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R E P O R T

of the Committee on Institutional Affairs

on the executive powers of the Commission (comitology)
and the role of the Commission in the Community's
external relations

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)



= Consultation procedure requiring a single reading



= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment



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By letter of 26 January 1990 the Committee on Institutional Affairs requested authorization to draw up a report on the executive powers of the Commission (comitology) and the role of the Commission in the Community's external relations.

At its meeting of 21 and 22 February 1990 the committee appointed Mr Roumeliotis rapporteur, pending the enlarged Bureau's authorization.

At the sitting of 2 April 1990 the President of Parliament announced that the committee had been authorized to report on this subject and that the Committee on Legal Affairs and Citizens' Rights had been asked to deliver an opinion.

On 10 September 1990 the President announced that he had also requested the Committee on External Economic Relations for its opinion.

At its meetings of 26 and 27 June 1990 and 17 to 19 September 1990 the Committee on Institutional Affairs considered the draft report and the amendments thereto.

At its meeting of 6 November 1990 it adopted the motion for a resolution by 7 votes, with 4 abstentions.

The following took part in the vote: Oreja, chairman; Prag, vice-chairman; Roumeliotis, rapporteur; Capucho, Cassanmagnago Cerretti, De Giovanni, De Gucht, Dury, Ferrer I Casals, Hänsch, Izquierdo and Maher.

The opinion of the Committee on External Economic Relations is attached to this report. The Committee on Legal Affairs and Citizens' Rights decided not to deliver an opinion.

The report was tabled on 15 November 1990.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

MOTION FOR A RESOLUTION

The European Parliament,

- having regard in particular to Articles 145, 4th indent, 155, 3rd indent, 113, 235, 228, 238, 203 and 205 of the EEC Treaty and to Title III (Article 30) of the Single European Act,
 - having regard to its reports of 14 March 1990¹ and 16 May 1990²
 - having regard to the Council's decision of 13 July 1987³ and the Commission's report to Parliament of 28 September 1989,
 - having regard to the reports it adopted on the guidelines for a draft constitution for the European Union, the intergovernmental conference in the context of the European Parliament's strategy for European Union, the principle of subsidiarity and preparations for the meeting with the national parliaments on the future of the Community,⁴
 - having regard to Rule 121 of the Rules of Procedure,
 - having regard to the report of the Committee on Institutional Affairs and the opinion of the Committee on External Economic Relations (A 3-0310/90),
- A. whereas the objectives of the European Community are the achievement of both economic and monetary union and European political union, as has been repeatedly stated, particularly at the very moment when European integration is the most fitting response to changes in the international political situation,
- B. stressing that these objectives cannot be attained without modifying the institutional structure on which the efficient and rational functioning of the European Community is based,
- C. noting that, apart from being efficient, the new institutional system will have to be based on an internal dialectical process, as a guarantee of democracy and the future development of the Community,
- D. whereas this also requires a redefinition of the role of the Commission, the Council and Parliament in order to establish a balance between the institutions and to make good the 'democratic deficit',
- E. whereas, therefore, the Commission must be made the actual executive body of the Community with clearly defined internal and external spheres of responsibility and whereas its democratic legitimacy must be reinforced

¹ Interim report by Mr Martin, see minutes of the same date

² Interim report by Mr Herman on economic and monetary union

³ OJ No. L 197, 18.7.1987, p. 33

⁴ Interim reports by: Colombo, Martin, Giscard D'Estaing and Duverger (see minutes of 11-12 July 1990)

through establishing relations of confidence in relations with the European Parliament,

1. Notes that the Member States intend to examine seriously the issue of the Commission's powers and that Parliament has already initiated the talks and made specific proposals in this regard in its resolution of 11 July 1990 on the Intergovernmental Conference⁵;

EXECUTIVE POWER IN GENERAL

2. Deplores that, in practice (3), Council has tended to make use of the most restrictive 'comitology' provisions when it confers executive powers on the Commission and this despite:
 - the Declaration of the Member States annexed to the Single European Act in which they stated that a predominant place should be given to the advisory committee procedure for matters falling within the field of article 100A,
 - the Commission's proposals which have, in the main, avoided the most restrictive procedures,
 - Parliament's position which also seeks to avoid restrictive procedures,

and concludes that only a reform of the Treaties in this matter will guarantee the effectiveness of Community decision-making mechanisms and the democratic principles of separation of powers and control over the executive;

3. Considers, therefore, that the Treaties must expressly stipulate that the Commission shall be the Community's executive body in its own right and not because these powers are delegated to it. It may be assisted in the exercise of these powers by advisory or management committees;
4. Notes that the increase in the Commission's powers in this area makes it necessary for the legislature to have correspondingly greater and more effective powers of control over the executive. Requests the Commission accordingly to implement in full the interinstitutional agreement (3) for the sake of effective information and consultation of Parliament and the Council, thereby ensuring that decisions are implemented promptly and smoothly;
5. Insists that the Commission ensures that its own services are aware of their duties in this respect and forward all relevant documents to Parliament in good time;
6. Instructs its parliamentary committees to be vigilant in applying the procedures agreed between the Commission and Parliament and in particular in applying Rule 53 of Parliament's Rules of Procedure as well as the guidelines approved by the enlarged Bureau (Musso report) concerning Parliament's position when considering legislative proposals;

⁵ Report by Mr Martin - see minutes of the same date

7. Considers that the Commission's responsibilities for ensuring uniform implementation of Community legislation by the Member States should be strengthened and calls upon the Commission to ensure vigilance in this regard, including, where appropriate, taking Member States to the Court of Justice;
8. Considers that the implementation of the budget falls within the Commission's sphere of competence and that, consequently, only an advisory committee may assist the Commission on such matters;

EXECUTIVE POWER IN THE ECONOMIC AND MONETARY UNION

9. Considers that, in addition to having general executive powers, the Commission must play a material role in both economic and social decision-making within the EMU;
10. Bearing in mind that economic and monetary union has not yet been implemented and that, at present, the form and content have not been fully determined, proposes the following general framework which may be defined in greater detail during the Intergovernmental Conference:
 - (a) economic union: it should be the responsibility of the Council and Parliament, acting on a proposal from the Commission to set the objectives and draw up policy and general principles. The Commission should have the power to monitor the Member States' implementation of Community law and be accountable to Parliament,
 - (b) monetary union: the common monetary policy must be entrusted to a European system of central banks. It must, nevertheless, be consistent with external exchange rate policy on and with a coordinated economic policy⁶;

INTERNATIONAL AGREEMENTS

11. Considers in regard to the procedure for concluding international agreements, that all the existing distinctions should be abolished and that provision should be made for only two types of international agreement: those with significant and those with non-significant international agreements. This procedure should not be applied, however, where the Council and the Parliament contest the definition of an international agreement as 'non-significant';
12. Considers that international agreements with third countries or international organizations must be negotiated and concluded by the Commission after it has informed the Council and Parliament, which shall be entitled to issue general guidelines on the conduct of the negotiations and to request information from the Commission at any stage of the proceedings;

⁶ See Herman report (Doc. A3-99/90) of 16 May 1990.

13. If, however, the international agreement involves amendment of Community legislation or has significant financial implications or if it is requested by the Council or Parliament, the Commission cannot conclude the agreement without prior authorization from the Council and Parliament. International agreements which involve revision of the Treaties shall be concluded in accordance with the relevant procedures;
14. Calls for the range of international agreements falling within the Community's sphere of competence to be significantly broadened to include, primarily, international, economic and monetary agreements;
15. Considers, finally, that the Treaty should stipulate expressly that the Commission is responsible for implementing international agreements, subject to parliamentary scrutiny;

COMMON FOREIGN POLICY

16. Considers that, if the Community in its present and future form is to play the role that befits it in the international political arena, it is essential to formulate a cohesive foreign policy embracing all economic and political relations or cooperative relations with third countries and international organizations;
17. Considers that, despite achieving a certain degree of success, European political cooperation, as provided for under Title III of the Single Act, does not meet these needs since the formulation of a common foreign policy on Community issues cannot be left to intergovernmental cooperation;
18. Calls, therefore, for the Community's sphere of competence to be extended to embrace a common foreign policy, including common defence policy issues, security and peace, on the basis of a single revision of the EEC Treaty and in accordance with the draft constitution drawn up by the European Parliament;
19. Notes, however, that the Member States should coordinate their action in areas which do not fall exclusively within the Community's sphere of responsibility;
20. Advocates, therefore, that the revision of the EEC Treaty should aim to establish a single system for a common foreign policy which provides for:
 - (a) the Council to draw up guidelines for foreign and security policy in consultation with the Commission for approval by Parliament,
 - (b) the Council (the Presidency-in-Office) and the President of the Commission jointly to represent the Commission externally,
 - (c) the Commission to have its own right of initiative and to deal with current affairs in accordance with general directives and guidelines laid down by the Council and Parliament (the EPC secretariat to be incorporated within the Commission and the Commission to be responsible for coordinating Community delegations to third countries);
 - (d) the Commission to represent the Community vis-à-vis and within the international organizations and to voice the common Community

position (in accordance with general directives from the Council and Parliament, where necessary).

- (e) Parliament to take part in implementing the common foreign policy through political control over the Commission and dialogue with the Council;

DEMOCRATIC FUNCTIONING OF THE INSTITUTIONAL SYSTEM

- 21. Considers that the legislative power in the Community should be exercised by both the Council and the Parliament jointly, as defined in its resolution of 11 July 1990 (5);
- 22. Considers, therefore, that it must have the right to elect by absolute majority the President of the Commission on a proposal from the European Council, as an essential condition of that body exercising executive power and as a means of ensuring that the Community's institutional system operates on a democratic basis;
- 23. Advocates that the President of the Commission, elected by Parliament, should have responsibility for appointing the members of the Commission (and for drawing up the Commission's programme) and that these should be subject to a vote of confidence by Parliament;
- 24. Stresses the particular importance of complete independence on the part of the Commission as a whole and the obligation of the Member States to respect this principle and not to seek to influence the Commission in the performance of its tasks as laid down by Article 157(2) of the EEC Treaty and reiterates that it considers the defence of this principle to be an integral part of the duties of all Community institutions;

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- 25. Calls on the Intergovernmental Conference to adopt these proposals which form part of the proposed amendments to the Treaties in accordance with paragraph 5 of its resolution of 14 March 1990;
- 26. Instructs its competent committee to submit further proposals on this subject, should this prove necessary;
- 27. Instructs its President to forward this resolution to the Commission, and the Council and to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

INTRODUCTION

As the title implies, this report discusses two separate subjects, namely the executive powers of the Commission (comitology) and the role of the Commission in the Community's external relations.

At first sight, it might be objected that these two subjects should not be considered together when, ostensibly at least, there is no essential connection between them. However, it should be stressed that, in deciding to combine the two subjects, the Committee on Institutional Affairs wished to accentuate the 'common denominator' between the two, i.e. the institutional aspect of extending European integration in regard to the Commission's executive powers.

The 'common denominator' then is the Commission's role in a future economic and monetary union and in a future European political union. However it is defined, this role must embrace both responsibilities of an internal nature (executive powers) and external responsibilities (agreements with third countries, common European foreign policy).

The philosophy underlying the EEC Treaty is the progressive attainment of its objectives, i.e. the eventual integration of Europe. The fact that the European Community is not a static entity is evidenced by the continual developments that have taken place since its inception. This continuous expansion of the Community's areas of responsibility naturally also entails a corresponding broadening of the substance or a change in the nature of the powers of the Community institutions. A typical example is the extension of the powers of the Community institutions under the Single Act as a necessary means of achieving the completion of the internal market.

Accordingly, the logical consequence of economic and monetary union, which will broaden the scope of the Community's responsibilities, will be the expansion and adaptation of the powers of the Community institutions, including, naturally, those of the Commission.

Nevertheless, the new powers of the Community institutions cannot be defined only in relation to economic and monetary union. This would inevitably lead to piecemeal adjustments and systematically serving the most short-term ends which is precisely what occurred with the Single Act which could now validly be regarded as restricted. Both the completion of the internal market and economic and monetary union are merely aspects of an overall design - the unification of Europe.

This is the reason for the dialectical approach to our examination of the development of the Commission's powers; the concluding proposals aim to provide an institutional framework which is a more complete response to the above process leading to European integration.

It should be stressed, however, that the final definition of the Commission's future powers together with their incorporation into an overall institutional regulatory framework for European union is a matter for a cohesive and

integrated legal system which will constitute the future European Constitution¹.

A. THE EXECUTIVE POWERS OF THE COMMISSION

I. The present system

According to the EEC Treaty the Commission (final paragraph of Article 155 of the EEC Treaty) shall 'exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter'. In other words, the executive power is that conferred on it by the Council. It had in fact been the generally pursued practice for the Council to confer executive powers on the Commission.

The Single Act did not make any structural change to this system. The addition of the third indent to Article 145 of the EEC Treaty, however, (which refers to the Council's powers) institutionalizes the practice followed, raising the conferral of executive powers on the Commission to the status of a legal requirement. The same addition enables the Council, but does not require it, to impose certain conditions on the exercise of these powers, which must, however, be consonant with principles and rules to be laid down by the Council acting unanimously.

Clearly, the aim of the Single Act is not only to institutionalize the executive power conferred on the Commission but also to extend it, making it optional to impose conditions on the exercise of that power. Finally, the stipulation that the provisions laid down must be consonant with principles and rules to be laid down in advance is clearly designed to rationalize the various types of committees which are composed of national civil servants and assist the Commission in the exercise of these powers. This interpretation is also corroborated by a declaration contained in the Final Act, in which the representatives of the governments of the Member States call on the Council 'to give the Advisory Committee procedure, in particular, a predominant place ...'.

Nevertheless, in its decision of 13 July 1987², the Council interpreted Article 145 of the EEC Treaty extremely restrictively and set up a whole range of different types of committee ('comitology') from advisory committees to committees of such a restrictive nature that they essentially abolish the Commission's executive power, transferring it back to the Council. Under the decision, where no agreement is reached between the Commission and a committee of national civil servants, the Council is able to overturn the Commission's proposal either by taking measures itself or by refusing to take a decision.

In its opinion (the Hänsch report)³ Parliament vigorously disagreed both with the Commission's proposal which provided for three types of committee - and was particularly opposed to the third type - and with the Council's

¹ As envisaged in the work of the Committee on Institutional Affairs (rapporteur: Mr Colombo)

² OJ No. L 197, 18.7.1987, p.33

³ OJ No. C 297/86, p.94

decision⁴, which increased the number of committees to seven. The main reasons cited by Parliament were that:

1. the decision is contrary to respect for the principle of the separation of powers and the Single Act, whilst it considerably extends the risk of not being able to take decisions and
2. it is completely contrary to the attempt to rationalize the large number of committees, contrary to Article 145, third indent, of the EEC Treaty.

Contrary to Parliament's opinion, the Commission declared⁵ its intention to accept the regulatory committee and, in certain cases, the safeguard clause in addition to the advisory and the management committees. It did, however, give an undertaking to Parliament that it would never propose the most restrictive type of committee. It also undertook to report to Parliament at the end of 1988 on the implementation of this procedure⁶. Despite this undertaking, the Commission report was submitted to Parliament on 28 September 1989 after a delay of one year and after a similar Commission report had been submitted to the Council!

As is clear from this report and from a statement by the President of the Commission, Mr Delors, to the Committee on Institutional Affairs at its meeting of 22 February 1990, the policy pursued by the Council in this area completely bears out Parliament's reservations while belying the Commission's optimism. Furthermore, it is clear that the objective of the Single Act to transfer more executive power to the Commission in order to improve efficiency has not been achieved.

II. Conclusions

It is apparent both from this Commission report and from the experience that Parliament has acquired after almost three years of 'comitology', particularly in connection with the single market, that:

1. The two most restrictive types of committee and the 'safeguard clause' have hardly been used at all, thus providing a cogent argument for their complete abolition.
2. In contrast, the regulatory committee, which severely limits the Commission's executive powers, has been widely used and in both its forms (more or less restrictive) and, on most occasions, despite the Commission's proposal to the contrary.
3. The management committee (more or less accepted by Parliament) has been used only minimally both by the Commission and by the Council except for matters connected with the common agricultural policy.
4. Finally, the advisory committee, which is more in keeping with the exercise of the Commission's executive powers, was repeatedly proposed by the Commission but rarely approved by the Council.

⁴ OJ No. C 246, 8.7.1987, p.42

⁵ Speech by Mr Delors, OJ No. L 2-354, 7.7.87, p.59-60

⁶ Letter from President Delors to Lord Plumb of 16 March 1988

The conclusions, therefore, are that the 'comitology' procedure as implemented hitherto and even after the entry into force of the Single Act results in a severe restriction of the Commission's powers. The most dangerous consequence of this situation in relation to the completion of the internal market is the considerable loss of efficiency and the delays created in the decision-making process as the procedure most commonly used allows the Council, acting by simple majority, to prevent decisions from being taken.

It should also be stressed once again that the logical consequence of restricting the Commission's executive powers is a corresponding restriction of parliamentary supervision over the executive body (since the Council, as an executive body, is not subject to parliamentary supervision). Moreover, the co-existence at this level of, in effect, two executive bodies with vague and indistinguishable powers within areas of Community responsibility undermines the democratic foundations of the European edifice.

IMPLEMENTATION OF THE BUDGET

As regards the implementation of the budget, the Council also lays down conditions on the exercise of executive powers by the Commission. The types of committee flanking the Commission in the implementation of the budget are generally restrictive of the Commission's powers and, in some matters, the result is that this power is transferred back to the Council⁷.

In broad outline, the comitology practice pursued in this sector does not differ from that applied in regard to the Commission's other executive powers. Furthermore, it creates severe problems in relation to the division of responsibilities between the Community institutions as laid down by the Treaty.

In fact, Article 205 of the EEC Treaty stipulates expressly that 'the Commission shall implement the budget ... on its own responsibility and within the limits of the appropriations'. Moreover, pursuant to Article 203, Parliament and the Council jointly constitute the budgetary authority.

Consequently, pursuant to these articles, where the Council adopts a restrictive procedure resulting in the transfer to the Council of executive power which belongs to the Commission, this is a violation both of Article 205 (in combination with Article 155, third indent) and of Parliament's powers in that, on budgetary matters, Parliament should have the same powers as the Council in its capacity as joint budgetary authority. In other words, if the Council, by virtue of setting up a restrictive type of committee, has the power to decide itself on implementing measures, then, theoretically, Parliament should also have the same power of decision-making.

Regardless of this, in its judgment of 24 October 1989⁸ the Court does not follow this line of argument. In its interpretation, it distinguishes between the power of taking administrative decisions and the power to commit expenditure, stressing that the Commission's power to implement the budget

⁷ See, for example, the management committee under the Financial Regulation or the Regulation on food aid

⁸ Case 16/88 Commission and Parliament v. the Council (not yet published)

does not affect the division of powers as laid down by various provisions of the Treaty.

Despite the criticism that has been levelled at this judgment, account should be taken of the fact that the dividing line between a decision which lays down executive rules and a decision that creates legislation is, in certain circumstances, barely discernible. This intensifies the legal uncertainty which comitology has created in regard to the division of Community responsibilities. A fundamental point that should be clarified is demarcation between legislative, regulatory and executive functions.

ECONOMIC AND MONETARY UNION

In the 1984 draft treaty on European union, Parliament envisaged a coordinating and supervisory role for the Commission over the economic policies pursued by the Member States' governments⁹.

Economic and monetary union, at least in the form now envisaged¹⁰, represents an extremely high level of integration within the Community in this sector. Consequently, the coordinating and supervisory powers over economic policy envisaged in the draft treaty no longer confer actual executive power on the Commission.

With the introduction of economic and monetary union, economic policy will be determined by the Council. At the intergovernmental conference, Parliament should put forward the view that the most appropriate system is one which confers the power of managing this policy on the Commission, assisted by a management committee with Parliament exercising supervisory power.

Should the management of economic policy be conferred on the monetary committee to be set up for this purpose (and which will consist of national civil servants), this will effectively mean total preclusion of parliamentary supervision, i.e. total exclusion of the directly elected representatives of the European people from an area of Community operations which will have a direct impact on their everyday lives. Parliament cannot accept such a scenario.

Another matter with institutional repercussions is the autonomy of the Central Bank (EUROFED). If it has absolute autonomy, this institution will acquire 'super powers', as there will be no supervision whatsoever. If it has partial autonomy, the Council and the Commission may submit recommendations to the Central Bank which will be able either to accept or reject them. However, if the Commission's recommendation is rejected, it must seek endorsement of its policy from Parliament, through a vote of confidence. If Parliament passes a vote of confidence in the Commission, EUROFED must accept the recommendation. If not, the Commission resigns.

Parliament may accept this proposal by President Delors. However, this raises the problem of the Council's responsibility for policy since it cannot, as co-legislator, request a vote of confidence from Parliament. Logically, it would be sounder for the Commission alone to submit recommendations to EUROFED

⁹ Article 50(2) and (3)

¹⁰ Commission report on economic and monetary union

with responsibility for policy lying with Parliament - or in conjunction with the Council - and for the Council to be able to submit recommendations through the Commission.

III. PROPOSALS

As expounded at greater length in the introduction to this document, the institutional system under consideration should meet not only the present and immediate needs of completing the internal market and of economic and monetary union¹¹ but also the further progress of the Community towards European union¹², in line with the political will referred to in Article 1 of the Single European Act.

As the above analysis shows, if efficiency is to be improved, if the Commission is to function effectively as an executive body and if parliamentary supervision - an essential element of the democratic process - is to be strengthened the following model must apply:

1. - Under the Treaties, executive power lies with the Commission.
2. - The Commission proposes the conditions (types of committee) to be adopted. The types of committee are limited to advisory and management committees.
3. - The Council together with Parliament (co-legislators) jointly lay down the conditions under which Community acts are executed; this is a potential facility of the legislative bodies but not a requirement.
4. - In the event of disagreement between the two legislative bodies, the same conciliation procedure is to be followed as will be laid down for the resolution of similar matters.

This institutional structure represents the most realistic solution even though it may be criticized as extremely radical, especially if it combines all four elements outlined above.

I believe that any other, more moderate, model will not meet actual needs or improve the institutional structure. I also consider it doubtful that a more moderate model would have more chance of being accepted by the intergovernmental conference.

For example, a system similar to the current one could be adopted, differing only in that the types of committee are restricted to two (advisory and management) and that unanimity is required in the Council in order to change the Commission's proposal. In order for such a system to operate democratically, however, it must specifically incorporate the right of Parliament to appeal to the Court to have acts of the Council declared void (obviously, this is included in the first proposal).

¹¹ See also Belgian Government memorandum of 29 March 1990

¹² Relevant Mitterand-Kohl memorandum to the President-in-Office of the European Council and agreement of the Dublin Council Summit

B. THE COMMISSION'S POWERS IN INTERNATIONAL RELATIONS

I. INTERNATIONAL AGREEMENTS

1. The present system

Under the EEC Treaty, the Community, having international legal personality, can conclude agreements with third countries either as a Community, or jointly with the Member States.

The criterion for distinguishing between these (i.e. whether the international agreement should be concluded by the Community, or the Community and the Member States or by the Member States alone) is whether the matter falls within the Community's internal sphere of responsibility. Obviously, the Community cannot conclude an international agreement on a matter which does not fall within its powers under the Treaties. Conversely, if a matter falls within its internal sphere of responsibility and it does actually exercise power in that area, international agreements in the same area may be concluded by the Community alone, as laid down by a long history of Court of Justice case law (Case 22/79 AETR (ECR 1971, p. 263), Cases 3, 4 and 6/76 KRAMER (ECR 1976, p. 1279), Opinions 1/75 (ECR 1975, p. 1355) and 1/76 (ECR 1979, p. 741)).

Finally, in the case of international agreements which, in part, concern matters which fall within the Community's internal sphere of responsibility alone and, in part, matters which fall within the Member States' sphere of responsibility or, in the case of international agreements concerning matters where part of the internal sphere of responsibility still remains with the Member States, these matters fall within the external powers of the Community and the Member States jointly.

Despite the apparently clear distinction between the exclusive and concurrent powers of the Community, this has created innumerable disagreements between the Commission, Parliament and the Council. This is because the boundaries of the Community's powers are variable owing to the dynamic nature of the Community model. Consequently, a strengthening or modification of the Community's internal powers involves a corresponding increase or modification of external powers, resulting in a corresponding decrease in the Member States' external powers. Given, however, that the Member States consider the conclusion of international agreements to be an essential part of their own sovereignty, many international agreements are concluded by the Community and the Member States together whereas, according to the principle expounded by the Court, this power lies with the Community alone.

It should also be stressed, however, that the legal system governing international agreements, under the EEC Treaty, reinforces this 'grey area' of concurrent powers, since the relevant provisions are neither clearly defined nor systematic.

For example, commercial policy which falls exclusively within the power of the Community, has not been defined with the result that in concluding international trade agreements, Article 113 is supplemented as the legal basis by Article 235 which provides for the broadening of Community powers, requiring unanimity within the Council for the conclusion of international agreements.

This also occurs with association agreements (Article 228 of the EEC Treaty). Moreover, the naming of an international agreement and the legal basis is often chosen on grounds of international political expediency and not on the basis of legal rationale.

Within the general framework of the Community's powers, therefore, the powers of the Commission are as follows:

- (a) the power to submit proposals and take initiatives (in regard to trade agreements, Article 113, research and development agreements, Article 130m, association agreements, Article 238, and other agreements not covered by the Treaty, Article 235),
- (b) the power to conduct negotiations, conferred on it by the Council in cooperation with a committee determined by the Council and under the direction of the Council,
- (c) agreements are concluded by the Council on behalf of the Community and implemented, for the most part, by the Commission.

2. Economic and monetary union

Clearly, with the advent of economic and monetary union, the scope of the Community's powers will broaden both internally and in international relations. International economic agreements and the position of the Community in international organizations will have to keep pace with these developments.

Without a radical change in the present system, however, there is a risk that differences of opinion about the scope of the Community's powers and about the dividing lines between the powers which the Member States retain or exercise jointly with the Commission will intensify. If the practice currently pursued is confused and complex both as regards the conclusion of international agreements and the Community's participation in international organizations, European union, under these conditions, can only exacerbate the adverse effects of this situation.

There is, therefore, a need to devise a Community external policy which is both cohesive and rational and, consequently, effective.

3. Proposals

The most appropriate way of achieving the above objective is to amend the Treaty. It does not have to be a particularly extensive amendment. It could be confined to the addition of an Article, or an amendment to Article 113 to provide for the following:

- (a) broadening the concept of trade agreement and adding the concept of economic agreements;
- (b) the Commission to conduct negotiations on these agreements under a mandate jointly issued by the Council and Parliament, after obtaining the opinion of Parliament and in accordance with conditions to be laid down subsequently;

(c) the Commission to conclude agreements after obtaining an affirmative opinion from the Council and Parliament (for agreements defined as significant) and, finally

(d) the implementation of agreements to be the province of the Commission (under parliamentary supervision).

The system may be criticized as too radical. Nevertheless, it is the most appropriate not only in order to guarantee the Commission a role of substance in external relations but also to confer on Parliament the befitting democratic function of a legislative body and effective parliamentary supervision over the executive power. This would ensure respect for the principle of the separation of powers.

These objectives cannot be obtained equally effectively using any other model based on agreement between these three institutions. Such an inter-institutional agreement could determine the content of commercial and economic agreements and the role of each institution in the process of drawing up a mandate for negotiations and in the conclusion and implementation of agreements. Moreover, as the Court of Justice has acknowledged¹³, such an inter-institutional agreement has legal force.

Nevertheless, the basic law of the Community is and should remain the EEC Treaty, which takes precedence over any other Community law. The fragmentation of laws which are fundamental to the functioning of the Community into a mass of other texts is contrary to the principle of legal certainty.

C. EUROPEAN POLITICAL COOPERATION

I. The present system

It should be stressed from the outset that European political cooperation on foreign policy matters is not a Community institution. As stated in Article 30 of the Single European Act, which governs European political cooperation, it falls within the sphere of cooperation between States. In fact, paragraph 1 of this Article expressly states that 'the High Contracting Parties, being members of the European Communities, shall endeavour jointly to formulate and implement a European foreign policy'.

The Commission's role in EPC is confined to association with its proceedings (paragraph 3(b)) and its sole task is to ensure, together with the EPC Presidency, that there is consistency between the decisions taken in the EPC context and the Community's external policy (paragraph 5).

The power of initiative and general management lies exclusively with the Member States (in the Presidency of EPC). In urgent circumstances, a request to convene EPC may be made by at least three Member States.

It is clear from the above that the aim of adding EPC to the Single Act is to systematize a hitherto long-standing practice but not to institutionalize it within a Community framework. It is clear that this is an experimental

¹³ Case 204/86

undertaking from the provision (in paragraph 12) for a possible revision of the system five years after its entry into force.

II. Conclusions

Despite some successes, the operation of this system in practice has clearly revealed all its shortcomings.

Firstly, the political position adopted by the Member States towards an international event in a particular country usually has economic and commercial implications for relations between the Community and the country or region concerned (for example, the trade embargo on South African products). These relations, however, fall within the exclusive or concurrent powers of the Community and, therefore, the Member States violate the Treaty by taking action in this area or the Community is forced to associate itself with these actions to maintain the institutional balance.

Secondly, it has become clear that in order to devise a cohesive external policy towards third countries, the Foreign Ministers meeting in European political cooperation must draw up a comprehensive policy covering the entire range of economic, political and technical matters, including cooperation and other areas that make up relations with third countries. Many of these matters, however, are not the responsibility of the Member States, given that they belong exclusively to the Community sphere of competence. The settlement of such issues between states creates the danger of provoking a constitutional crisis.

Finally, in the present day and age, international events and changes in the international political scene take place at such speed and often overtake our forecasts. The European Community must therefore be flexible and react promptly if we wish to respond effectively to these challenges and lay claim to an important role in international developments. The form that EPC takes and the procedures followed do not provide for this possibility, as has been demonstrated in practice many times.

III. Proposals

The arguments developed above lead to the conclusion that Parliament can only reiterate its previous proposals in favour of institutionalizing EPC and enshrining it in the Community Treaties and, consequently, repealing Article 30 of the Single Act and abolishing cooperation between states.

The following may be regarded as the main points concerning the incorporation of EPC in the Treaties:

1. the distinction between the Council and political cooperation to be abolished. This means that EPC would constitute an integral part of the Community's foreign policy and would be implemented by the Council on behalf of the Community;
2. the Commission to have the right of initiative jointly with the Council both in matters involving political cooperation and matters concerning relations and cooperation with the international organizations;

3. the Commission to have the power to manage Community foreign policy and the common position of the Member States in the international organizations, in accordance with a general mandate drawn up by the Council;
4. the Commission to manage current affairs in accordance with general directives and guidelines issued by the Council and the European Parliament;
5. the role of the President of the Commission to be strengthened by recognizing that he represents the Community to the outside world (possibly jointly with the Presidency of the Council);
6. ensuring the involvement of Parliament in the Community's system of external relations by assigning to it powers of political control over the Commission and institutionalizing dialogue with the Council.

IV. Remarks

Despite the fact that the rules governing political cooperation are not an appropriate method of dealing with international situations and should be amended, the objectives can be attained through minor adjustments¹⁴. For example, a system of close cooperation could be established between the Commission and the Foreign Ministers by strengthening the role of the EPC secretariat and bringing it into closer association with the Commission. In the same context, the powers of the Presidency (or the 'troika') could be strengthened in close cooperation with the President of the Commission and a system be set up for joint consideration of matters and coordination of action by the diplomatic representatives of the Member States and for more frequent meetings between the ministers.

Furthermore, by adding the Commission to Article 30(10)(b) of the Single Act and by adding the words 'the Commission or Parliament' to the end of paragraph 10(d) this would involve the Commission in exercising initiative, coordination and representing the Member States to the outside world and would also extend the power to convene EPC to both the Commission and Parliament.

These proposals, which are put forward as examples, or other similar proposals certainly represent an improvement on the present system but they do not lay these problems to rest completely.

- (a) A speedy and effective response by the Community will not be achieved by increasing consultation between the responsible bodies.
- (b) They do not secure or facilitate one voice for the Community in the international organizations.
- (c) There is still the absence of a permanent and stable body to represent the Community (the international face of Europe) in the international arena, which undermines the Community's international image and political authority. (Statements have been made on occasions by many European politicians such as Mr Mitterand, Mr Mertens, Mr Gonzalez and others).

¹⁴ See, for example, the Belgian Government's memorandum

(d) They increase the 'democratic deficit' within the Community to the extent that Parliament's role remains restricted and there is no effective parliamentary supervision of the Member States' acts.

(e) Finally, they impede the progress of the Community towards European union, given that an important sector of activity continues to be mainly a matter for cooperation between states.

D. GENERAL CONCLUSIONS

It should be stressed that if reinforcing the Commission's powers, as set out in this working document, appears to go a considerable way beyond the present framework, it is, however, no more than what is absolutely essential to achieve the objective of the Single Act to improve efficiency, and to make good the 'democratic deficit' in the Community in its present and future form. It is also evident that no institutional body can be examined in isolation; it always forms part of a whole, the balance of which is based on an internal dialectical process, which is a guarantee of democracy.

This means that to achieve this internal dialectic, which the present institutional system lacks, the Commission must become the executive body of the Community both in regard to internal matters and third countries. This in turn means that the Commission must acquire democratic legitimacy based on the confidence of the European Parliament, the expression of democratic legitimacy in the Communities (this also applies to the Council).

The essential preconditions for the new institutional order are, therefore, as follows:

Firstly, Parliament must become co-legislator with the Council and

Secondly, the Commission (in the person of its President) must be elected by Parliament and receive its vote of confidence. (See also the report by Mr Sutra de Germa on behalf of the Committee on Institutional Affairs on the Presidency of the European Community Doc. A 2-140/89, OJ No. C 158, 26.6.89, p. 368).

The first condition is perhaps the more important objective which Parliament has already set as a sine qua non for further European integration.

As regards fulfilling the second condition, it should be noted that this does not necessarily require an amendment to the Treaty. In fact, nothing prevents the Member States, who have the power to appoint the President of the Commission (Article 19 of the Merger Treaty), from appointing as President the person proposed by Parliament after an election (and who may also be elected as a Member of Parliament). Nevertheless, the transfer to the President of the Commission of the power to appoint its members and determine their number requires an amendment to the Treaty.

In this context, it should be recalled that Parliament attaches particular importance to the independence of the members and the staff in general of the Commission from national influences (Article 157 of the EEC Treaty), as well as to close and constructive cooperation between the two institutions.

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on External Economic Relations
for the Committee on Institutional Affairs

Draftsman: Mr André SAINJON

At its meeting of 17 July 1990 the Committee on External Economic Relations appointed Mr André Sainjon draftsman.

At its meetings of 27-28 September, 16-17 October and 30-31 October 1990 it considered the draft opinion.

At the last meeting it adopted the conclusions as a whole by 8 votes to 0, with 1 abstention.

The following took part in the vote: De Clercq, chairman; Bertens (for Porto), Braun-Moser, Christensen (for Moretti) Hindley, Lemmer, Peijs, Rossetti and Visser (for Titley).

1. Introduction

The Committee on External Economic Relations's experience of the Commission's involvement in international relations is mainly of a practical nature.

The Committee on Institutional Affairs is the committee responsible for considering this question; it is drawing up an own-initiative report with Mr Roumeliotis as rapporteur.

The Rules of Procedure thus allow a certain flexibility in the drafting and presentation of the report.

The subject is very important because it concerns preparation of Europe's future institutional structure and the construction of economic, monetary and political union, while taking account of the existing institutions, particularly the political nature of the European Parliament's decisions.

Like other committees and the European Parliament itself, the Committee on External Economic Relations has given thought to the democratic deficit resulting from the current working of the European institutions.

With this in mind, the Committee on External Economic Relations believes that it should be associated with the other Community institutions in a cooperation procedure for the definition of negotiating briefs for international economic and trade agreements between the EEC and third countries.

Too often Parliament is only informed at the final stage of negotiations, when it would be highly desirable for it to have an equal say with the Council in defining the Commission's negotiating brief.

2. Theoretical aspects of commitology

Too often legal and technical experts do not care whether the terms they use are comprehensible. Commitology and subsidiarity are cases in point.

Every week the Commission deals with all kinds of business of varying degrees of importance. Monitoring and appeals are in practice dealt with where necessary by committees of officials.

There are three types of committee:

- (a) Advisory committees, which only give their opinion, leaving the Commission to take its decision independently;
- (b) Management committees, which can delay the Commission's decision if they oppose it by a qualified majority;
- (c) Regulatory committees can delay a decision if they do not support it by a qualified majority.

3. Present powers of the Committee on External Economic Relations

The Committee on External Economic Relations' terms of reference include consideration of all economic and trade agreements that the Community may conclude with non-member states throughout the world (e.g. the recent agreements with Czechoslovakia, Bulgaria and EFTA). It is thus directly involved in the practical side of preparing international agreements of this type.

It would be unthinkable, if only for practical reasons (delays and limited technical resources), for it to consider all projected amendments and minor updatings, for which the Commission is responsible under its executive powers. There are about 20 agreements every month, counting economic and trade agreements alone, if all those that require monitoring are included.

4. Powers that might usefully be granted to the Committee on External Economic Relations in the future

The main purpose of this draft opinion is to give the Committee on External Economic Relations an opportunity to assess what degree of involvement in drawing up agreements in general would be appropriate, particularly those that are likely to have a political impact, with the option of referring them to a plenary sitting of Parliament.

Consideration should thus be given to an amendment of the treaties, which can only be done in the framework of an intergovernmental conference, and amendment of the Rules of Procedure, which of course Parliament can carry out quite independently, provided nothing is introduced that is contrary to the treaties.

5. Conclusions: suggestions for a new procedure

- 5.1. Parliament will receive a request for consultation by the Council on a Commission proposal (current procedure) on the definition of the Commission's negotiating brief (not yet the case).
- 5.2. Parliament will refer the proposal to the appropriate committees, consultation of the Committee on External Economic Relations as the committee responsible being compulsory;
- 5.3. The Committee on External Economic Relations will appoint either a rapporteur or a working party to monitor the draft agreements for which it is responsible;
- 5.4. The persons appointed will help define the negotiating brief and thus its framework; they will monitor the progress of the negotiations, without interfering, and the final preparation of the agreement on behalf of the Committee on External Economic Relation, respecting the basic rules for conducting negotiations in general.
- 5.5. The draft agreement will be considered adopted by Parliament, without debate in plenary, subject to approval by majority vote by the Committee on External Economic Relations on stringent conditions that have still to be worked out, unless a certain number (to be decided) of the current Members of Parliament table a request for consideration in plenary.

