regional policy in an integrated Europe**, by Hans von der Groeben (November 1969)
- \*34. **Economic and monetary coordination in the European Community** (June 1971)
- \*35. **Ensuring fair competition in the European Community**, by Emmanuel M. J. A. Sassen (March 1970)
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