

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 622 final.

Brussels, 23 November 1977.

USE OF THE FOURTH INDENT OF ARTICLE 155 OF THE EEC TREATY

(European Council, 5 and 6 December 1977, in Brussels)

COM(77) 622 final.

7

MEMO FROM THE COMMISSION FOR THE EUROPEAN
COUNCIL

USE OF THE FOURTH INDENT OF ARTICLE 155 OF THE EEC TREATY

1. The fourth indent of Article 155 of the Treaty provides as follows:

"In order to ensure the proper functioning and development of the common market, the Commission shall:

...

- exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter."

In the Community machinery, the Commission is the management body and the Council is the rule-making body.

2. On a number of occasions the Community has expressed at the highest level its preoccupation concerning the way in which it is managed. Paragraph 8 of the Final Communiqué of the Paris Summit Conference of December 1974 states:

"Moreover, they [the Heads of State or of Government] agree on the advantage of making use of the provision of the Treaty of Rome whereby the powers of implementation and management arising out of Community rules may be conferred on the Commission."

In his report Mr Tindemans proposed that greater use be made of Article 155 of the Treaty in the implementation and management of Community common policies. The inability of the Council machinery, overburdened as it is with matters of detail, to concentrate on matters of importance and thereby remove the bottlenecks in the work of the Council proper has frequently been deplored.

3. Despite many statements of intent, there is no evidence to suggest that substantial progress has been made. There are two reasons for this: First there is a tendency to overlook the very wording of Article 155. What the Treaty speaks of there is ensuring the "functioning" of the common market. At the same time, the point is not that the Council "may" delegate its powers in specific, determined cases to the Commission, but that the Commission "shall exercise the powers" conferred on it by the Council. The only restriction imposed by the Treaty is that it is for the Council, and the Council alone, to lay down the rules. The distinction between executive powers and the rules to be laid down by the Council is of course a legal one, but the decision rests finally on the political will of the Council.

Secondly, the fact that the Council membership inevitably varies from one meeting to another, has led to a situation in which one simply cannot discern any general line of conduct. In some areas (agriculture or customs, for instance), the powers conferred on the Commission are often extensive enough to allow for proper management. In others, the position is far from satisfactory. Even within a given area, there may be wide differences for which there is no apparent explanation.

/4. ...

4. The Community has important management functions, and has therefore to be able to react quickly and flexibly to problems presenting themselves.

5. The Commission carries out its tasks of management in close liaison with the Member States (there are ten or so different types of cooperation). Discussions on conferring executive powers on the Commission and on the way in which those powers are to be exercised can go on for months - years even. Yet the exercise of powers actually conferred has hardly ever been a source of difficulty in the last 15 years, and the difficulties have been solved simply by following the procedures laid down in the enabling decision - or by applying the general rules governing relations between the Commission and the Council.

6. The Commission is aware that there is already a problem as to how to make proper use of the fourth indent of Article 155 in the Community as it stands, but would recall that the problem will take on an added dimension as a result of enlargement.

7. The Commission considers that more systematic use of the fourth indent of Article 155 should apply to all areas where the Community has powers to exercise, but should particularly concern the following types of decision (proposals will, of course, be made to the Council in each individual case):

a. Decisions establishing facts

It is for the Commission to determine that a given situation exists (that a tariff quota has been used up, that thresholds and maximum country amounts under the generalised system of preferences have been reached, that a slaughterhouse in a non-member country satisfies all the rules, that a given non-member country is not affected by a given epidemic disease, and so on). This category also includes decisions recording scientific results obtained by experts working under contract with the Commission.

b. Allocation of budgetary appropriations

The Commission is responsible for allocating the total resources made available to it by the budgetary authority; it arbitrates between various claims on the basis of agreed criteria or principles.

Examples: management of funds and appropriations within the Community, or financial assistance and the like in external relations.

c. Day-to-day administration and management

The Commission is responsible for the day-to-day administration and management of schemes set up by the Council. This rule is broadly followed in the common agricultural policy, where the Commission acts with the assistance of the management committees. It could be extended to other fields (such as the technical adaptation of regulations to changed circumstances, the management of exception clauses and safeguard clauses).

d. Emergency measures

The Commission takes emergency measures when necessary (seeking Council confirmation where required). This happens already in several areas (in agricultural matters or the
/management

management of the commercial policy, for instance) and should become the general rule.

All these powers could then be exercised in accordance with the various procedures worked out and by now tried and tested in a variety of fields (management committees and legislation committees).

* * *

~~In external relations the rule should be that negotiating directives should allow for reasonable room for manoeuvre or should be set in terms of objectives~~

8. CONCLUSION

The Commission suggests that the European Council, confirming what was agreed in December 1974, should ask the Council to make full use of the possibilities offered by the fourth indent of Article 155 in accordance with the principles set out above. Since the role of general coordinator is played by the Council (Foreign Ministers), the Commission will approach that body in some suitable fashion whenever, in any given area, there are serious difficulties in implementing that provision. The Commission will report annually to the European Council on the results obtained.
