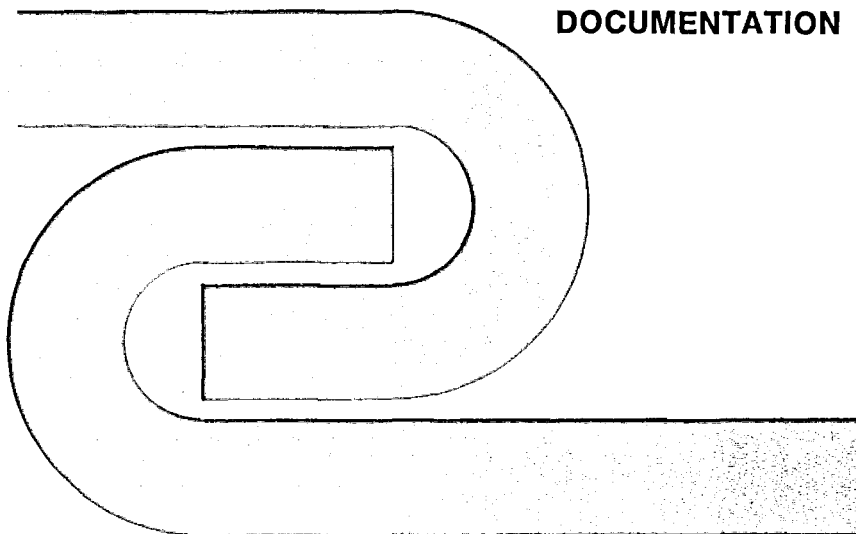


ECONOMIC AND SOCIAL COMMITTEE
OF THE EUROPEAN COMMUNITIES
General Secretariat

**THE RIGHT OF INITIATIVE
OF THE
ECONOMIC
AND SOCIAL COMMITTEE**

DOCUMENTATION



Brussels - October 1977

ECONOMIC AND SOCIAL COMMITTEE
OF THE EUROPEAN COMMUNITIES

General Secretariat

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and Documentation

THE RIGHT OF INITIATIVE
OF THE ECONOMIC AND SOCIAL COMMITTEE
Documentation

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THE RIGHT OF INITIATIVE OF THE
ECONOMIC AND SOCIAL COMMITTEE

INITIAL OBSERVATION

This document has been drawn up by the Division for Studies and Documentation (General Directorate) which assumes sole responsibility.

The aim is to inform members of the Committee and its constituent bodies of the main points arising out of the establishment and implementation of the right of initiative.

The document is not binding upon the Committee, its constituent bodies or the Groups.

FOREWORD

THE ECONOMIC AND SOCIAL COMMITTEE'S RIGHT OF INITIATIVE

In June 1974 the Council of the European Communities approved a new Article of the Committee's Rules of Procedure, granting the Committee the right to deliver Opinions on its own initiative on all matters relating to the work of the Community. The Council took its decision in the light of the recommendation made at the meeting of the Heads of State or of Government of the Member States in October 1972.

This epoch-making innovation marked the end of a long period during which the Committee had been continuously studying its role and endeavouring to overcome a number of shortcomings in the Treaties.

Only three years have elapsed since the acquisition of the right of initiative, and it is clearly too early yet to draw any conclusions. We do, however, think that it would be a useful exercise to examine the lessons which have been learnt, now that a new appraisal is to be made of the future role of the Committee.

The information used in compiling this document has come, for the most part, from the Committee's archives. Reference has also been made to the many statements issued by members of the Committee, the Committee's Bureau, Groups, Sections and, in particular, the Committee Chairmen. We have also drawn upon certain studies, especially the work of the former Secretary-General, Mr Jacques GENTON.

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Our aim has not been to provide an academically complete and unassailable account of the right of initiative. Nevertheless, the present document is, in my view, sufficiently comprehensive to stimulate thought about the Committee's consultative role in the institutional framework of the Community.

A close look at the many aspects of the Committee's work in connection with both the fast-moving development of the Community Institutions and with Community law in general reveals that promising changes are taking place. These changes need only to be taken still further.

The authors of the document have however refrained from commenting on topical issues which are still a source of controversy within the Committee.

We nevertheless hope that those who read this document will be provided with food for thought which will enable them to put forward constructive proposals for making the Committee still more effective and for ensuring that its work reaches a wider public and has a growing influence.

R. LOUET
Director-General

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INTRODUCTION

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A. Consultative Bodies having the Right of Initiative in the Six Founder-Members of the European Community (1955-1958)

The existence of organized occupational and other interest groups in the six founder-members of the European Communities had many practical effects.

Employers' and workers' organizations came together in collective bargaining, in which they had a large measure of autonomy, and they also sought to influence public authorities before decisions were taken (1).

The organized endeavours of occupational and other interest groups to influence the executive and the legislature led in the majority of the Member States, with the exception of the Federal Republic of Germany, to the establishment of institutions to channel the voices of the various groups. Economic and social consultative councils thus took shape. These councils were important assemblies; they brought together representatives of both individual trade and professional organizations, and groups of trade and professional organizations. They served as the mouthpiece for the claims and aspirations of these bodies.

(1) See Jacques GENTON "Representation and influence of economic agents in the European Community", pages 2-4. Address given in French on 16-18 November 1965 to the Institute for European Studies of the Université Libre de Bruxelles, Belgium.

One of the main points to note with regard to the work of these Councils was that, between 1955 and 1958, they were already empowered either under the Constitution or by law, to put forward their views on their own initiative. They were not only entitled to choose the field in which to give their views but also to determine the timing (1).

The economic and other interest groups were therefore able to keep the authorities informed of the main problems facing their organizations and their members and they were able to point out in good time the type of measures which they wanted the authorities to take.

It therefore became customary for the representatives of large economic and social organizations to make known their points of view to the authorities in order that they could be taken into account.

The involvement of economic and other interest groups in the decision-making process of the abovementioned five Member States at this time was responsible for the achievement of certain progress towards economic and social democracy.

(1) For detailed information on this subject see the document issued by the ESC in December 1976 entitled "Economic and Social Consultative Councils in the Member States of the European Communities and the Economic and Social Committee" (R/CES 124/77); the right of initiative granted to the various economic and social consultative councils is described in detail in the abovementioned document (Belgium - page 5 and page 16; France - page 28; Italy - page 58; Luxembourg - page 73; Netherlands - page 87).

B. The Attempts to make Provision for the Right of Initiative when Drafting the EEC and the EAEC Treaties (1955-1957)

Not surprisingly, the subject of the involvement of economic and social interest groups in the legislative process of the Communities was raised on many occasions during the negotiations prior to the establishment of the European Economic Community and the European Atomic Energy Community.

The aim was to create a balance between the power of (a) Community institutions and (b) social and occupational interest groups, whose function was to safeguard the interests of individual sections of the population. This balance was achieved by introducing a system under which economic power was subordinate to political power. There was also a need to make arrangements for the joint representation of various trade and occupational groups in order that the various organizations could hold joint discussions on given subjects (1).

On 27 December 1956 the question of the involvement of economic and social interest groups in the working of the Communities through the medium of a consultative committee (3) was first raised by the Chairman of the Committee of the "Heads of Delegations" (2).

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- (1) See Jacques GENTON, extract from the FIABCI Bulletin of September 1965 (Selected Documents and Articles of the ESC, No. 32/1965).
 - (2) See S. NERI and H. SPERL on the EAEC Treaty in "Preparatory Work and Interpretations by the Six Governments, Parliamentary Documents" (in French) issued by the Court of Justice of the European Communities, Luxembourg, 1962, Article 165 : Background.
 - (3) See S. NERI and H. SPERL, idem, Article 165, Background, Chapter 1.

From the very beginning, the Netherlands delegation proposed that the consultative body be authorized to advise the Commissions and the Councils of Ministers on any joint economic or social problem of general importance (1).

This proposal in effect included the possibility of providing this consultative body with the right of initiative. The proposal was not adopted, the majority of the delegations being against it (2).

The main reason given at the time for not providing the ESC with the right of initiative was that the Assembly (the European Parliament) did not have such a right, and reasons of institutional balance therefore dictated that this right should not be provided for (3).

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- (1) See S. NERT and H. SPERL on the EAEC Treaty in "Preparatory Work and Interpretations by the Six Governments, Parliamentary Documents" (in French) issued by the Court of Justice of the European Communities, Luxembourg, 1960, Article 193 : I, Background.
 - (2) See S. NERT and H. SPERL on the EEC Treaty. The authors give an account of these events, based on the parliamentary records of the discussion on this subject in the Upper House of the Netherlands Parliament. Article 190 : II. Parliamentary Records. Doc. 4725 No. 41, p. 14, col. 1.
 - (3) See address by Walther HALLSTEIN, the then President of the EEC Commission, to the ESC at its inaugural meeting on 19 May 1958 (Doc. CES 4F/58 Appendix 4, p. 4). Mr HALLSTEIN had previously been a member of the German Delegation during the negotiations on the EEC and EAEC Treaties.

Furthermore, to quote Gerda ZELLENTIN, "the majority of the Governments, particularly those made up of centre parties, foremost of which was the Government of the Federal Republic of Germany, showed extreme reservations over the establishment of a 'Fourth Power' at supra national level. They were afraid of involving economic and social interest groups in their external economic and social policy" (1).

Finally, the negotiators considered that the establishment of the Communities might be made more difficult by granting the right of initiative to the ESC, since the Commission already had a similar right (2).

C. The EEC and EAEC Treaties of 1957 under which no Provision was made for the Right of Initiative to be granted to the ESC

Though each of the Treaties devoted a special chapter to the ESC, they nevertheless did not regard it as an institution.

Articles 193 to 198 of the EEC Treaty and Articles 165 to 170 of the EAEC Treaty made no provision for the granting of the right of initiative to ESC. These Articles make it abundantly clear that the scope of the ESC's work depended entirely on the consulting institutions, namely the Commissions and Councils of the EEC and EAEC.

(1) Gerda ZELLENTIN "Formen der Willensbildung in den Europäischen Organisationen" p. 105 Kölner Schriften zur Politischen Wissenschaft. - Athenäum Verlag 1965. For the Chapter on the ESC see pages 105 to 131 - Selected Documents and Articles of the ESC No. 19/66 - 101/69).

(2) Nadine BERNARD, Claude LAVAL, André NYS "Le Comité économique et social" p. 45. Institute of European Studies of the Université Libre de Bruxelles, from the collection entitled : Thèses et travaux politiques - Editions de l'ULB - Brussels, 1972.

The Institutions consulting the ESC recognized the role it was to play as, to quote Walther HALLSTEIN, "the Committee will, to a certain extent, be involved in the shaping of the new body of Community law". He also stated that the ESC's voice carried great weight during the drafting of Community Regulations (1). Another speaker stated that "workers and trade and industrial organizations must be closely involved in the working of the new Communities." (2) "They (the workers) will find that the Communities offer clear guarantees of the social awareness of the Six".

D. The Awareness by the Committee's Members of the Implications of the Absence of the Right of Initiative

On 19 May 1958 the ESC held its inaugural meeting in the meeting hall of the Belgian Senate in Brussels. On this occasion and in the succeeding months it became clear to the Committee's members that the majority of their number were leading officials of major economic and social organizations.

Approximately 75% of the ESC's members were presidents or general-secretaries of powerful national organizations representing employers, workers or other interests. (3)

(1) Address by Walther HALLSTEIN (op. cit. p. 4, note 3), p. 4.

(2) Address by Mr LAROCK, the then President of the EEC Council, to the inaugural meeting of the ESC on 19 May 1958 (Doc. CES 2/58 - p. 3).

See also W. HALLSTEIN in "Gewerkschaft, Wirtschaft, Gesellschaft", Cologne 1963, p. 381-392. "The ESC as an agent of European integration in the field of economic and social policy" (in French) Selected documents and articles of the ESC No. 16/63.

(3) See the first list of members of the ESC (Doc. CES 15/58, of 1 October 1958).

See also Gerda ZELLENTIN (op. cit. p. 5, note 1) p. 107.

It is hardly surprising that these leading figures attempted to acquire an influence on the Community legislative procedure comparable to that which they exercised on the legislatures in their own countries.

At its very first meeting the ESC took up the question of its role and, in particular, the possibility of making known its views, at the appropriate moment and without being consulted, on the fields which concerned it, namely important economic and social issues affecting the Community. In this respect members of the ESC were encouraged by Walther HALLSTEIN in his address to the Committee when he pointed out (1) "it is through the Economic and Social Committee that the EEC Commission will be informed of the views of factory managers, farmers, workers, and professional people. As members of the Committee, you are, ladies and gentlemen, the spokesmen of public opinion in the Community in the economic field. The Commission looks to you to pass on the experience, the technical point of view and the concerns of the public in the six Member States."

Mr HALLSTEIN went on to say "As you are aware, ladies and gentlemen, although it is not a Parliament, the ESC is, by virtue of the role which it is called upon to play, more than a simple panel of experts. The reason why I say "more" is that the EEC Commission is obliged to hear your views" (2).

(1) W. HALLSTEIN, Address given on 19 May 1958 (op. cit. p. 4, note 3) p. 4.

(2) W. HALLSTEIN (idem) p. 3.

E. The Attempts made to Incorporate the Right of Initiative in the ESC's Initial Rules of Procedure (1958) and the Failure of these Attempts

This awareness of the ESC's role explains why the Committee tried, when drafting its Rules of Procedure, to cast off the shackles which the Treaties seemingly imposed on it by not granting it the right to study matters on its own initiative (1).

The members of the working group formed on 19 May 1958 (2) to draw up the Rules of Procedure, proposed that, since the convening of the ESC was the responsibility of its Chairman, he should be entitled to do so on his own initiative (3).

In the suggested text for Article 17, the Chairman was to be able to convene the ESC after consulting the Committee's Bureau or at the request of one fifth of the Committee's members (4).

(1) Gerda ZELLENTIN (op. cit., footnote 1) p. 109.

(2) Mr MASOIN was both the chairman and the rapporteur of this group.

(3) Mr MASOIN's report, CES 17/58, p. 2.

(4) Article 17

The Economic and Social Committee shall be convened by its Chairman, either at the request of the Council or the Commissions, on the advice of its Bureau or at the request of one fifth of its members, to discuss matters falling within the Committee's terms of reference.

Draft Rules of Procedure of the ESC, 25 June 1958.
Doc. CES 13 F/58 cx.

The opposition to the Committee having the right to discuss matters on its own initiative was centred not on the procedures to be used for putting this right into effect but on the very principle of the matter. This attitude stemmed mainly from a certain fear of "corporatism" propagated by the Federal Republic of Germany where bad memories of the Reichswirtschaftsrat in the Weimar Republic still lingered on. Furthermore, this country did not have an equivalent national body and found it difficult to appreciate the need for such a body or its effectiveness (1).

This led the Councils to think that the ESC, as a consultative body, should not have the right to take up matters on its own initiative (2), for they felt that this right was likely to upset the balance of power and the allocation of tasks (3). The ESC's initial attempt to have the right of initiative included in its Rules of Procedure therefore ended in failure.

Nonetheless, the large majority of the Committee's members, accustomed - as stated above - to having greater freedom of action on similar bodies in their home countries, did not consider that the ESC bodies set up by the Rules of Procedure would necessarily make the Committee into an upper chamber of experts. Instead they saw it as being a sort of "economic assembly" and for this reason they used all the openings rightfully offered the ESC by its Rules of Procedure for taking some initiative, to try and get the scope and impact of the Committee's work extended (4).

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- (1) Memo from the Secretariat of the ESC, Brussels, 14 August 1958, Doc. CES 795 F/58 ddi.
 - (2) Memo concerning the articles in the Rules of Procedure drafted by the ESC, which the Councils would like to discuss with the ESC's Bureau on 15 October 1958, Doc. CES 1120 F/58 rev. mr.
 - (3) See also on this point the Commission of the EEC's comments on the draft version of the ESC's Rules of Procedure, Doc. CES 989/58 cx.
 - (4) See also on this point Gerda ZELLENTIN (op. cit., p. 5, footnote 1), pp. 109-110.

I. THE OPERATION OF THE ESC FROM 1958 TO 1972 IN THE

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PRE-"RIGHT OF INITIATIVE" ERA

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A. THE INSTRUMENTS IN THE RULES OF PROCEDURE GIVING THE
ESC SOME FREEDOM TO WORK ON ITS OWN INITIATIVE

In our examination of the legal openings which the ESC had during this period for displaying a certain amount of initiative we shall look first at studies and information reports, which were provided for directly by the Rules of Procedure, and then at the publication of statements and the delivery of Opinions at the Committee's own request, which were the outcome of steps taken by the ESC's representatives or members.

1. Studies

Article 18 of the 1958 Rules of Procedure stipulated in the third paragraph that :

"The Committee shall be convened by its Chairman, acting in agreement with the Bureau and with the prior consent of the Councils and Commissions concerned, which thus give the Committee permission to prepare the study of questions on which the Treaties stipulate that it must or may be consulted."

In turn, the third paragraph of Article 20 in the 1968 Rules of Procedure stated that the ESC "... shall be convened by its Chairman, in liaison with the Bureau and with the prior consent of the Council or the Commission, to prepare the study of questions on which the Treaties stipulate that it must or may be consulted."

It should be noted that this was a flexible procedure, not designed to culminate in the formal delivery of a Committee Opinion, for dealing with subjects on which the Commission itself had not yet taken a definitive stand (1). It was therefore a matter of taking an objective and comprehensive look at the various aspects of a question, in anticipation of consultative work at some later stage. In actual fact, the studies dealt with subjects on which the Treaties stipulated that the ESC must or may be consulted.

In particular, this procedure, by granting the Committee a "limited right of initiative", allowed the Committee to participate in work on vocational training policy and medium-term economic policy (1966-1970) (2). This is particularly clear, for example, if we take a look at how the Committee came to prepare a study on vocational training.

On 18 May 1965 the Commission sent the Committee a document, for the information of its members, dealing with programmes of action with regard to a common vocational training policy in a general context and in the field of agriculture (V/SEC (65) 1355 final) (3).

At its meeting on 19 June 1965, the ESC's Bureau thought, in response to the wishes expressed by the members of the Specialized Section for Agriculture, that the time was ripe for asking the Commission for permission to produce a study under the third paragraph of Article 18 of the 1958 Rules of Procedure. This Study was to take as its basis the document sent to the Committee for information. As a result, the Bureau

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- (1) Mr de BIEVRE. VITA magazine No. 3 of 15 February 1966, pp. 103-107.
 - (2) BERNARD, LAVAL, NYS (op. cit., p. 5, footnote 2), pp. 146 and 147.
 - (3) 56th meeting of the Bureau of the ESC held on 29 June 1965, R/CES 272/65, pp. 8-9.

instructed the Chairman to ask the Commission for permission to produce this study, which he did on 9 July 1965. In his request the Chairman pointed out that the study was simply to be an internal document. Final agreement was given on 22 January 1966 (1) at a time when, in the wake of the 30 June 1965 crisis, the work of the Committee had slowed down and come to all intents and purposes to a halt (2).

The chief point to be remembered about this procedure is that it enables the Committee in the pre-"right of initiative" era to voice its views with the consent of the institutions on matters on which it had not been consulted. This was done at the request, prompting or rather "initiative" of the Committee's members (3).

2. Information Reports

Even though it was not until 1968 that the procedure for the production of information reports was laid down in a specific article of the Rules of Procedure (Article 24), the Committee had already compiled twelve such reports between 1961 and 1964 on the basis of the second paragraph of Article 18 of the 1958 Rules of Procedure, which stipulated that the Committee could be convened by its Chairman, on the advice of the Bureau, to continue its discussion of questions on which it had been consulted by one of the Councils or one of the Commissions (4).

The main idea behind this procedure was that it allowed the Committee to play an on-going part in the work of the Commission.

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- (1) 62nd meeting of the Bureau of the ESC held on 26 January 1966 - R/CES 24/66.
 - (2) BERNARD, LAVAL, NYS (op. cit., p. 5, footnote 2), pp. 146 and 147.
 - (3) 172nd meeting of the Bureau of the ESC (special meeting held on 27 April 1976, Doc. R/CES 491/76).
 - (4) BERNARD, LAVAL, NYS (op. cit., p. 5, footnote 2), pp. 144 to 146.

This is clearly shown to be so if we look at the steps taken following the sending to the ESC in July 1961, for information purposes, of the Commission's draft proposal for a regulation on the implementation of the common agricultural policy (1).

As the Committee's Chairman at that time, Mr E. ROCHE, indicated in a memo to the Bureau members, the Commission considered that it had fulfilled the obligations imposed on it by the EEC Treaty by consulting the ESC beforehand on the broad lines of agricultural policy.

The Commission's legal department, acting on the basis of Article 43 (1) and (3) of the EEC Treaty, thought in fact that consultation of the Committee was not obligatory with regard to implementing directives and regulations, especially when a common market organization was being planned (2).

Nevertheless, the ESC members' wish to be consulted on issues which they considered to be of prime importance (2) caused its Chairman, Mr ROCHE, to comply with the request of the Chairman of the Specialized Section for Agriculture and suggest to the Commission that the Committee and, through it, the Specialized Section for Agriculture, be asked to compile "information" reports on measures to be taken in application of the Mansholt proposals. Article 47 of the EEC Treaty should act as the legal basis for these reports, it was suggested (3).

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- (1) BERNARD, LAVAL, NYS (op. cit., p. 5, footnote 2), pp. 144 to 146.
 - (2) BERNARD, LAVAL, NYS (idem), pp. 144 to 146.
 - (3) BERNARD, LAVAL, NYS (idem), pp. 144 to 146.

The Commission was willing to accede to this request, especially as Mr MANSHOLT himself regretted that the Treaty failed to deal with the role to be played by the ESC when the time came to put the common agricultural policy into practice, since the Committee was not formally obliged to voice its views on the relevant regulations and directives and on the actual content of measures to be taken (1).

It was therefore proposed that documents implementing the CAP should be sent to the Specialized Section for Agriculture for its information. The Section would then be able to discuss these documents and set out its ideas in a report, which - however - would clearly not have the same status as an Opinion (2).

It must be stated in conclusion that this procedure - which was not intended to be used for matters on which the Committee was to be, or might be, formally requested for an Opinion - was chiefly designed to allow the ESC to voice its views in fields where the Executives had not felt obliged to request the Committee for an Opinion. Its main effect was to oblige the institutions to keep the Committee informed - at the Committee's request or "initiative" - about subjects which they (the institutions) had discussed and which the ESC judged to be vital.

(1) Doc. CES 182/61 pd.

(2) However, in compliance with Article 197 of the EEC Treaty which stipulated that a Section may not be consulted independently of the Committee, Chairman ROCHE felt that "the information supplied to the Section should pass through the hands of the Bureau and should be divulged at the Plenary Session" (see 18th Plenary Session of 15.12.61, Doc. R/CES 232/61, on this point) and Memo from the Chairman, Mr ROSENBERG, to the members of the Bureau at that time.

In practice, it was a way of allowing a Section to examine a specific dossier and produce a report on that subject for the Committee's members. The procedure consisted of presenting the Committee with the findings of some research without obliging it to decide either way on these findings (1). It should also be noted that the information reports always dealt with texts already drawn up and generally approved by the Commission (2).

3. Publication of Statements

Efforts to obtain a wider audience for the Committee were also made outside the confines of the 1958 and 1968 Rules of Procedure under which the Committee, as a Community body, was not allowed to make any political statements or deliberate without being consulted by the Councils or the Commissions (3).

For example, "the members of the ESC" condemned the collapse of the UK entry negotiations on 30 January 1963 (3).

The Committee was meeting in Plenary Session at the moment the Community broke off the negotiations. After some bargaining, it was unanimously agreed at the instigation

(1) This has always been the ESC Bureau's interpretation - see the 172nd meeting of the Bureau of the ESC (special meeting) held on 27 April 1976 (Doc. R/CES 491/76) on this point.

(2) Mr DE BIEVRE (op. cit., p. 11, footnote 1).

(3) Gerda ZELLENTIN (op. cit., p. 5, footnote 1), p. 129.

of the Committee's Chairman not to continue deliberating this question in public. It was thus via the Groups, which discussed the Community's action, that the views of the Committee's members were made known (1).

In much the same context was the statement made in 1963 by the then Chairman, Mr ROCHE, approving Lord GLADWYN's plan for a united Europe (2).

As a final noteworthy example, it is possible to single out the attitude of the ESC's members to the collapse of the Communities' talks in June 1965 on plans for agriculture. This collapse occurred just after all the Committee's members - bar one, who had abstained - had voted in favour of the Commission's plan for financing agricultural policy and extending the powers of the Parliament.

Following a statement by the Commission's President, the Committee - instead of voting on a motion which struck an aggressive note towards the Council and more especially the stand taken by one of the Member States - had "the intelligence (3) to refer the task of commenting on the Commission President's declaration to each of its Groups". The declaration made in support of the Commission was presented in such a way that, as in the case of the two other examples above, "it was impossible to say that the Committee, acting within the framework of its Rules of Procedure and within the confines imposed by the Treaties, had overstepped its terms of reference" (3).

(1) J. GENTON (op. cit., p. 3, footnote 1), p. 48.

(2) Bulletin of the ESC No. 1/1963, p. 86 - quoted by J. GENTON.

(3) J. GENTON (op. cit., p. 1, footnote 1), p. 48.

Thus, the ESC, acting through and at the initiative of the socio-economic forces gathered together in its midst, was able to take a stand on several political issues of topical interest without contravening its Rules of Procedure.

4. The Delivery of Opinions at the Request of the Committee's Chairman

The ESC also managed, without amending its Rules of Procedure, to be consulted on matters which were of such topical interest that it could not afford to overlook them. Thus, thanks to action taken by its Bureau and, in particular, its Chairmen - who persuaded the Councils and Commissions to consult the Committee where there was no obligation to do so - the ESC was in fact granted a right of initiative in a disguised form (1), as borne out by the substantial increase in the fields in which it was called to state its views.

At the beginning, it was chiefly a question of getting the consulting Institutions to include the ESC's programme of activities on the agendas for their meetings (DE STAERCKE) (2) or asking for the Committee to be supplied with a rough list of the questions on which the consulting Institutions were planning to request the Committee for Opinions (E. ROCHE) (3).

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- (1) J. GENTON (op. cit., p.1, footnote 1), p. 47; see also on this point Fritz FISCHER "Die Institutionalisierte Vertretung der Verbände in der Europäischen Wirtschaftsgemeinschaft", p. 123, "Veröffentlichungen des Instituts für internationales Recht der Universität Kiel" - Hansischer Gildenverlag, Hamburg 1965.
 - (2) Meeting of the Bureau of the ESC of 29 January 1959, Doc. R/CES 5/59.
 - (3) Letter from Mr E. ROCHE to the President of the Councils of the European Communities of 30 October 1963, ref. 2193/63.

At his press conference on 19 October 1962, Mr ROCHE stated that he had insisted that the ESC should be consulted "at the appropriate juncture and in good time on other major topics concerning the future of the Communities" (1).

Later, Mr ROCHE declared at the Plenary Session of November 1962 that the ESC should be consulted above all on the general lines of action which the Community authorities considered taking.

Similarly, in December 1965 the ESC Chairman, Mr Piero GIUSTINIANI, indicated to the then President of the EEC Commission, Mr HALLSTEIN, the matters on which the Committee could be consulted, with a view to preparing a properly structured programme of work.

Faced with the problem of the Committee's practical activity in the medium term, the EEC Commission could not refuse this request. On 27 January 1966 Mr GIUSTINIANI read out to the full Committee a letter from Mr HALLSTEIN stating that the ESC would be consulted on matters which were of prime importance (2).

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- (1) Topics such as : the Common Energy Policy; relations with overseas countries; the common policy in all its ramifications (particularly the negotiations with Britain); the Euratom research and teaching programme; and the measures to implement the policies on agriculture, transport, freedom of establishment, and rules on competition.
 - (2) See : Mr Italo MINUNNI "Why a New Lease of Life for the ESC" in "24 Ore" of 8 February 1966 - ESC Selected Documents and Articles No. 6/66 p.3. Matters such as : business concentration; the setting up of European companies progress in vocational training in agriculture; Community programmes in agriculture; the application of rules on competition; and the development of the common commercial policy.

From this description of the legal paths offered to the ESC by its Rules of Procedure and how they were used to give the Committee a certain right to act on its own initiative, it seems one can conclude that the Committee has succeeded in extending its activities to a certain extent beyond the limits initially imposed by the authors of the Treaty of Rome.

Nevertheless, it would be overlooking some of the truth if we did not study the real scope of such action since in the absence of a right to act on its own initiative recognized by the basic texts, the ESC was dependent on special authorization from the Institutions concerned each time it wanted to be consulted.

B. THE SCOPE OF THE ESC'S ACTIONS

From 1958 to 1972 the ESC had no right to act on its own initiative and was basically an advisory body. Its terms of reference and operations were closely circumscribed by the Treaties of Rome and by its own Rules of Procedure (1).

Even the most basic attempts to free the Committee from the constraints imposed by its basic texts ran into two obstacles : (i) the limits imposed on the choice of topics on which the ESC could state its views, and (ii) the rules governing the moment when the ESC could make its points.

Now it is easy to imagine that the degree of greater or lesser freedom in choosing topics on which to express a position and the time when this can be done may constitute a vital factor in evaluating the real impact of any action. In the Committee's case, the developments which follow show quite adequately that the attempts made by the ESC to widen its role were restricted by the very small degree of freedom it had on these two points.

1. The Limits on Choice of Topics

Article 198(1) of the EEC Treaty (together with Article 170(1) of the Euratom Treaty), which states that "The Committee must be consulted by the Council or by the Commission where this Treaty so provides", lays down that the Committee must be asked for an opinion in certain fields. These fields cover matters which are of great importance to the Communities, such as for the EEC :

(1) Rules which it still does not control. Article 196(1) of EEC Treaty and Article 168(1) of Euratom Treaty.

- the common agricultural policy (Article 43);
- freedom of movement for workers (Article 49);
- freedom of establishment (Article 54(1) and (2));
- freedom to provide services (Article 63(1) and (2));
- transport policy (Article 75(1) and Article 79(3));
- the approximation of laws (Article 100);
- social policy (Articles 118 and 121);
- The European Social Fund (Articles 126 and 127);
- and finally, the common vocational training policy (Article 128);

and for EURATOM :

- schools (Article 9);
- health protection (Articles 31 and 32);
- investment programmes (Articles 40 and 41); and
- the common nuclear energy market (Articles 96 and 98).

But as a logical consequence of the absence of the Committee's right to act on its own initiative, provision was also made for the ESC to be consulted by the Community institutions "in all cases in which they consider it appropriate" (Article 198(1) of EEC Treaty and Article 170(1) of EURATOM Treaty).

The basic texts therefore make a fundamental distinction between mandatory and optional consultation of the ESC when listing topics likely to be the object of Committee work. This situation must be interpreted as the first brake on the ESC's power to act fully as an advisory body, inasmuch as its members were not systematically asked for an Opinion on all matters concerned the Communities.

The very nature of the Committee's make-up makes it a privileged forum for getting to know the views of most of the socio-economic forces in the Communities.

As far as optional consultations are concerned, it is worth noting that almost all of these have come from the Commission, an institution which is quite favourably disposed towards the ESC. However, the Commission could take the view that it was not necessary to consult the Committee voluntarily. It could also consider that there was no need to refer a measure a second time to the Committee, in order to ascertain its views on measures to be applied in individual sectors, when it had already adopted a position on general principles.

But in practice the distinction between the two types of consultation possible under the terms of the Treaties takes a different form, namely a difference between consultation of a general nature and consultations of a technical nature.

In the beginning, Community regulations tended to cover individual sectors or technical fields, due mainly to the need to adopt a step-by-step approach to arrive at a co-ordination of national policies and, later, at an alignment of laws. This led to a result which was not intended by the authors of the Treaties because, since the ESC had to be consulted on general and important matters, it was also consulted in the same areas on matters which were essentially technical - and such consultations have turned out to be the most frequent.

As we have already pointed out, the ESC, whose basic role is to mirror the reactions of social and occupational groups to the Community's economic and social policies, and not express criticism of a technical nature, should have given priority to discussing general topics which were of concern to its members (1). But, in fact, it was these very topics, which tended generally to qualify for an optional consultation, that systematically were least accessible to Committee members and came up for discussion the least frequently. Apart from the difficulties members had to express their views on matters which were of concern to them, this had a more political effect. It was almost impossible for the ESC to work out for itself its own overall view of things, and adopt an overall attitude towards the Communities' economic and social policy. Most of the positions adopted by the ESC concerned papers and considerations that were basically technical and were submitted to it by the Commission or the Council (2). Those Opinions, and they were few, in which the Committee did propose a more elaborate strategy in certain areas of economic and social policy, had already been the subject of practical and technical consultations which called for the respect of previously defined fragmentary guidelines.

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- (1) Proposals and suggestions for strengthening the powers, terms of reference, influence and effectiveness of the ESC and its Groups, made by the three Group Chairmen and submitted for the consideration of the ESC Bureau's select working party on 10 June 1971, CD 35/71 p. 2.
- (2) Gerda ZELLENTIN (op. cit. p.5, note 1), p. 40.

One can conclude, therefore, that without the freedom to choose where to intervene (1), the Committee's basic ideas, on which its Opinions were founded, were determined not by means of a coherent programme of reflection on issues that were felt to be most important (2), but by the "chance" of consultation and the good will of the bodies referring matters to the ESC or authorizing it to take them up.

As a rider to the remark made above on the advisory nature of the ESC, it has been said that the Committee's Opinions should not be limited to formal amendments of the texts submitted to it but should also - and above all - contain the ideas and the clear and specific comments of members (3).

In other words, this means that it was necessary for more of the topics referred to the ESC to be such as to capture the interest of the top representatives of economic and social life in the Member States and be sufficiently topical to enable members to feel more closely involved in Community policy-making and thus strengthen the role of the Committee.

As long as the Committee did not have the freedom to choose where it wanted to act, the members, who were important representatives of the main economic and social sectors in the different Member States, did not feel they were able - indeed they were not able - to use the ESC as a means for

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- (1) One important exception being the ESC Opinion on the Memorandum of the Commission of the EEC of 29 May 1963 on the Programme for Community Action during the Second Stage - OJ No. 189/63 p. 3013 et seq.
 - (2) Gerda ZELLENTIN (op. cit. p.5, note 1), p.40.
 - (3) Proposals and suggestions of the three Group Chairmen in 1971 (op. cit. p.23, note 2).

intervening in Community decision-making as effectively as they were able to do at national level. The members therefore, and their organizations or national sectors of activity, became to some extent disenchanted with the Committee, and sought other channels for action.

2. The Limits on the Moment of Intervention

In the original framework for Community decision-making resulting from the Treaties of Rome, the ESC was "the only possible and legal way, at the stage when Council decisions were taken, of sounding out the opinions of professional organizations" (1).

Moreover, to enable the ESC to carry out its advisory role correctly, it could not be sufficient merely to consult it, even if this were done frequently; the Committee had to be able to make its contribution under good conditions, that is to say at an appropriate moment, before a decision was taken. It was also vital for it to be given adequate time for its studies and deliberations (2).

During the years 1958-1972 what happened in practice was that when the ESC had to deliver an Opinion following a mandatory or optional consultation it had to deliberate on texts which had already been drawn up by the consulting institution, since it had no right to act on its own initiative (3).

(1) J. GENTON (op. cit. p. 3, note 1), p.10.

(2) Jean MEYNAUD, ~~Dusan~~ SIDJANSKI "Les groupes de pression dans la Communauté européenne de 1958 à 1968", Institut d'Etudes européennes ULB Bruxelles Collection Thèse et travaux politiques. Editions de l'Institut de Sociologie 1971, p.600. See also J. GENTON (op. cit. p.3, note 1)

(3) J. GENTON (op. cit. p.3, note 1), p.15.

In other words, the institution asked the ESC for an Opinion on a text that had already been adopted in the sense that it was the result of an initial process of "consultation-drafting-approval." The text might be a draft proposal, but it was no longer a rough outline. It had already embodied choices, it formulated proposals, made observations, set down guidelines for any debates by approaching an issue from a certain angle. What is more, the Council consulted the ESC when it wanted to take a decision fairly rapidly on a text (1).

Now, it is quite obvious that if economic and social groups are to be involved in decision-making they should be brought in at the stage when the overall policy to be applied to an economic or social issue is being formulated. Intervention by the Committee at this stage would enable it to influence the approach towards solving a problem in the light of the ideas of its members. So the economic and social groups have to be able to make their contribution before choices are made and decisions taken. When the Committee was brought in after the stage when proposals were drawn up and (or) when various pressures had had time to do their work, (advisory committees, experts, direct contact with the Commission), then "intervention became more formal than real and participation was an illusion" (2).

(1) ESC Activity Report for 1961, Doc. R/CES 55/62 p. 5.

(2) J. GENTON (op.cit. p.1, note 1), p. 34.

When the Commission was the consulting institution and it had not yet submitted its text to the Council, it could still make changes to take account of the suggestions made to it.

But if the Council was consulting the ESC, then the procedure became more complex. Generally speaking, the Council decides "on a proposal from the Commission". So, as long as the Commission had not declared its proposal to be definitive the Council could refer the text back to it for the Committee's suggestions to be taken into consideration (1). But if this were not the case, then under Article 149(1) of the EEC Treaty and Article 119(1) of the Euratom Treaty the Council had to decide unanimously to amend the Commission's proposal.

Such a procedure would certainly slow down the decision-making process and consequently hamper the Committee's work being taken into consideration (2).

So in practice the ESC's Opinions often suffered from the same fate as that which sometimes happened to the European Parliament's Opinions and which Mr H. FURLER denounced in a report drawn up for the Political Committee on the powers and terms of reference of the European Parliament :

"What does give cause for concern is that the permanent representatives and the Commission get together to discuss proposed regulations while the consultation procedure is still going on.

(1) J. GENTON (op.cit. p. 3, note 1), p. 9 pointed out here that "the Council does not itself correct the document".

(2) J. GENTON, (idem) p. 9.

(3) BERNARD, LAVAL, NYS (op.cit. p. 5, note 2), p. 148.

Sometimes - and the case has already arisen - they even go so far as to agree on changes to proposals, so that the Parliament is busy deliberating on a text which is no longer up to date" (1).

This could be partially due to the fact that in practice, even if requests for an opinion were sent by the institutions, "the departmental structure was such that very often it was the officials who set deadlines which did not always take into account all the aspects of the problems envisaged" nor of the long and delicate nature of the work involved in drafting an Opinion (2). Very often, the procedure for getting work under way did not enable certain opinions to be completed within the deadline set, so that many opinions were approved by the ESC Plenary Assembly after the Commission or the Council had reached a decision. In other words, the Committee's influence on the final decision was nil (3).

Thus in practice the Committee has only been consulted during the second stage of drawing up texts, after the basic choices had been made - despite the fact that the ESC, as a Community body, was a direct access to the centre of decision-taking (4).

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- (1) Report of Mr H. FURLER, E.P. working document 1963-1964, 14 June 1963, Doc. No. 31, p. 15, ss 68.
 - (2) Presentation of the ESC's Activity Report for 1961 by the ESC Secretary-General Doc. R/CES 55/62.
 - (3) Proposals of the three Group Chairmen of 1971 (op.cit. p. 23, note 2).
 - (4) MEYNAUD, SIDJANSKI (op.cit. p. 25, note 2), pp. 488 - 489.

3. Inadequacy of the Types of Document with respect to which the Committee had a Certain Right of Initiative

With respect to the scope of the methods used to mitigate the absence of a right of initiative, it must be pointed out that : all "ESC documents" which express its official views and are drawn up under its responsibility, must be approved by a vote of the full Committee. In other words, it must be possible to hold a general discussion of such documents at a Plenary Session, and Committee members must be able to amend them (1).

a) Information Reports

The Rules of Procedure (2) specify that information reports are Section documents, not Committee documents. Consequently, they do not bind the Committee. Information reports can be submitted to the Committee by a Rapporteur and give rise to a general discussion, but by the Plenary Session and therefore cannot be amended by Committee members (3). As a result, information reports do not have the same status as Opinions - not even formally (4) (5).

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- (1) Draft report by Mr MAMERT, Rapporteur for proposals to change the ESC Rules of Procedure. 31 October 1972, Doc. CES 336/72 rev. 2, p. 34. See also Article 39 (4th, 5th and 6th paragraphs) of Rules of Procedure of 1974.
 - (2) RP of 1958, Article 18(2). RP of 1969, Article 24. RP of 1974, Article 24.
 - (3) Draft Report of Mr MAMERT (idem), p. 36
 - (4) See 113th Plenary Session of 26/27 September 1973, Doc. CES 699/73, point XVII
 - (5) It has, however, been accepted that the Plenary Session can, by a procedural vote which does not prejudice any agreement on the substance, decide to forward an information report to the Institutions.

Information reports thus enabled the ESC to broaden its terms of reference. But they did not formally or legally increase its freedom, for they do not express an official Committee stand on a matter which it had selected. They do not allow the Committee to take up an issue on its own initiative, and decide how to tackle that issue, for they concern documents drawn up (and generally approved) by the Commission.

By reason of their legal character as a document of a Committee Section, information reports have no place in the Community decision-making process (1). They consequently cannot be compared with Opinions, and do not enable the Committee to intervene in the consultative phase of Community decision-making.

Although information reports seemed to open up fairly large possibilities, in reality the scope given to the Committee to follow up matters referred to it was unsatisfactory. "A more hostile policy on the part of the Commission could have prevented the Committee, or its Section for Agriculture, from dealing with major aspects of the CAP".

(1) Article 197(3) of EEC Treaty and Article 169(2) of EAEC Treaty : "These specialized sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee".

(2) BERNARD, LAVAL, NYS (op. cit., p. 5, note 2), p. 145.

In short, information reports did not increase the ESC's freedom because each information by the Council or the Commission depended on the latter's agreement or sympathetic attitude.

b) Studies

Similarly, Studies depended on the agreement of the Institutions. Furthermore, they were drawn up in advance of consultation on a particular issue (1). If they did not concern a matter which had to be referred to the Committee, the decision whether to refer that matter to the Committee was the prerogative of the Executives.

If the Study procedure was to be properly used, they could not be of an academic or "scientific research" nature. In other words, they should be confined to matters of immediate interest to the Institutions because they were not "Committee documents" in the strict sense and, whatever the validity of their arguments, were not backed up by an official document. It was therefore necessary to base studies on documents furnished by the Institutions (1).

The upshot is that Studies, like information reports, did not offset the ESC's lack of a right of initiative.

(1) Draft Report by Mr MAMERT, 31 October 1972 (op. cit., p. 29, note 1), p. 35.

c) Requests that Specific Issues be referred to the Committee for an Opinion

Thanks to the initiatives taken by its Chairmen, the Committee obtained certain results by asking for referrals. However, while the Institutions agreed to refer implementing provisions relating to spheres where the Institutions are required to consult the Committee on instruments laying down general principles, they were more reluctant to do so with respect to other areas; they hesitated and generally preferred, as we have just seen, the inadequate procedure of information reports (1).

The Committee was still in a dependent position, for it had to request the Council or the Commission for authorization to produce an Opinion. This dependence could only be eliminated by institutionalizing the ESC freedom of action, i.e. by giving it a right of initiative (2).

d) Declarations

The Treaties do not empower the ESC to take a formal stand in the form of declarations. Although declarations have been made by individuals or groups represented on the ESC, these do not have the status of ESC Opinions; this reduces their impact on Community activities.

(1) ESC Activity Report for 1961 (op. cit., p. 26, note 1), p. 23

(2) M.I. MINUNNI (op. cit., p. 18, note 2), p.4.

II. ATTEMPTS TO INTRODUCE A RIGHT OF INITIATIVE

The ESC thus tried to take the initiative to some extent, through the various instruments at its disposal, and to shake off the Treaty limitations to full exercise of its consultative role. At the same time, there were increasing demands for grant of the right of initiative.

Broadly speaking, the economic and social groups based their argument on the changes in Member State societies, research workers based their case on an evaluation of the Community's decision-making machinery, and the ESC constituent bodies referred to the practical difficulties hampering them in the discharge of their duties. But all parties developed their idea of the function which a consultative body should have. This led to the establishment of concrete proposals embodying the views of the various parties. This in turn led to a new attitude, given the facts of 1972, and opened the road towards the Paris Summit decision.

A. THE PARTISANS OF A RIGHT OF INITIATIVE

1. Economic and Social Groups

Initially, the pressure for a right of initiative did not always stem from an identical evaluation of economic and social needs. But the case for such a grant was nevertheless made out at a fairly early date.

As early as July 1962, for instance, Mr MASOIN (Group I - Employers) said it was essential that the ESC should have a right of initiative with respect to certain matters, and subject to certain conditions (1). In September 1962, Mr COOL (Group II - Workers) argued that it should be possible to grant powers not specifically forbidden by the Treaty (2).

In November 1963 (3), the three ESC groups consequently endorsed the proposal that the Committee should be able to make recommendations, which would then be submitted to the Councils and Commissions by its Chairman (4).

As pointed out by Mr GINGEMBRE (Group III - Various Interests), there were grounds for criticising the firm refusal of the consulting Institutions to grant the ESC any right of initiative, at a time when they were encouraging the proliferation of expert committees (5).

Despite this large measure of agreement among ESC members, the Council and certain Member States continued - for the same reasons as in the past - to reject any idea of an increase in the Committee's powers (6). To get round these objections, the ESC members changed their line of argument.

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- (1) Mr MASOIN's memo of 31 July 1962, Doc. CES 2/62; position of Group I set out in a document entitled "Views on Amendment of the RP", 19 September 1962, Gr. I CES 2/62
 - (2) First meeting of ad hoc working party on RP amendment (26 September 1962), Doc. R/CES 239/62
 - (3) See page 46, first amendment of RP
 - (4) Second meeting of ad hoc working party on RP amendment (15 and 16 November 1962), p. 19
 - (5) Idem., p. 21
 - (6) See Introduction, pp. 4 and 5.

It was in February 1963 that Mr DE BIEVRE (Group I - Employers) suggested taking a different tack. He suggested that no further reference should be made to an increase in ESC powers being necessary in itself. The case for a right of initiative should be based on economic facts, including the way in which economic and social issues should be tackled (1).

In 1964 (2), the Workers' Group stated that use should be made of EEC Article 198 and EAEC Article 170 which stipulated the matters that had to be referred to the ESC. The Group pointed out that the Treaties were outline instruments, and did not prohibit new measures to further their objectives. EEC Article 235 and EAEC Article 203 had been drawn up to allow such new measures.

In addition to the case for a right of initiative being set out in new terms, it was crucially bolstered by a new development, namely the changes in economic and social management within the Member States. This change was particularly marked in the countries which had previously been the most strongly opposed to granting a right of initiative.

(1) Second meeting (7/8 November 1963) of the Sub-Committee on the Action Programme Doc. CES 63/63

(2) Gerda ZELLENTIN (op. cit., p. 5, note 1), p. 109

(3) Article 235 of the EEC Treaty states

"If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Commission shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures".

As the DGB pointed out in February 1969 (1), "... As it becomes increasingly rationalized, economic policy is dropping the laissez-faire strategy of the post-war years, its decisions are being taken at other levels, and consultative bodies are being used". This meant that interests could be properly defended only if permanent, institutionalized contacts were established from the economic policy-making stage. In other words, the DGB considered that in the EEC context it was obviously necessary "... for workers and their unions to step up their influence in the ESC ...". But at the same time, it is necessary that lawmakers should, when draft laws are discussed, be aware of workers' views ...". This amounts to saying that, in the Communities, the ESC should have appropriate consultative powers including a right of initiative.

It was thus found that it was not just a matter of taking account, at the technical level, of an economic and social evolution. It was also necessary to resolve the economic and social problems created by economic and social policies. If such problems could not be resolved with the agreement of those concerned, then economic and social policies would not fulfill their objective (2).

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- (1) From "Welt der Arbeit", Journal No. 7 (14 February 1969) of the German DGB; ESC Selected Documents and Articles, No. 40/69
- (2) See M.L. ROSENBERG's Article in Europa-Archive No. 9, 1972. ESC Selected Documents and Articles, No. 44/72, p. 10.

To avoid decision-making machinery being blocked in this way, the need for the ESC to decide the timing and subject of its intervention had to be asserted more strongly. Accordingly, the three ESC Groups took a joint stand in June 1971 (1). This stand was reiterated at the 100th Plenary Session of the ESC (26/27 January 1972) (2).

The statement in question said that the Committee should be able, with the prior agreement of its Bureau, to initiate studies when draft documents were being drawn up by the Commission. Similarly, it was said that the ESC should be able to give priority to general issues exercising members (3).

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- (1) Proposals of three Group Chairmen, 1971 (op. cit., p. 23, note 2), p. 2
 - (2) See statements by Mr KUIPERS, Mr BRENNER and Mr GINGEMBRE at the ESC 100th Plenary Session of 26/27 January 1972, Doc. CES 52/72, Appendix 6
 - (3) This did not mean minimising discussion of draft regulations or directives of a much more technical nature.

2. Scientific Bodies and Leading Figures

Whatever the enthusiasm or lack of enthusiasm with which economic and social groups endorsed the Treaty of Rome, they did not intend to join a Europe organized in any way whatsoever. They considered that the representatives of the major economic and social groups should have their just place in the Community Institutions. The creation of Europe was to involve their increased participation in public life and ensure their liberty, right of initiative and influence (1).

The aim was thus to create an economic and social democracy, and establish the procedures it needed if it was to operate properly. Economic democracy, as Mr J. GENTON pointed out, means the participation of social and economic groups in decision-making (2).

To be effective, it was necessary to act before fundamental choices had been made, before a rigid context could enclose and limit the expression of the views of the economic and social groups (3).

(1) See M.E. ROCHE, "Une démocratie économique et sociale", in "Intérêts européens", No. 5, February 1964, p. 4.
ESC Selected Documents and Articles, No. 9/64, p. 5.

(2) See Mr J. GENTON (op. cit., p. 1, note 1), p. 33

(3) (Idem.), p. 34.

Now it was precisely the role of the ESC as a Community body to find out just where the views of the various interest groups represented on it differed most widely on any particular point. The next step was to agree on a compromise text which could be used by the Community Institutions as a basis for finding solutions to their problems. For this to happen, however, the ESC needed to be given the right of initiative. And only through the granting of the right of initiative would the interest groups have sufficient time to express their views on what they considered to be matters of priority (1).

This recognition of the right of initiative likewise presented the ESC with the best chance of giving a satisfactory, coherent reply to questions referred to it by the Institutions. With no such right it was hard for the ESC to adopt an overall line on economic and social policy since virtually all the matters on which it was consulted by the Institutions were technical or sectoral in kind (2).

In other words, here was a Community body shorn of the means needed to fully carry out all its duties. As a general rule (3), "an Institution does not find its *raison d'être* in some social function or in some ideology underlying

(1) See J. GENTON (op. cit., p.1, footnote 1), p. 46

(2) See Gerda ZELLENTIN (op. cit., p. 5, footnote 1), pp. 127-128

(3) Wilhelm KENNIS "Politics and Practical Philosophy", quoted by Norbert KOHHASE in his work "The New Notabilities - The Tasks of the ESC of the EC", Bulletin of the EC, No. 5/1965 - Selected Documents and Articles of the ESC, No. 29/1965.

this social function; an Institution derives its justification from the certainty of being able to carry out a political task stemming from the very nature of all organized "public life", i.e. to give shape to life in society ..." for the common good.

A large number of sectoral interests were represented on the ESC, but when the Committee discussed a matter and expressed its views thereon in an Opinion, the general purpose and aims of the European Communities were predominant. The general conclusions of Opinions were not the outcome of coercive action but plausible attempts to come as close as possible to what constituted the "common good" (1).

In requesting that the ESC be given the right of initiative, it was therefore not a question of "launching an all-out attack on the rules of the Treaties" (2) but of making it possible for the Committee to become an open forum where economic and social interest groups could give voice to their concerns.

According to a number of studies (3) such a reform was all the more necessary because of the blatant inequalities in the ability - and hence influence - of the economic and social interest groups to gain admission to the decision-making centres. Between 1961 and 1966 representatives of "various interests groups" and "wage-earners" did not have - outside the ESC - the stable and representative springboard for inter-occupational consultations needed to make their voices heard clearly by the Institutions. This was not the case with representatives of employers, however, who were organized from very early on.

(1) See W. HENNIS (op. cit., p. 39, footnote 3).

(2) Mr Italo MINUNNI (op. cit., p. 18 footnote 2), p. 4.

(3) See L. MEGRET, J.V. LOUIS, D. VIGNES, M. WAELBROEK, "EEC Law", Vol. 7, pp. 107 and 108, Brussels 1973. See also J. MEYNAUD, S. SIDJANSKI (op. cit., p. 25, footnote 2), p. 560.

For the trade unions, for example, the important thing was to create proper European structures so that economic and social policy could be properly influenced at Community level. In this context an ESC with the right of initiative could have helped to make trade union action at Community level more coherent. Judging from the experience gained in the consultative committees of one specific sector (the organization of agricultural markets), the trade unions had much to gain from belonging to a body that was able to express its views on the major economic and social issues of European integration (1). This was all the more so because, as a collective body, the ESC represented many different trades (2) and so was able to discern the economic and social realities of the Communities much better than consultative committees comprising representatives from just one sector of the economy.

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- (1) Thus there could well have been a certain amount of pressure to swiftly bring into existence genuine trade union structures at European level. See here MEYNAUD, SIDJANSKI (op. cit., p. 25, footnote 2), p. 660.
- (2) BERNARD, LAVAL, NYS (op. cit., p. 5, footnote 2), p. 197.

3. Bureau of the ESC and Chairmen

In 1962 the Chairman of the ESC, Emile ROCHE, laid particular emphasis on the need for "economic democracy", a concept he undoubtedly considered fundamental to the Committee's work.

A great responsibility lay on the shoulders of the ESC in the early sixties before there had been the political follow-up for which some provision was made in the Treaties needed to provide the Communities with a vital democratic counterweight to the power of the Commission-Council tandem, both Institutions of complex legal origin. After all, the duty and purpose of the ESC was to be one of the active elements in the fabric of economic democracy (1). Although Mr E. ROCHE felt that "the authorities responsible had never hesitated to consult the ESC on all basic problems relating to implementation of the Treaties", this was no substitute for freedom to act on own initiative - the freedom most likely to guarantee the vital independence of the ESC within the framework of economic democracy (1).

It is not surprising therefore that at a press conference held in October 1962 (2) E. ROCHE argued in favour of full recognition of the right of initiative for the ESC. Drawing attention to the spirit of the Treaties and to the manner in which they could be interpreted - both of which held out hope that the ESC could tackle subjects not entirely technical in character - Mr ROCHE stressed that the Committee could not properly fulfil its function if it restricted itself to certain specific subjects.

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- (1) See Declaration made by Mr E. ROCHE on his election as Chairman of the ESC at the 22nd Plenary Session of 4 May 1962, Doc. CES 129/62, Appendix 4, p. 6.
 - (2) Press conference following an official visit paid to the Italian Government on 19 October 1962, quoted by ZELLENTIN (op. cit., p. 5, footnote 1), p. 109.

This necessitated a new approach to the formulation of arguments intended to secure changes to the Rules of Procedure - changes likely to meet the wishes of the many members of the Committee who had insistently urged that the ESC be given the right of initiative (1).

Referring by analogy to the powers conferred on other Institutions with a consultative function in the various Member States of the Community (2), several members of the ESC thought that it was about time the Committee be given the same rights (3). In 1962 members of the Committee advocated that the Chairman be given the right to convene a meeting of the whole Committee or of specialized sections, without the Committee having to be consulted beforehand by the Council or the Commission.

(1) Memo submitted by Mr Guy VANHAEVERBEKE for the attention of the Secretary-General of the ESC on 18 October 1962.

(2) Belgium (CEC and NLC): Article 3 of the Standing Orders of the Central Economic Council - Article 1 of the Organic Law of the National Labour Council

France (FESC) Article 3 of the constitution of the Economic and Social Council - Article 28 of the Rules of Procedure of the FESC

Italy (CNEL) Article 12 of Law No 33 of 5 January 1957

Netherlands (SER): Article 41 of the Industrial Organization Act of the Netherlands

Luxembourg (LESC): Compendium of legislation on the Economic and Social Council (Article 2(1) - Articles 27 and 34 of the Rules of Procedure of the ESC)

ECSC: Article 6 of the Rules of Procedure of the ECSC's Consultative Committee - see R/CES 374/71

For Denmark (EC), Great Britain (NEDC), Ireland (NESC) see R/CES 124/77 "The Consultation Machinery of the Community"

(3) Draft report of the "ad-hoc" Group set up to revise the Rules of Procedure - R/CES 275/62 of 5 November 1962

Following the presentation of the Commission memorandum on the Community's Action Programme, this attitude remained the predominant one during the second phase. All the members of the ESC were aware of the fact that in examining economic problems they were at the same time confronted by questions of economic and political democracy. Despite the divergences in their interests and political convictions they agreed to give thought to the role of the Institutions, and particularly that of the ESC, in the decision-making process (1).

It should be mentioned here that the Commission submitted its Memorandum (2) on 26 October 1962, although the Committee had already taken cognizance of this document earlier and had contemplated the idea of allowing each of its specialized sections to draw up a report on the subjects dealt with therein (3). A little later, on 28 November 1962, the President of the Commission, W. HALLSTEIN, made a statement on the Memorandum before the ESC, saying that "the Commission was most interested in the reaction of the ESC and would pay serious attention to whatever the Committee thought worthy of bringing to its notice" (4).

Under Article 17 of the Rules of Procedure a sub-committee was set up to work on this "reaction". At the various meetings of the sub-committee the idea became firmly established that this so-called economic integration was essentially a political phenomenon and that political integration had already begun with the gradual realization of the Economic Community (5).

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- (1) See Doc. CES 35/63, p. 3; Doc. CES 63/63, p. 7 et. seq. and Doc. CES 126/63, p. 4.
 - (2) Commission Memorandum of 24 October 1962, Doc. COM(62) 300.
 - (3) See E. ROCHE, meeting of the Bureau of 29 October 1962, Doc. R/CES 270/62 Appendix.
 - (4) Doc. CES 325/62 Appendix 1.
 - (5) Working document of the Sub-Committee on the Action Programme (Doc. CES 35/63 of 23 January 1963).

In consequence, most of the members drew attention during discussion of the Commission Memorandum to the institutional problems posed by the implementation of the Action Programme. They stressed in particular the need for the Community to become more democratic, e.g. by conferring on the Committee the right of initiative, and so consolidating its authority.(1).

Once more it was a question of giving the representatives of the major economic and social forces their proper place within the new equilibrium - no more no less,

Although the efforts made between 1961 and 1963 were crowned with success only in 1972 - the year the ESC was finally given the right of initiative - this did not mean that they had been entirely in vain in the meantime. First of all they had led to the Institutions adopting a new approach to the work and importance of the role of the ESC. Secondly they had also taken the form of a series of concrete proposals on amendments to the Rules of Procedure and these had paved the way for the 1972 solution.

(1) Opinion of the ESC on 29 May 1963, OJ of the EC of 29 December 1963 No 189/63.

B. CONCRETE TEXTUAL PROPOSALS

We shall first of all examine the two procedures adopted for the revision of the Rules of Procedure (1), with particular reference to the attempts made to institute a right of initiative. We shall then examine the action taken by the Chairman of the Committee, Mr KUIPERS, between 1970 and 1972 in conjunction with the work of the Committee and its "ad hoc" working group responsible for carrying out the second revision of the Rules of Procedure (2).

1. First Revision of the Rules of Procedure (1961-1968)

At the request of various members, a Study Group was set up in November 1961 with the task of undertaking a preliminary draft revision of the Committee's Rules of Procedure (3). Three types of suggestions emerged from this preliminary draft revision, (a) those relating to matters of form only, e.g. the actual drafting of ESC documents, (b) those concerning the work of the Committee and its Sections, and (c) those relating to more crucial matters such as the position of the Committee in the Community's institutional machinery and, in particular, freedom of initiative(4).

It was then decided on the basis of Article 54 of the Rules of Procedure of 1958 to set up an "ad hoc" working party of 15 members with Mr SERWY as Rapporteur and with, as general terms of reference, preparatory work for a revision of the Rules of Procedure.

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- (1) Article 54 of the Rules of Procedure of 1958 and Article 61 of the Rules of Procedure of 1968.
 - (2) Which will then take the name of the "Rules of Procedure Committee".
 - (3) Memo of 13 November 1961.
 - (4) 23rd Plenary Session of 16/17 July 1962 (CES 202/62).

The Committee was all the more favourably disposed to such action because, as we have already shown (1), it had become familiar with the possibilities offered to other consultative institutions in various Member States.

The idea emerged from discussions held at the time that in view of opposition from the Council and a number of Member States the best solution would be to introduce the concept of the right of initiative into those passages dealing with the powers of the Chairman. What was needed was to confer on the Chairman of the Committee the right to convene a meeting of the Committee or of its specialised sections without the need for prior consultation by the Institutions (2).

This approach stemmed from the fact that a number of members, although aware of the advantages to be gained from giving the ESC the right of initiative, considered that this would only be legally possible if the Articles of the Treaties relating to the Committee were revised.

A private exchange of views also took place between representatives of the legal departments of the Council and the Commission on the one hand and Mr MASOIN and Mr SERWY, Chairman and Rapporteur of the "ad hoc" group on the other. The outcome of these talks was that an amendment of the Rules of Procedure was not opportune for the following three reasons (3).

(1) See page 43

(2) Doc. 275/62 of 5 November 1962

(3) See Memo of 18 October 1962 from Mr Guy VANHAEVERBEKE to the Secretary-General of the ESC.

From a legal point of view it was still held that the provisions of the Treaties offered no basis for conferring the right of initiative on the ESC. From a political point of view the Institutions (and particularly the Council) did not seem to be inclined to officially accept an expansion of the Committee's terms of reference.

Finally, as far as current reality was concerned, it was pointed out that the attitudes of the various Councils and Commissions were sufficiently flexible to offer hope of an increase in the Committee's freedom of action some time in the future.

Four possibilities were entertained at the second meeting of the "ad hoc" working group, namely :

- to intensify the practice of requesting the Committee to deliver Opinions;
- to reinforce the above practice by inserting an appropriate provision in the Rules of Procedure;
- to give the Committee permission (provided a fixed majority of votes were obtained) to invite the Institutions to refer matters to it;
- to obtain full recognition of the right of initiative for the ESC (1).

After the various options had been weighed up and the fears of the ESC taken into consideration, a compromise solution was worked out. This was based on the ways in which successive Committee Chairmen had actually tackled the matter in the past.

(1) Second meeting of the "ad hoc" working group of 15-16 November 1962 - R/CES 291/62.

In the course of his duties the Chairman had regular contacts with the Councils and the Commissions. It was therefore suggested that he be given the task of putting the Committee's case to these Institutions. (1)

The only bone of contention was whether or not it was necessary to specify a qualified majority for setting the initiative procedure in motion. (2)

This prominent issue faded into the background, particularly when a legal expert at the Commission stated (3) that in strict law, any move to grant the Committee a right of initiative would be repugnant to Articles 196 (third paragraph) and 198 (first paragraph) of the EEC Treaty and to Articles 168 (third paragraph) and 170 (first paragraph) of the EAEC Treaty.

The Chairman of the ad hoc Group was afraid that the institutions would veto any over-ambitious proposals and this additional legal barrier induced him to state that "there was nothing to prevent the Committee from appointing the Chairman as its spokesman and he would moreover be obliged to apprise the Councils and the Commissions of the Committee's views" (4). The Committee endorsed this formula. (5)

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- (1) Addendum to the draft SERWY Report dated 5 September 1962 (Doc. R/CES 275/62)
 - (2) Doc. R/CES 6/63 of 20 and 21 December 1962
 - (3) In this connection see draft SERWY Report (Doc. R/CES 261/63 of 1 July 1963)
 - (4) Cf SERWY Report (Doc. CES 261/63 of 2 September 1963)
 - (5) 36th Plenary Session held on 28 and 29 April 1964 (Doc. CES 252/63 fin.)

This compromise did not go much further than similar moves when the first version of the Rules of Procedure was being drafted. (1)

Moreover, despite the shift in attitudes to the role of consultation in the Community economic and social decision-making process, it was by no means certain that this proposal would win the support of the "powers that be". Mr E. ROCHE, Committee Chairman, had to inform the President of the Commission, Mr W. HALLSTEIN that, in the interests of conciliation, the Committee had decided to drop its demands for a fully-fledged right of initiative. (2)

Although some Member States were in favour of giving the economic and social interest groups a bigger say, others expressed serious misgivings on the grounds that they were afraid of exceeding the provisions of the Treaty. (3)

The Councils endorsed these fears and finally dismissed the ESC proposals. They agreed only to record in the minutes that "the Councils note the Economic and Social Committee's intention to submit to them, where appropriate, requests to be consulted on specific issues. The Councils will continue to examine favourably any suggestions submitted to them." (4)

(1) Cf Pages 8 and 9 above

(2) Letter dated 15 May 1964 from Mr E. ROCHE to Mr Walter HALLSTEIN, President of the Commission of the European Economic Community

(3) Extract from Agence Europe of 19 December 1964

(4) Memo from the Council Secretary-General dated 28 April 1965.

This statement sparked off a succession of bitter exchanges and Mr SERWY declared that "the Council's attitude was a blow to the hopes of the representatives of economic and social activity who by their work within the Committee had always demonstrated their desire to play their part in the European venture. The Councils' attitude would give the impression that political forces were opposed to regular institutional involvement of the economic and social interest groups in the Community's work"(1).

Mr SERWY also stated that "unless they were properly involved in the Community's work on a regular basis, the economic and social interest groups might well be tempted to resort to other methods", particularly in view of the fact that under the ESC's extremely modest proposals, "the Executive bodies retained the final say in any decision to consult the Committee."

Subsequently, on 10 October ESC spokesmen had talks with delegations from both the Councils and the Commissions. At this meeting, Mr MAJOR, ESC Chairman, stressed that when working out the role of the Committee, it was completely illogical to ignore powers enjoyed by its national counterparts (2). He felt moreover that there was some misunderstanding about the scope of the right of initiative requested by the Committee. The Committee's Bureau could give favourable consideration to a revamped proposal stipulating that :

(1) Mr SERWY's comments on the proposed Council amendments to the draft revised version of the ESC's Rules of Procedure. Doc. R/CES 193/65 of 14 May 1965

(2) See Page 43.

- The Chairman shall liaise with the Councils and the Commissions;
- The Chairman shall be accountable to the Committee for any proposals he shall make or any actions he shall take on its behalf at joint meetings with either the Commissions or the Councils.

Mr MAJOR reiterated Mr SERWY's earlier statement that the compromise envisaged by the Committee was in no way prejudicial to the Committee's right of initiative being raised again at the forthcoming negotiations on the merger of the Communities (1).

This compromise was finally adopted which meant that the final version of Article 9 of the revised Rules of Procedure reflected the wording proposed by the Bureau itself (2). Nevertheless it was a bitter disappointment to those people who had pinned so much hope on the revision of the Rules of Procedure. Attempts to secure the ESC greater freedom of action had ended in total failure.

(1) This merger would automatically involve a revision of those sections of the Treaty which dealt with advisory bodies like the ESC and the ECSC Consultative Committee.

(2) Summary Report, Doc. CES 190/67.

2. The Second Revision of the Rules of Procedure (1971-1972)

On 28 September 1971 the ESC Bureau set up a panel to revise the Rules of Procedure, with a view to securing the right of initiative. At its 99th Plenary Session held on 24 November 1971, the Committee invoked Article 61 of the 1968 Rules of Procedure in order to permit such revision. The Committee empowered the ad hoc Panel (1) to examine the Rules from start to finish. This initiative was taken against the background of moves to amend the Treaty and the imminent enlargement of the Communities.

The drafting of a text on the right of initiative raised both fundamental and practical problems. Firstly (2) the Panel had to avoid falling into the trap of being too vague or asking too much. Secondly it had to bear in mind (3) that while there was a substantial majority in favour of the right of initiative, there were differences of opinion within the ESC itself about how this right should be defined. Finally, the Council had always been extremely reticent on this issue even though, as Mr KUIPERS had pointed out, prestige was not involved. The Committee was merely seeking to enhance its influence vis-à-vis the Institutions.

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- (1) Chairman, Mr BOULADOUX, Group II - Workers, Rapporteur, Mr MAMERT, Group III - Various Interests.
 - (2) As pointed out by Mr ASCHOFF (then Chairman of Group III - Various interests) at a meeting of the Bureau's select working party on 22 June 1971 (R/CES 424/71 of 22 June 1971)
 - (3) Speech by Mr BERNIS, Group III - Various Interests, idem.

The ESC's hopes had subsequently to be tailored to prevailing circumstances. In fact, contrary to original plans, the revision of the Treaties was postponed until enlargement of the Communities. Nevertheless the Chairman of the Panel on the Rules of Procedure stated that those sections of the Rules which dealt with referrals could still be amended to secure the Committee the right of initiative.

In this connection the Rapporteur floated the idea of adding a fourth paragraph to Article 20 which dealt with referrals (1).

The proposal was : "At the request of a majority of its members the Committee may be convened in order to give an Opinion on a specific issue submitted in advance to the Bureau for investigation." Mr MAITERT pointed out that it would be difficult to specify the size of the majority needed to implement the right of initiative. He also queried the wisdom of requiring the Committee Chairman to inform the Council and the Commission about any ESC meeting convened in connection with an initiative Opinion (2).

This version was finally accepted at the 104th Plenary Session held on 28 and 29 June 1972 (3). With an eye to the forthcoming Paris Summit Conference, the Committee called, in no uncertain terms, for a more important role and wider terms of reference.

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- (1) Since the proposed revision of the Treaties had been dropped it was no longer possible to make recommendations about amendments to Article 198 of the EEC Treaty and Article 170 of the EAEC Treaty.
 - (2) Minutes of the 7th meeting of the Panel on the Rules of Procedure held on 9 June 1972; R/CES 422/72.
 - (3) 104th Plenary Session of 28 and 29 June 1972; CES 470/72.

We have not gone into detail about the work involved in the second revision of the ESC's Rules of Procedure, since the initiative and the discussion was largely sparked off by the first revision. It is moreover important to consider the following dates :

- 1968 - 2nd Rules of Procedure

- 1971 - Second revision

in order to realise the continuity and consistency of the ESC's work.

A rapid comparison of the two procedures highlights the following features :

On the occasion of the first revision of the Rules of Procedure, the Committee demanded a right which analysis had shown to be necessary, not to say crucial, to the proper running of the ESC. The Committee's proposals had been emasculated by opposition from various quarters. The second attempt was made in a radically different political climate. The Executives - not the Communities - had been merged in July 1967. The new Member States were knocking at the door. Governments had changed in some Member States (1) and this had led to shifts in economic and social policy.

All these factors were instrumental in creating the radically changed atmosphere surrounding the second revision of the Rules of Procedure. Opposition was now fragmented. Approaches differed to varying degrees. The ESC's request was felt to have a reasonable chance of success. At this stage we should point out that the Chairman, Mr KUIPERS, has done Trojan work to enlist the support of several Governments for the right of initiative (2).

(1) In France and Germany

(2) At the same time as the Rules of Procedure were being revised by the ESC.

3. Steps taken by Mr KUIPERS, ESC Chairman

On 10 November 1970 Mr KUIPERS made his first significant contact with the Council President, Mr Walter SCHEEL (1). Following these talks, Mr KUIPERS announced that Mr SCHEEL "attached considerable importance to the ESC's work". Mr SCHEEL would also ensure that the Committee would be consulted appropriately about enlargement of the Community (2).

On 14 February 1971 Mr KUIPERS had talks with the Commission and its President, Mr MALFATTI, on the Committee's current and future role in the Community. Discussion focussed on the "Council's formally expressed intention to involve the representatives of economic and social activity more and more closely in the administration of the economic and monetary union". (3)

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- (1) Then President of the FDP Liberal Party (one of the parties in the German Coalition Government) and Minister of Foreign Affairs
 - (2) Cf. Appendix to the minutes of the 90th Plenary Session held on 25 and 26 November 1970. CES 591/77 Appendix 2
 - (3) Cf. 93rd Plenary Session held on 24 and 25 February 1971 CES 151/71, Appendix.

During his official visit to Italy, Mr KUIPERS discussed the right of initiative in even greater detail at talks on the role of representatives of economic and social activity in drafting political decisions (1). After an official visit to Belgium, Mr KUIPERS was able to state that the ESC's concern to play a more active role in building Europe was widely recognized (2).

Mr KUIPERS then paid an official visit to Germany where he was received by President HEINEMANN and Mr SCHEEL, Minister for Foreign Affairs. From these talks emerged the first concrete results of the series of high-level diplomatic contacts. Having referred to the possibility of extending the ESC's powers, Mr KUIPERS stated that his visit had been successful (3).

On 15 December 1971 Mr KUIPERS met President POMPIDOU of France who was "exceptionally well disposed to the Committee's desire for official recognition as a Community institution armed with the right of initiative" (4). The French support for the right of initiative was further cemented by Mr KUIPERS's talks with Mr ROCHE (5) who had been elected President of the French Economic and Social Council.

(1) Cf. 94th Plenary Session, CES 217/71

(2) Cf. 95th Plenary Session, CES 345/71

(3) Cf. 99th Plenary Session, CES 735/71

(4) Cf. Appendix to the minutes of the 100th Plenary Session, CES 52/72, Appendix 1, page 3

(5) ESC Chairman from 1962-1964.

At a formal Committee Session (1) Mr KUIPERS reinforced the impression that victory was within the Committee's grasp. He told members that there was "every reason to expect that the Committee's stature would be increased". Referring to contemporary governmental structures, he stated that no one any longer questioned "the need to institutionalise joint consultation". It was therefore clear that "the Community Institutions must be strengthened" and "... our understanding of this is that the ESC be granted the right of initiative" (2).

Before leaving office, Mr KUIPERS discussed the ESC's future with the Council and Commission Presidents. The Council President assured him that the Committee's request for a right of initiative would be on the agenda of the Paris Summit Conference (3). In his valedictory address, Mr KUIPERS had already stated his conviction that the Council would react favourably to a Committee request for the right of initiative (4). There was every reason for optimism.

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- (1) Cf. 100th Plenary Session held on 26 and 27 January 1972; CES 52/72 Appendix 2
 - (2) The Groups, which had constantly supported calls for the right of initiative, did so again (op. cit. page 23, note 2) and pages 23 and 37.
 - (3) Cf. Minutes of the 128th meeting of the ESC Bureau on 26 September 1972 (R/CES 599/72)
 - (4) Cf. 104th Plenary Session held on 28 and 29 June 1972, CES 470/72, Appendix 1.

III. CONFERRAL OF THE RIGHT OF INITIATIVE AND ITS INITIAL
===== APPLICATION =====
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A. THE DECISION CONFERRING THE ESC'S RIGHT OF INITIATIVE

1. The Paris Summit Conference (19 - 21 October 1972)

The Communiqué issued at the end of their meeting by the Heads of State or of Government of the six original and three new Member States contained the following passage about the ESC :

"They (the Heads of State or Government) invited the Community Institutions to recognise the right of the Economic and Social Committee in future to advise on its own initiative on all questions affecting the Community."

The principle of the ESC's right to give its unsolicited Opinion at any time on any matter of interest to the Community had thus been recognized. This success was much better than the Committee had hoped for in its previous attempts by means of amendment of the Rules of Procedure in that the right was recognized as extending to all the fields covered by the EEC and Euratom Treaties (1).

Winning the right was the culmination of years of persistent support for the idea by the majority of the Member States and the Commission, and was helped by a change of heart on the part of the German Government.

(1) See below p. 67

The governments of the Benelux countries, Italy and France, backed by their national organizations and unions, had supported the ESC's claim for many years. At the 1972 Paris Summit, France, which was in the Chair, managed to steer the Conference in the right direction. The ESC's case also had the support of the Commission, which was keen on knowing the views of the various economic groupings as soon as possible. The breakthrough came when Germany lifted the 15-year old veto it had exercised in the Council on the various revisions of the Rules of Procedure.

Let us dwell for a moment on the German Government's change of attitude. It was due to a complete change of approach towards participation by interest groups in national and Community decision-making on economic and social matters.

During Ludwig ERHARD's period as Economics Minister (until 1963) and afterwards as Chancellor (from 1963 to 1966), the Government was wary of any attempt to bring interest groups in an advisory capacity into decision-making because it was felt that this would go against the free market economy principle.

However, as was shown by the 1966 - 1967 recession in Germany, a certain amount of planning in the Federal Government's and the Länder's economic and financial policies had become essential. The "Great Coalition" (1) again had to face up to stark

(1) CDU-CSU and SPD

economic and social realities, and this led to its enactment of the "Law to Promote Stability and Economic Growth" (1) introducing five-year plans for the budget (2).

As collective bargaining between employers and unions could have a considerable impact on the proposed Federal Government and Länder plans for wages, prices, employment and investment, Section 3 of the Law provided for concerted action between the Federal Government, the Länder, the unions and the employers' associations. Germany thus clearly recognized the importance and influence of the big interest groups on decisions in these areas (3).

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- (1) "Gesetz zur Förderung der Stabilität und des Wachstums der Wirtschaft" of 8 June 1967, BGBl. I., p. 582, amended by the Law of 18 March 1975, BGBl. I., p. 705.
 - (2) The Law also contained planning of the five-year investment programme of the various German Ministries (pp. 9 - 10 of "Stabilitätsgesetz"). The investment programmes had to fit into an overall economic stability policy ensuring stability of prices, a high level of employment, stability in trade and a sufficient rate of growth.
 - (3) See also article by M. RHEIN, "Europäische konzertierte Aktion", in : Europa-Archiv, 31st Year, No. 15/1976.

Having changed its attitude towards the involvement of the interest groups in the crucial decisions of economic and social policy, the German Government could no longer maintain its opposition to the right of initiative for the Committee which would make possible an effective expression of the views of those interest groups at European level.

Meanwhile, the German DGB had mounted a campaign to win acceptance for a new system of concertation with wider aims and on a larger scale than that provided by the "Stabilitätsgesetz" (1). Under it, the consultation and joint decision-making approach would be applied to the whole field of economic and social policy. The DGB proposed for this purpose the setting-up of an Economic and Social Council at Federal level and similar Councils at Länder level (2).

So it was that finally, in 1972, Chancellor Willy BRANDT decided it was time for an initiative to be made on behalf of Community-level involvement of the interest groups, and included in a memorandum prepared for the Paris Summit a call for recognition of the right of initiative of the ESC, which should become the chief forum for dialogue, concertation and consultation between the Council, the Commission and the interest groups.

Associating the citizen and the social partners in decision-making, the German Government argued, would make sure that the policies in the social field set out to do the right thing.

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- (1) See, for instance, the article, "Why our claim to be associated in decision-making still holds", in : "Welt der Arbeit" (the DGB journal), No. 7, 14 February 1969; reprinted in ESC's series of Selected Documents and Articles, No. 40/69.
 - (2) Controversy still surrounds this idea in Germany. See, for instance, the Report of the Committee of Enquiry on Institutional Reform, set up by the Bundestag, in : "Drucksache 7/5924, Deutscher Bundestag, 7. Wahlperiode", pp. 115 - 119.

W. BRANDT closely followed the position which the DGB had stoutly defended (1), that as the Community moved towards economic and monetary union, the interest groups should be brought into decision-making to a greater extent and this involvement would help the moves towards closer union succeed.

The fact that the ESC was a meeting place between the interest groups and the Community Institutions, the memorandum said, made the Committee an ideal forum for this participation (2).

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- (1) According to information given to the Division for Studies and Documentation by the former Chef de Cabinet of ex-Chairman, Mr LAPPAS, Mr Helmut RIES, at meetings between representatives of the DGB and Mrs Katharina FOCKE, the then Secretary of State at the Chancellor's Office, Mr LAPPAS helped to swing the German Government in favour of recognition of the right of initiative for the ESC.
- (2) Chancellor Willy BRANDT's memorandum, "Deutsche Initiative für Massnahmen zur Verwirklichung einer europäischen Sozial- und Gesellschaftspolitik".

2. Incorporation of the Right of Initiative in the Rules of Procedure (1974)

After the decision at the Paris Summit Conference, the ESC quickly set to work putting it into practice, firstly by immediately beginning to exercise the right, and secondly by endeavouring to get the right into its Rules of Procedure (1).

Immediately on taking office as Chairman in September 1972, Mr LAPPAS met the President of the Council and told him that the ESC was determined to make full use of the freedom of initiative finally granted to it. He informed the President that the ESC had set up a working party to report on the implications of the Summit decision for the Committee's future activities, and that once the Council had approved the new Rules of Procedure, it was likely that the ESC would start to express Opinions on its own initiative (2).

Afterwards, in his account of the interview with the President of the Commission, Mr MANSHOET, the Committee Chairman said that the main topic in the interview had been the right of initiative, and that the President of the Commission had wanted to see this right interpreted in a wide sense as authorising the Committee forthwith to take discussion of any matter without waiting to be consulted by the Council or Commission (3).

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- (1) The ESC's right of initiative was not officially conceded until February 1974. The Committee, was, however, able to make good use of this period to revise its Rules of Procedure.
 - (2) ESC Press Release of 31.10.1972, PR 29/72 (771).
 - (3) 130th meeting of Bureau on 24.10.1972, Doc. R/CES 709/72.

This wide interpretation was the one adopted by the ESC, when at its Plenary Session of 29/30 November 1972 (1), it endorsed the position taken up by its Bureau at its meeting on 28 November, and asked the Sections to suggest subjects on which the Committee should exercise its right of initiative (2).

Later (3), the Bureau laid down a procedure for deciding on exercise of the right : "applications that the Committee give its Opinion on a subject without being asked to do so by the Council or the Commission must first go before the Bureau. The Bureau decides whether to put the application before the full Committee, where the application is decided by a majority of the Committee Members; ... applications must be submitted to the Bureau in writing by a Section, a Group, or at least five Members of the Committee; ... applications must be fully explained and documented and give a clear statement of the subject matter" (4).

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- (1) At this Session the new draft Rules of Procedure containing the right of initiative called for during the second revision of the Rules and recognized by the Paris Summit was adopted.
 - (2) See e.g. Doc. CES 43/73 and Doc. R/CES 170/73 rev. item 4 of 136th meeting of the Bureau
 - (3) 142nd meeting of the Bureau on 28 November 1973, Doc. R/CES 787/73
 - (4) It is worth noting that five Opinions were issued on the Committee's own initiative before the entry into force of the new Rules of Procedure in 1974. They were :
 - GATT (overall approach), 111th Plenary Session of 23/24 May 1973; Doc. CES 438/73 A + Ann. and 449/73 PR + App., in : OJ No. C 115 of 28.9.1974;
 - Industrial and Technological Policy, 115th Plenary Session of 28/29 November 1973; Doc. CES 881/73 A + App., and 889/73 PR, in OJ No. C 115 of 28.9.1974;
 - Economic and Monetary Union, 116th Plenary Session of 12/13 December 1973; Doc. CES 928/73 A + App., and 934/73 PR + Add., in OJ No. C 115 of 28.9.1974.

(footnote continued on p. 66)

This procedure was used until 1974, when the Council of Ministers officially recognized the ESC's right of initiative (1).

The new Rules of Procedure adopted by the ESC at its 108th Plenary Session on 29/30 November 1972, which were approved by the Council at its meetings on 15 January 1973 and 4 March and 13 June 1974 and became effective in their entirety (2) on the latter date, contained a fourth paragraph in Article 20 :

"It (the Committee) may be convened by its Chairman, on a proposal from its Bureau and with the agreement of the majority of its members, to deliver, on its own initiative, Opinions on any question pertaining to the tasks assigned to the European Economic Community or the European Atomic Energy Community".

This Article shows that freedom of initiative is exercised by the Assembly and not by the Chairman (3). It has given much more political "punch" to Committee Opinions.

(continuation footnote 4 on p. 65) :

- Common Agricultural Policy, 118th Plenary Session of 27/28 February 1974;
 - GATT (Agricultural aspects), 118th Plenary Session of 27/28 February 1974; Doc. CES 215/74 A and 225/74 PR, in OJ No. C 115 of 28.9.1974.
- (1) Letter from the President of the Council to the Chairman of the ESC, dated 12.1.1974, printed in book of texts pertaining to constitution of ESC, Part 1, p. 23.
 - (2) The new 4th paragraph of Art. 20 of the Rules of Procedure entered into force on 4 March 1974.
 - (3) Original Rules of Procedure, p. 8 and 9, first revised version of Rules of Procedure, p. 46 et seq. In both these cases it was proposed to include the right of initiative among the powers of the Chairman of the Committee.

It is to be noted that the right of initiative may be exercised in respect of "all questions affecting the Community" (text of Communiqué of the heads of state or of government at the Paris Summit, which was confirmed when the Council, on 12 February 1974, formally recognized the right)

The fields the ESC can advise upon under its right of initiative thus range from the Community economic and social policy to institutional matters and the general direction of Community policy.

As Community integration is a continuing process, the subjects with which the Committee may deal are not restricted to areas in which integration is already at an advanced stage, but may also concern areas in which integration has hardly been started, and the interest groups in the ESC can in such cases demonstrate their desire to see progress made (1).

As we will see further on in detail (2), the ESC's role, though still advisory, has become more dynamic thanks to exercise of the right of initiative.

An examination of the various means of expression (3) offered by the Committee's Rules of Procedure and its right of initiative - recognized at both the highest political level in the Community (the 1972 Paris Summit) and by the Community's decision-making Institution (the Council) -

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- (1) To name one recent example, the ESC Opinion on the relationships between East and West Europe over transport.
 - (2) See below pp. 82-84.
 - (3) Mainly by Opinions which are voted.

shows that the ESC can directly participate in and increase the pace of European integration. Its scope in the consultative process thus exceeds the bounds originally assigned to it in the Treaties (1).

(1) See Articles of Treaties providing for consultation of ESC, p. 21.

B. IMPLEMENTATION OF THE RIGHT OF INITIATIVE

1. Procedure used between 1974 and 1975

As explained earlier, the procedure prior to the entry into force of the 1974 Rules of Procedure was as follows. First, the Sections were asked to go into subjects which might be dealt with in own-initiative Opinions. Then, at the proposal of the Bureau the Plenary Assembly decided by a majority what action should be taken (1). This procedure remained in force until 1976.

At the request of the then Chairman, H. CANONGE (2), a critical appraisal was carried out in April 1976 of the first uses to which the right of initiative had been put. The aim of this appraisal was to coordinate the various proposals for using the right of initiative and plan recourse to the right of initiative within the framework of the normal work of the ESC. This operation (3) revealed that certain aspects of the way in which the right of initiative had been implemented seemed to contrast with the aims which had been put forward during the negotiations to obtain the right of initiative. That is to say

- most own-initiative Opinions concerned documents on which the Commission and Council had not opted to consult the ESC. Issuing an own-initiative Opinion in no way made up for the fact that the Committee was taking a stand on a text that had already been drawn up (and therefore its Opinion was often too late) and on a subject which the consulting Institutions had already selected in the light of their idea of what the priorities were. This meant that the Committee's action was limited in its importance and in its impact from the very outset.

(1) See above pages 65 and 66.

(2) Letter from Chairman H. CANONGE to the Section Chairmen, 15 January 1976 No 147/76.

(3) See Document R/CES 415/76 item 5 - 172nd meeting of the Bureau of the Committee, 27.4.1976.

The Opinions dealt with issues that were important to certain vocational groups, but, generally speaking, they were not concerned with major issues which were capable by their topicality and their more political character of increasing the importance of the ESC's task and role within the European machinery;

- only a few own-initiative Opinions (the minority) tackled subjects concerned with general policy. As a result, indirectly the ESC was returning to the restrictive practice of the years in which there was no right of initiative (1). Because of this limited use of the right of initiative it did not encourage the major European socio-vocational organizations to choose the ESC more regularly as a forum for discussion and dialogue on issues of particular concern to them (2);

on aggregate, the subject matter of own-initiative Opinions was selected piecemeal and on an essentially sectoral basis. There was no overall concept at any given time of what objectives were being pursued. In other words, use of the right of initiative was not preceded by a general discussion and had not been sufficiently well defined. Such discussion should have concentrated on the practical possibilities that the own-initiative Opinion opened up as an instrument for allowing the socio-vocational groups to insert themselves into the decision-making process.

Indeed, "by inviting the Section's bureau to make proposals at the same time it was possible to achieve a certain consistency between these proposals" (3) and to take up these proposals in the light of "the most important features of the European and world situations". Accordingly, more precise guidelines designed to get round these disadvantages were laid down by the Bureau at its 172nd meeting, held on 24 April 1976 (4).

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- (1) See pages 22, 23 and 24 above.
 - (2) See A. LAPPAS, ESC press release of 29 November 1972, PR 32/72 (787).
 - (3) See Doc. R/CES 415/76 item V, 172nd meeting of the Bureau, held on 27 April 1976.
 - (4) See Doc. R/CES 491/76, 172nd meeting of the Bureau of the ESC, extraordinary meeting of 27.4.1976.

2. Planning the Implementation of the Right of Initiative as from May 1976

The criticism of the manner in which the right of initiative had been used led the Bureau at meetings on 27 April and 24 May 1976 to adopt a new plan which was designed to ensure that (1) "the implementation of the right of initiative conformed with a general policy to be defined, by the Bureau".

Accordingly, the Bureau drew up standing orders defining how the right of initiative was to be used. These orders provide as follows (2) :

. . .

"This is why it has decided to plan the use to be made of this procedure each year, in the light of the Communities' activities and the Committee's overall workload. To this end, the Sections must endeavour to include their proposals for own-initiative work in their own programmes of work.

At the beginning of each year, the Sections should therefore examine the topics within their terms of reference that are due to become the subject of Community measures or deserve special attention, and decide in which cases it would be expedient to anticipate the request for an Opinion, expand on a previous Opinion or draw up an own-initiative Opinion.

The Sections' anticipated work schedules must as far as possible be in the possession of the Committee's Bureau at the start of each year so that they can plan the work in the manner set out below :

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- (1) Statement by Mr DE BRUYN at the 172nd meeting of the Bureau of the ESC, 27 April 1976 - Doc. R/CES 491/76
 - (2) ESC Basic Documents, Part III; the Bureau's Standing Orders, pp. 10 and 11.

a) Description of the Procedure adopted by the Bureau

The General Secretariat shall prepare a general memo outlining the economic and social issues which are likely to dominate the Committee's work in the period under consideration.

After this memo has been studied by the Bureau, it shall be communicated to the Sections and the Groups, which must make their comments and any proposals within a fixed period.

After the Bureau has taken note of the Section's and Groups' reactions, it shall adopt a programme on the basis of the General Secretariat's proposals.

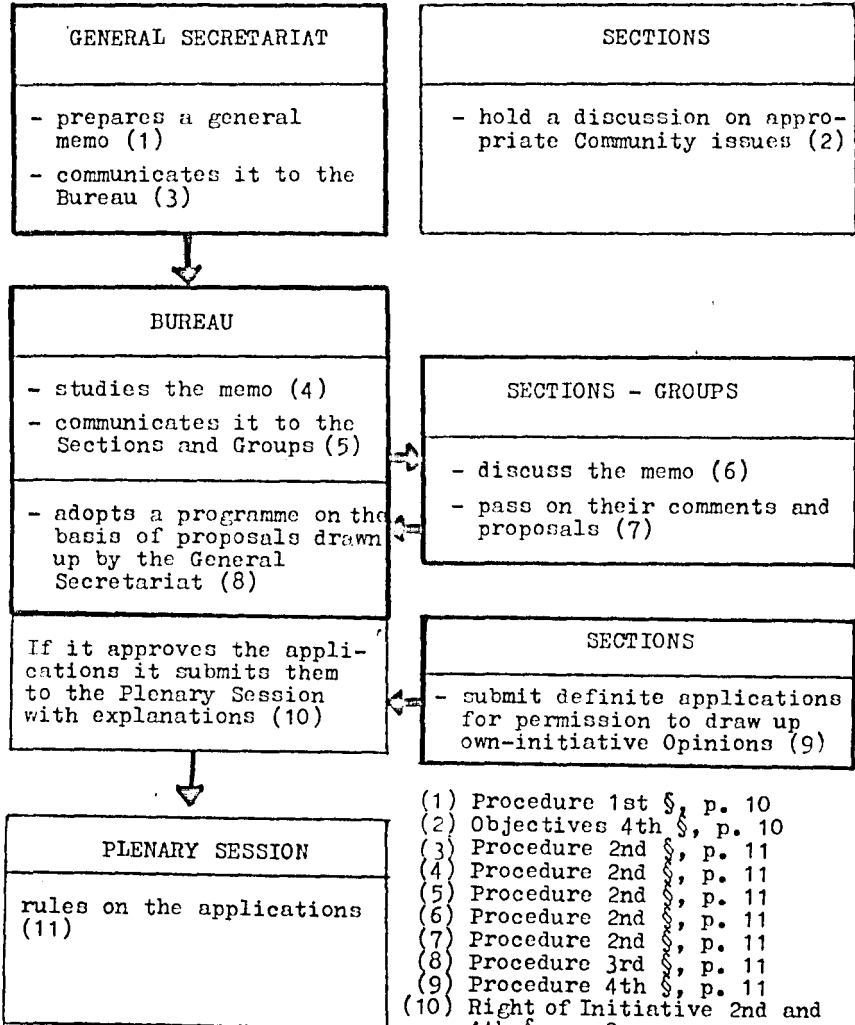
The Sections shall then progressively submit definite applications for permission to draw up own-initiative Opinions within their respective spheres of competence on specific topics which are in keeping with the programme.

The establishment of this programme shall not preclude use of the own-initiative procedure - in accordance with the rules in force - for matters not on the programme, where the Bureau recognises this to be necessary."

...

Once it is decided that an own-initiative Opinion is to be adopted, the rules for drawing it up are as laid down in Articles 20 to 45 of the Rules of Procedure.

PLANNING RIGHT-OF-INITIATIVE WORK



- (1) Procedure 1st §, p. 10
- (2) Objectives 4th §, p. 10
- (3) Procedure 2nd §, p. 11
- (4) Procedure 2nd §, p. 11
- (5) Procedure 2nd §, p. 11
- (6) Procedure 2nd §, p. 11
- (7) Procedure 2nd §, p. 11
- (8) Procedure 3rd §, p. 11
- (9) Procedure 4th §, p. 11
- (10) Right of Initiative 2nd and 4th §, p. 9
- (11) Right of Initiative 4th §, p. 9

b) Objectives of Planning Recourse to the Right of Initiative

It should be noted that this procedure should not only allow the subject for an overall ESC policy to be selected in the light of the economic and social situation in the Community, it also must lead the proposers of a given own-initiative Opinion to reflect on certain points.

- The first requirement is for realism : if the Community tackles a given subject, is it likely to get somewhere? to achieve something constructive? to arrive at a compromise which will allow the Community to make some progress? to propose an effective area for work?
- The second requirement is for effectiveness : is the proposed Opinion likely to be acted on? is it opportune? is now the time in which a favourable reaction is most likely to be obtained from the Institutions?
- The third requirement is for consistency : on a more general level the questions to be asked are what overall concept is the proposed Opinion to be aligned on? which earlier views are to be adhered to and which are going to have to be altered?

This sort of work planning does not prevent an unscheduled own-initiative Opinion being drawn up on a topical issue during a given period.

c) Use of the Right of Initiative under the Urgency Procedure (1)

Article 37 of the Rules of Procedure provides that, at the request of a member or group of members, the Bureau may propose to the Plenary Session

(1) see part III, pp. 11 and 12, of the Bureau's Standing Orders

that a statement by a member or group of members on a topical issue should be placed on the agenda. It is then for the Plenary Session to decide whether this issue should be followed up by a thorough examination and to determine what procedure should be followed (1)(2).

If the Plenary Session decides to deliver an own-initiative Opinion, it designates a Section to prepare the work in the usual way, time permitting. If the matter is seen to be urgent, however, the Plenary Session may immediately appoint a Rapporteur-General, under Article 18 of the Rules of Procedure, to draft an Opinion and a Report on the basis of a general discussion. Should it not be possible for this general discussion to be held immediately, it could take place at a meeting of the Section responsible for the matter.

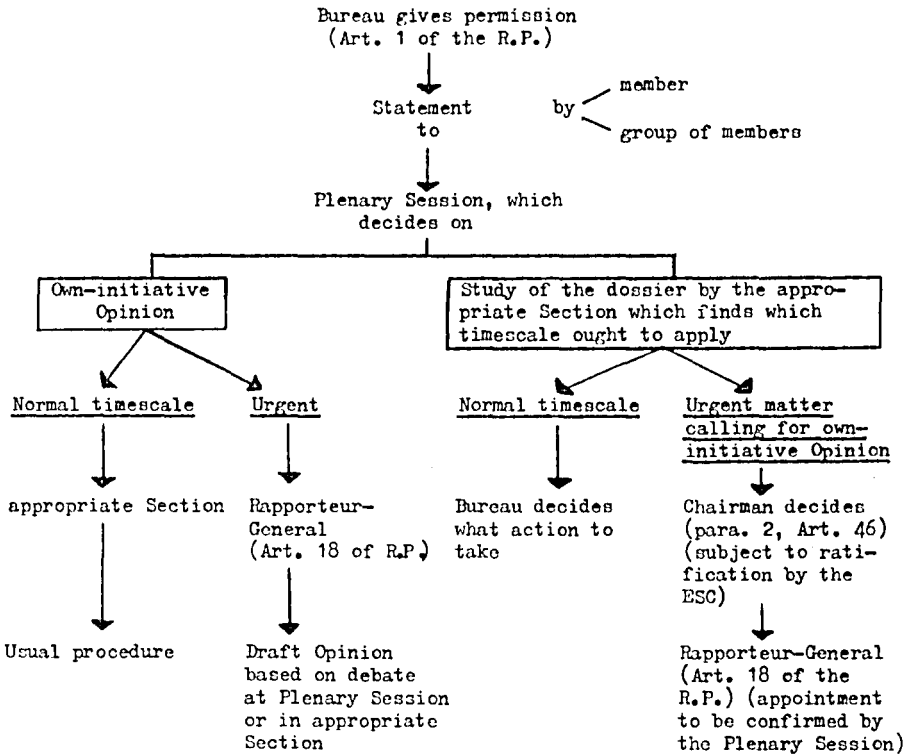
Where the Plenary Session asks the responsible Section to study the dossier beforehand and the Section, after studying the dossier, finds that the Committee should make its views known as a matter of urgency, the Chairman, acting under the second paragraph of Article 46 (which may be interpreted as applying to work which the Committee undertakes on its own initiative), may take every necessary step to ensure that the work proceeds on a proper footing, subject to ratification by the Committee.

For instance, he may - acting under Article 18 - appoint a Rapporteur-General to deal with the matter; such appointment must be ratified by the Plenary Session.

(1) Bureau meeting on 24 May 1976, Doc. R/CES 570/76, item 7

(2) See for example the procedure followed for the ESC Opinion of 26.2.1976 on Unemployment in the Community and, in particular, documents R/CES 81/76 and 93/76 Appendix 2. For views on this procedure consult documents R/CES 203/76, 251/76 and 263/76.

USE OF THE RIGHT OF INITIATIVE UNDER THE URGENCY PROCEDURE



d) The Significance of the Urgency Procedure

From the Bureau's Standing Orders, it appears that the decision whether or not an own-initiative Opinion should be drawn up is primarily the responsibility of the Plenary Session in cases of urgency.

In other words, proposals from one or more members must be channelled through the Bureau (Art. 37 of the Rules of Procedure) which decides whether the topical issue in question may be submitted in the form of a declaration to the Plenary Session. If the Plenary Session decides neither to draw up an Opinion nor to instruct the responsible Section to study the relevant dossier, it is difficult to conceive how the ESC Chairman could utilise the second paragraph of Article 46 of the Rules of Procedure (urgency procedure) autonomously. In effect, these Standing Orders of the Bureau, which were drawn up in accordance with paragraphs one and three of Article 8 of the Rules of Procedure, coordinate the work of the various organs of the Committee, including that of the Chairman.

However, one could conceive of a situation in which during a relatively long intermission (summer months) and the emergence of absolutely exceptional circumstances, the Chairman might apply Article 46 of the Rules of Procedure purely and simply without the Plenary Session having been consulted beforehand.

IV. ATTEMPT TO EVALUATE THE ROLE OF THE ESC ARMED WITH THE
RIGHT OF INITIATIVE

The qualitative change in the role of the ESC, armed with the right of initiative, must be assessed against the background of :

- the Community's decision-making process,
- the ESC's position in the institutional machinery created by the Rome Treaties,
- the dynamic evolution of Community policies and the ESC's involvement therein,
- the scope for action provided by the right of initiative,
- the forthcoming European Parliament elections under direct universal suffrage.

A. THE COMMUNITY DECISION-TAKING MACHINERY AND THE ESC

Building Europe means changing present economic and social structures, generally by way of the legal instruments provided by the Treaties - i.e. regulations, directives and decisions (1).

The ESC's right of initiative, which - according to the fourth paragraph of Article 20 of the Committee's Rules of Procedure - empowers the Committee "to deliver, on its own initiative, Opinions on any question pertaining to the tasks assigned to the Communities" is one way of involving socio-economic groups more closely in Community decision-making and thus in the enacting of EC legislation.

(1) See Article 189 of the EEC Treaty and Article 161 of the EAEC Treaty.

This is the background to the ESC's right of initiative. The way in which this right has been implemented will be dealt with later. In other words, under the Treaties and its own Rules of Procedure, the ESC is entitled to adopt unanimous or majority Opinions which take into account and reflect the views of socio-economic groups for the purpose of influencing the Community legislative process. The Committee's consultative function should be considered from this angle.

When analyzing the Community's decision-making process, one fundamental point to be noted is that, as a general rule, the Council can act only "on a proposal" from the Commission. The Council is rarely able to take decisions on its own authority or on the basis of Commission Opinions alone (1). More often than not the Council adopts measures or takes decisions "on a proposal from the Commission" (2). The Commission, therefore, plays a decisive role as initiator in such instances. In addition, until such times as the Council has taken a final decision, the Commission may alter (or withdraw) its proposal (3).

This may be done to accommodate the European Parliament, to take discussions at the Council into account, to allow for ESC Opinions or to make allowance for developments which were not foreseeable when the Commission's proposal was originally drafted.

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- (1) As, for example, in the case of Articles 84(2), 126 and 237 of the EEC Treaty.
 - (2) See, for example, Articles 28, 33(6), 43(2) para. 3, 55, 63 and 79 of the EEC Treaty.
 - (3) As in Article 149(2) of the EEC Treaty and Article 119(2) of the EAEC Treaty. In such instances the Commission is free to amend its proposal as often as it considers necessary.

Furthermore, when the Commission declares that its proposal is final, "unanimity shall be required for an act constituting an amendment to that proposal" (1).

As far as the ESC is concerned, the main conclusion to be drawn from this fleeting survey of the decision-making process is that

- the machinery used in the Community for making these decisions
- the current balance of power between Community institutions, and
- the powers devolving on the Commission

all give the Commission a decisive role as the initiator of, and driving force behind, legislation (2). This is therefore the body to which the Committee, in using its right of initiative, should at the appropriate moment address the views voiced and compromises reached within its ranks, on those major topical issues which the socio-occupational groups think must be solved at Community level.

(1) See Article 149(1) of the EEC Treaty and Article 119(1) of the EAEC Treaty

(2) For a more detailed commentary see "La voix des partenaires sociaux. Le C.E.S., un essai de démocratie économique" in "30 jours d'Europe", Supplement to No. 188 - March 1974

SIDJANSKI "Aspects Fédératifs de la C.E." Res publica 1964, Vol. IV, p. 355. Quoted by P.H. TEITGEN - "Cours de droit institutionnel communautaire", Poly-copié 1975 - 1976, p. 316, Paris, Les cours de Droit

B. THE POSITION OF THE ESC IN THE INSTITUTIONAL MACHINERY
AFTER 1972

In the words of Mr H. CANONGE (1), "The Economic and Social Committee is a constitutional consultative body of the Community Institutions" (2).

A body :

The ESC is referred to as a "body" because it is not described as an "Institution" in Article 4 of the EEC Treaty or Article 3 of the EAEC Treaty. The first paragraph of each of these two Articles lists the Community Institutions, whilst the second paragraph states that the ESC shall assist the Commission and the Council in an advisory capacity (3).

Constitutional :

The ESC is a "constitutional" body as it is provided for in those sections of the EEC and EAEC Treaties which set out how the two Communities are to operate.

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- (1) ESC Chairman from 1974 to 1976
 - (2) Statement by Mr H. CANONGE to the 175th meeting of the ESC Bureau on 29 June 1976 (R/CES 633/76, Item VIII)
 - (3) This interpretation is shared by the ESC and used in support of its claim for institutional status which would, in the view of the ESC, give it budgetary autonomy, the right to decide its own Rules of Procedure and to appoint its own members, acting on proposals from the organizations representing social and economic interest groups. For further details, see ESC Opinion of 28 March 1974 entitled "The Place and Role of the Economic and Social Committee in the Institutional Machinery of the Communities in the Context of a Possible Evolution thereof" (CES 331/74, p. 7 - OJ No. C 115 of 28.9.1974, p. 37/1); see also the ESC Opinion of 16.7.1975 on European Union (CES 805/75, p. 10-11, OJ No. C 270 of 26.11.1975, p. 2 et seq.).

The ESC is therefore clearly involved in the "constitutional development of the Communities" and is thus part of the dynamic process of "European integration".

The actual role of the ESC in the development of the Communities will have to be continually re-defined as the institutions evolve. Having acquired the right of initiative, the ESC will henceforth be in a position to play an active part in the continual adaptation of its role. To quote one example, if, in the years to come, the European Parliament - elected on the basis of direct universal suffrage - were to be granted increased powers, including real legislative power, it would be perfectly logical for the consultative role of the ESC to be extended to cover the European Parliament (1) as well as the Commission and the Council.

Consultative :

The ESC is classed as a "consultative" body because Article 198 of the EEC Treaty and Article 170 of the EAEC Treaty provide for its consultation by the Commission and the Council. The ESC submits its views in the form of Opinions (Article 20 of the Rules of Procedure).

As the term "consultative" implies, the Institutions consulting the ESC and the bodies to whom own-initiative Opinions are addressed are under no obligation to act upon the Opinions. The Treaties in no way bind the Commission and the Council to draw up or amend a proposal to accommodate the views of the ESC.

(1) For further details, see page 108 et seq.

It is clear, therefore, that the ESC can activate or amend the Communities' legislative process only if the Institutions to whom its Opinions are addressed accept its recommendations in full or in part and act accordingly. The ESC does not therefore have the right to initiate legislation, the right which gives the Institutions a free hand to set in motion the Communities' legislative process.

The role of the ESC is therefore essentially to pass on advice, in the form of Opinions, to the Commission and the Council and, under certain circumstances, the European Parliament, in the hope that its suggestions will be taken into consideration. The Committee has no decision-making or joint decision-making power, and such powers are not sought by its members. Nor does the ESC have the right to initiate legislation as have national Parliaments.

The question therefore arises as to whether or not it would be politically advisable for the Community authorities to try to take more account of ESC Opinions thereby permitting the important social and economic interest groups represented on the ESC to exercise greater influence. After all such groups seek to influence, and do indeed influence, the decisions taken by public authorities in all modern democracies. Should different rules apply in the Communities ?

Turning once again to the consultative role of the ESC, fears of corporatism are unfounded. Corporatism implies that legislative power is exercised by industrial and professional corporations who are not elected by universal suffrage and who usurp the place of Parliament which is the manifestation of the sovereignty of the people (1). In other words, corporatism can only be said to exist if corporations are "empowered to take decisions which are binding upon all those to whom they apply" and if "rigid institutional structures are established, despite the fact that the economic situation itself is subject to change" (2).

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- (1) See the speech delivered by Mr H. CANONGE marking the end of his term of office (CES 927/76 Appendix 2, p. 24)
 - (2) Pierre MENDES FRANCE in "La République Moderne" Gallimard, Paris, 1972, quoted by Arnaud Marc LIPIANSKY in "L'Europe en formation" No. 181-182, April/May 1975, Special Edition "Le C.E.S. du C.E.".

Moreover, giving the ESC increased powers would neither limit nor encroach upon the role or the prerogatives of the European Parliament, since, in the words of Alfons LAPPAS "the ESC is more of a front-line post for the organizations taking part, at all levels, in seeking consensus within the framework of modern political structures" (1). To put it in another way, the abovementioned organizations seek to influence other bodies which have decision-making power.

The social and economic interest groups in the Community readily recognize that the influence brought to bear upon the European Parliament by socio-economic lobbies must not jeopardize Parliament's political accountability. Such interest groups cannot therefore be given the right to take part directly in joint decision-making (2).

What does the ESC's right of initiative therefore imply and how is it to be exercised? What new scope does this right give to the ESC and what contribution does it make to the overall aim of European integration?

The fact that the right of initiative has been laid down in an addendum to the Rules of Procedure - the fourth paragraph of Article 20 - clearly demonstrates that this new right is something more than a broader interpretation of the earlier provisions. The right to act autonomously gives the ESC a new power.

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- (1) Alfons LAPPAS, then Chairman of the ESC, in a speech made in Deauville in May 1973 on the role and influence of the ESC
- (2) For further information on this subject, see the address given by H. VETTER, President of the German Trade Union Confederation and current President of the ETUC, to the 132nd meeting of the ESC's Bureau at the headquarters of the German Trade Union Confederation in Düsseldorf on 20 December 1972 (R/CES 13/73 Appendix 1).

By 1972 the European Council, the Council and the Commission all recognized that it was becoming more and more necessary to meet the requirements of "economic and social democracy" by encouraging important social and economic interest groups in the Community to put forward their views. The granting of the right of initiative to the ESC was intended to ease the problems referred to earlier (1).

The fact that the ESC now has the right to put forward its views on its own initiative - choosing the appropriate moment - in the fields with which it is essentially concerned (2), means that, in future, it will be able to make known its point of view whilst proposals are still on the drawing board and it will even be able to propose subjects to the Commission (3).

It should also be noted that, because the role of the ESC is fundamentally consultative, it cannot become a forum for meetings and negotiations between representatives of employers' organizations and trade unions and the public authorities (4).

(1) See pages 10-32 above

(2) With the exception of the fields covered by the Treaty setting up the European Coal and Steel Community

(3) There are in fact no restrictions on the timing or the subject matter of own-initiative Opinions. The communiqué issued after the summit meeting in Paris in 1972 states that the ESC will be able to advise on its own initiative on "all questions affecting the Community" (see pages 59-67).

(4) This point is not disputed by the three Groups at the ESC. The abovementioned position has been confirmed in the stands taken by Group III on 30 March 1977 (R/CES 434/77, 431/77 Gr. III rev.) and by Group II (statement issued by the ETUC on 22 April 1977 concerning improvements to the way in which the ESC operates (A.(3) and (4)).

It is up to bodies like the Tripartite Conference and the Standing Committee on Employment to work for a consensus between the major employers' organizations and trade unions and the public authorities in fields in which each side has freedom of action.

Meetings and consultations between the two sides of industry and the decision-making bodies of the Community - the Commission and the Council - and representatives of Member States do not involve participation in the Community's legislative process (1). The aim is rather to initiate overall negotiations which could, to a certain extent, commit the various parties to follow certain guidelines in their approach to economic and social policy (2).

The ESC does not, therefore, interfere in the affairs of other bodies with different aims.

(1) For further information, see Eberhard RHEIN, p. 497 et seq. of the work referred to in footnote 3, p. 61 above

(2) Eberhard RHEIN, *idem*, p. 500.

C. THE DYNAMIC EVOLUTION OF COMMUNITY POLICIES AND THE PARTICIPATION OF THE ESC

The Community's decision-making bodies (the European Council, which replaces the summit meetings, the Council, the Commission and the European Parliament) (1) have, in the past, come out in favour of increased involvement of socio-economic interest groups in the work of the Communities, particularly in the legislative process.

The development of a number of forward-looking Community policies, such as the Social Policy, implies involving socio-economic interest groups, organized on a Community basis, in the legislative process. The involvement of the major organizations representing employers, workers and various interests in the Community has been facilitated by the establishment of effective umbrella organizations at Community level (2).

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- (1) See the Commission Decision of 29 July 1964 (OJ No. L134 of 20 August 1964, p. 2256/64) and, in similar vein: the Commission Decision of 17 May 1963 (OJ No. L80 of 29 May 1963), the Commission Decision of 19 December 1963 (OJ No. L2 of 10 January 1964), the Commission Decision of 5 July 1965 regarding the Establishment of a Joint Consultative Committee on Working Conditions in Road Transport (OJ No. L130 of 16 July 1965, 8th recital), the Council Decision of 14 December 1970 establishing the Standing Committee on Employment of the European Communities (OJ No. L273 of 17 December 1970), the Communication from the Commission to the Council on the Environmental Programme of the European Communities, dated 24 March 1972 (OJ No. C 52/1).
- (2) See 'An Empirical Examination of the Functionalist Concept of Spillover', Emil Joseph Kirchner, Case Western Reserve University, June 1976, which gives a detailed history of the ETUC between 1968 and 1973.

The Commission and the Council have continually drawn attention in legal and other documents to the need for economic and social interest groups to play an active role in framing common policies.

It was when the need for cooperation was to the forefront that the ESC was granted the right of initiative, thereby giving the abovementioned interest groups an effective way of making their voice heard.

It is quite natural that the ESC should take on such tasks, provided they come within the realm of consultation, since it is the 'sole institutional spokesman at Community level' (1).

In addresses to ESC plenary sessions, Commission and Council representatives have on several occasions stated that the right of initiative provides the ESC with new tools to enable it to fulfil the role of key spokesman (2). These Institutions therefore encourage the ESC to make thorough use of the new powers which it has at its disposal.

(1) See the ESC Opinion of 28.4.1974 (CES 331/74, p. 13)

(2) As, for example, in the addresses given by Mr ORTOLI, at that time President of the Commission, to the 119th Plenary Session on 28 March 1974 (CES 388/74, p. 20) and by Mr DURAFOR, then President of the Council, to the 122nd Plenary Session on 18.7.1974 (CES 831/74, p. 14)

However, those official Commission documents between 1974 and 1977 (1) which call for greater involvement of economic and social groupings, seldom refer to the ESC as a likely centre for such consultations and involvement.

There are two possible reasons for this :

Either the Commission assumes that since the Committee already enjoys considerable autonomy in its work there is no longer any need to refer to it. In other words the Commission takes it for granted that the Committee is the pre-eminent forum for the economic and social forces.

Alternatively, the Commission no longer regards the Committee as being the cornerstone of its new policy of involvement.

In any event, although the right of initiative gives the ESC a head's start over other consultative bodies in terms of "prestige" and impact on the Community's decision-making process, economic and social groupings will certainly go elsewhere for consultations if this officially sanctioned right of initiative is not utilized to the full (2).

(1) First recital of the Commission Decision of 25.7.1974 (OJ No. L 243/22 of 5.9.1974). The third recital moreover refers to the Resolution of the European Parliament of 13.6.1972 (OJ No. C 70 of 1.7.1972, p. 11, points 8 and 13). The Commission Decision also refers to the Council Resolution of 21.1.1974 concerning a Social Action Programme (OJ No. 13/1 of 12.2.1974). In the preamble of this Resolution appears the following passage : "Whereas such a programme involves ... increased involvement of management and labour in the economic and social decisions of the Community..." Also of relevance is the Resolution of the European Parliament of 24.6.1976 on the preparation of the Tripartite Conference (OJ No. C 159/29 of 12.7.1974).

(2) See speech by Mr H. CANONGE marking the end of his term of office (op. cit. p. 83, footnote 1), p. 25.

The ESC is therefore under a political and institutional obligation to make positive use of this right - a right which must be understood by socio-economic groups as allowing the Committee to express its will and take initiative in order to advise and influence. By failing to seize the opportunity the Committee would be neglecting its institutional duty and would be responsible for consultative work going elsewhere.

The nature of ESC activity has thus changed fundamentally and the Committee is now committed to using the legal instrument which has been bestowed upon it - and which enables it to make its mark and fulfil its role vis-à-vis the Communities and their new theory of involving social and occupational groups more closely in European affairs. The right of initiative will enable the ESC to play an active part in moulding the major economic and social policies of the Communities.

And Committee influence on Community policy will depend in the future on the dynamism it shows and on the effectiveness of its action.

Has the ESC not been somewhat slow in assuming and grasping the significance of its new role? Are its members sufficiently aware of the new possibilities open to the Committee?

This may or may not be the case but if so it is certainly not too late to do something about it. In the passage on the planning of own-initiative work the Bureau Instructions (2) lay down guidelines for enhancing the prestige of the ESC. However, perseverance on the part of the Chairmen, the Bureau, the Groups and the Sections will still be needed if the impetus is to be maintained and not peter out, as a result, for example, of over-concentration on sectoral issues.

(1) See speech by Mr H. CANONGE marking the end of his term of office (op. cit. p. 83, footnote 1), p. 27

(2) Basic documents of the ESC, 1976, Part 3, pp. 10 and 11.

The ESC will thus be able to develop and strengthen its position as a major "economic and social assembly" particularly well suited to the task of advising and guiding the decision-making bodies of the Communities.

The Committee also possesses (in the form of a permanent General Secretariat) an appropriate infrastructure for taking action at any given moment, i.e. whenever members of the Committee deem it necessary, or the Treaty requires it. By helping with the preparation of documents the Secretariat can in fact provide ESC members with an effective back-up service during the planning stage of own-initiative work. Needless to say, the issues covered by own-initiative work must be as concrete as possible.

The procedures provided for under the Rules of Procedure, e.g. the urgency procedure (1) and the fact that virtually all Committee Opinions are adopted by a unanimous or majority vote, show that the Committee possesses an effective procedural machinery. This enables the organizations represented on it (2) "to compare ideas, exchange information and defend their legitimate interests and thus ensure that the Institutions can take informed decisions. At the same time these groupings must shoulder their responsibilities as often as possible, by making clear-cut proposals to the Community decision-making bodies".

The Committee's role can therefore be to throw light on economic and social currents and pressures in the EEC when Community policies are being shaped.

(1) Article 46 of the Rules of Procedure of the ESC

(2) Speech by Mr H. CANONGE marking the end of his term of office (op. cit., p. 83, footnote 1), p. 28.

D. THE RANGE OF ESC OWN-INITIATIVE WORK

- a) fields covered
- b) timing
- c) new openings afforded by a combined application of the right of initiative and other procedures sanctioned by the Rules of Procedure.

1. Fields Covered

The fields covered by the ESC's right of initiative include the economic and social policies of the Communities, institutional questions and general Community policy (1).

Viewed in the context of European integration, we can observe that the right of initiative is used :

- in areas where Community policy is at the implementation stage;
- in fields where Community action is still in its infancy;
- when the various bodies represented on the ESC have called for a Community initiative but no action has been taken by the Institutions.

(1) See pp. 59 and 67, as well as the Opinion of the ESC on European Union of 16.7.1975 (op. cit., p. 81, footnote 3).

a) Draft texts on which the ESC has not been consulted
(Community policies in the course of implementation)

We are concerned here with fields where a Community policy is currently being implemented and the decision-making process has already got under way (draft regulation, draft decision or draft directive) but the Committee has not been consulted by the Commission or Council.

In using its right of initiative in these fields, the ESC is able to render its action "complementary" to the normal decision-making process. Its Opinions usually relate to sectoral and technical matters which are of considerable interest to representatives of trade and professional organizations on the Committee (1).

b) ESC activity within the framework of the new Community policies

As new policies, e.g. those in the fields of

- regional development,
- the environment,
- consumer protection,
- industry, and
- energy

are gradually worked out, the case for consulting the ESC becomes obvious.

(1) For example, decision of the ESC Bureau to deliver an own-initiative Opinion on a Proposal for a Council Regulation (EEC) on Direct Cooperation between the Bodies Designated by Member States to Verify Compliance with Community and National Provisions in the Wine Sector (Decision of the Bureau of the ESC of 26.4.1977).

However, since the Treaties do not provide for consultation of the ESC on these new policies, the Commission and Council often decide not to consult the ESC on an optional basis either. The only alternative open to the ESC therefore lies in drawing up own-initiative Opinions.

Thus, for example, every single Opinion delivered on regional policy has been an own-initiative Opinion (1).

This is a good illustration of the way the Committee can help to shape all the new policies by making use of its right of initiative and putting its shoulder to the wheel of European integration.

(1) Opinion of 1 April 1976 (CES 378/76) on the Regional Development Problems of the Community during the Period 1975/1977 and the Establishment of a Common Regional Policy
(Rapporteur : Mr MAHER)
(Study on the same subject : CES 217/76)

Opinion of 24 November 1976 (CES 1202/76) on the First Annual Report on the European Regional Development Fund 1975, and the Summary Analysis of Annual Information 1976
(Rapporteur : Mr LOUGHREY)

Opinion of 31 March 1977 (CES 386/77) on How Regional Development Helps Solve Unemployment and Inflation by making for a more Balanced Distribution of the Working Population
(Rapporteur : Mr BORNARD)

c) The Committee as an Instigator of Community Policies

The representatives of professional associations, trade unions, trade organizations and various other interests, who are often the first to be brought face to face with the burning issues of the day, can - if they consider that Community-level action is necessary - play an important role in getting the appropriate policies off the ground and making sure they are carried through (1).

Such people can be compared to a seismograph which not only records "earth tremors" but immediately passes on the information received.

The Committee's action here differs from the type of action described earlier. Instead of expressing its views on existing documents, the ESC now attempts to make some impact on basic policies by giving consideration to a number of different factors (e.g. examination of the issues at stake; formulae likely to obtain the backing of the organizations represented on the Committee; assessment of how urgently a Community policy is needed).

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- (1) e.g. the own-initiative Opinion currently being drawn up on Transport in Relations with the Eastern Bloc Countries. This Opinion will be delivered before the end of 1977.

See also the own-initiative Opinion on Unemployment in the Community, adopted on 26 February 1976 (CES 216/76) (Rapporteur : Mr BASNETT)

Should an own-initiative Opinion not be appropriate for one reason or another, this initiatory role might also take the form of a "declaration" adopted by the Plenary Session. See here the ESC resolution on the steel sector (CES 486/77, Appendix 2) adopted at the Plenary Session of 28 April 1977 and in which the ESC "urges the European Institutions to do all in their power to overcome the difficulties in question" - See also the Bureau's Instructions in the Basic Texts of the ESC, Part 3, point 1E, p. 11.

These own-initiative Opinions are often preceded by Studies designed to assemble the maximum possible information on a given subject.

2. Timing

Commission proposals generally set out the main strategies underlying a given Community policy. These proposals, however, may be amended during the legislative process, either by the Commission itself or during Council negotiations.

The ESC must therefore be ready to use its right of initiative at each stage of this legislative process so that it can intervene at the most critical moment and thereby make a maximum impact on both the Commission and the Council (1).

In view of the fact that more progress has been made with some common policies than with others, it follows that the "correct timing" of ESC intervention will also vary in relation to the stage reached in the draft legislation in question.

Thus, with policies at the implementation stage and where the spadework has already been done, the ESC should use its right of initiative when, as is often the case, the Commission has published a draft Regulation and the ESC has not been consulted either on a mandatory or optional basis.

(1) See Opinion of the ESC on "The place and role of the Economic and Social Committee in the Institutional Machinery of the Community in the Context of a Possible Evolution Thereof" (op. cit., p. 81, footnote 3), p. 9.

The ESC should exercise its right of initiative at the initial stage of the Commission's preliminary work on new common policies which are to involve wide-ranging significant regulations or decisions. This would enable the organizations represented on the ESC to put forward their views before the Commission has made up its mind and submitted substantive proposals.

Other authorities, such as the European Parliament, have also seen the need for power to influence decision-making at the right moment. The Commission is to draw up, and submit to the Parliament, a document on earlier intervention by the Parliament (1).

The Commission wishes to give the European Parliament more power at the proposal-formulation stage (2).

The Commission could assist the ESC by providing it with comprehensive documentation on issues under discussion. The ESC would then be able to draft studies, and make recommendations in own-initiative Opinions.

Where the organizations represented on the ESC feel that there is a need for a common policy, and the Commission has not yet started the relevant preliminary work, the ESC could deliver a brief Opinion stating the problems involved and encouraging the appropriate authorities to take action.

(1) See European Report No. 411, 23/4/77

(2) Logically, Commission proposals should be referred to the ESC and the European Parliament at the same time. When this does not happen, the ESC should exercise its right of initiative.

If the Commission then produces formal proposals at the Committee's instigation, the Committee should be able to take a stand on them when they are submitted to the Council or Parliament (mandatory or optional referral, or own-initiative Opinion when the proposal is forwarded to the Council or Parliament).

Finally, the Committee could take a stand on amendments made by the Commission to proposals already submitted to the Council. Such final stands would be taken just before the Council takes a decision (1).

It follows from the above that the Committee's right of initiative allows it to state its views throughout the decision-making process, at any moment which it considers fit.

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- (1) When the Council delays its decision on a major instrument, the Committee's Bureau, with the agreement of the full Committee, can instruct its Chairman (under the second paragraph of Article 9 of the Rules of Procedure, which entrusts him with relations with the Council) to reiterate previous Committee statements on the matter, and call for an early decision reflecting the Committee's views; Cf. the procedure followed on the siting of JET (181st Bureau meeting, 25 January 1977, Doc. R/CES 104/77, p. 5). For subsequent stages, see Opinion on the Proposal for a Community Programme for 1976 - 1980 in the Field of Controlled Thermonuclear Fusion and Plasma Physics (Doc. CES 1233/75) and the statement of the Bureau of the Section for Energy and Nuclear Questions (7 January 1977, Doc. CES 1334/76, pp. 2 and 3).

3. New Openings afforded by a Combined Application of the Right of Initiative and other Procedures sanctioned by the Rules of Procedure

In the many years (1958-1972) when the Committee's powers were more limited, the Institutions (and especially the Commission) were severely tempted to consult sectoral committees on some issues. As a result, the consultative machinery became more complicated and, by the same token, less effective (1).

Combined use of the right of the initiative and the procedures authorized by the Rules of Procedure for specific circumstances, could bring it home to the Institutions that they can henceforward carry out all their consultation through the ESC, and that it is unnecessary to set up other consultative committees.

The new fourth paragraph of Article 20 of the Rules of Procedure makes it clear that when the Committee takes matters up on its own initiative, it is to do so only by issuing Opinions.

(1) See ESC Opinion of 28/3/74 on the Place and Role of the ESC (op.cit. p. 80, note 3), p.8

But the ESC has other instruments at its disposal - studies (second paragraph, Article 20 of Rules of Procedure), further documents on matters on which it has already issued an Opinion (third paragraph, Article 20) and information reports (Article 24).

The insertion of the right of initiative in Article 20 of the Rules of Procedure may influence the scope of "preliminary documents", as certain ESC documents are generally called (1).

The 1968 Rules of Procedure's provisions on studies were amended in 1974. Prior agreement of the Council or Commission is no longer necessary.

ESC studies, additional Opinions and information reports must be considered in the light of the new institutional situation created by the insertion of a right of initiative in the ESC Rules of Procedure.

Needless to say, where one of these documents is used in combination with the right of initiative, appropriate deference must be paid to the rules on the use of that right (planning of right of initiative, authorization to draw up an own-initiative Opinion) (2).

(1) See definition of Opinions, studies and information reports in Bureau's Standing Orders of June 1976 - ESC Basic Documents, Part III, p . 45

(2) See pp. 9-12 of Bureau's Standing Orders (1976) - ESC Basic Documents.

The three documents - Studies, additional Opinions and information reports - with respect to which the ESC has a measure of independence are discussed below :

a) Studies

Studies are drawn up on "questions on which the Treaties provide that it (the ESC) must or may be consulted".

The first paragraph (second sentence) of Article 198 of the Treaty states that the Committee may be consulted by the Council or by the Commission in all cases in which they consider it appropriate (optional consultation). It follows that studies can be drawn up on any subject of relevance to Community activity apart from matters which fall within the Treaty establishing the European Coal and Steel Community.

Studies, like initiative Opinions can, therefore, be drawn up on any matter of relevance to the EEC or the EAEC.

The practical implication is that studies, like own-initiative Opinions, give the ESC a measure of independence.

In many cases, studies consist of a detailed evaluation of facts relevant to Community action to be taken in the future. In such cases, it is logical for studies to be followed by own-initiative Opinions; the study highlights and clarifies the problems involved, the own-initiative Opinion takes a stand on the solutions proposed in the study.

The studies on the Community's relations with Portugal (1) and Greece, for instance, could provide the factual basis for "own initiative" Opinions on enlargement. (2).

This procedure would allow "full, objective exploration of specific issues" (3).

No problem arises when the ESC takes up a specific issue in order to urge the Institutions to initiate a new policy. Where, however, the ESC produces a study on a matter on which the Commission is already working, there is a danger - which should not be underestimated - that the ESC will duplicate the Commission's work, often with inadequate means.

Be that as it may, the ESC's right to combine a study with an own-initiative Opinion (second and fourth paragraphs of Article 20 of the Rules of Procedure) give it scope for independent, effective action.

(1) Doc. CES 730/76 of 12.4.1977

(2) See, for instance, Doc. R/CES 277/77 rev. pt. 4, p. 6 (29.3.1977 meeting of ESC Bureau)

(3) See Bureau's Standing Orders, pp. 47-48 .
Where a clear consensus appears to be emerging during work on a study the Bureau may, at the request of the relevant Section, decide that the Committee should issue an own-initiative Opinion rather than a study.

b) Additional Opinions (third paragraph, Article 20 of Rules of Procedure)

Additional Opinions can relate to previous own-initiative Opinions, or to previous Opinions drawn up on matters referred (optionally or mandatorily) by the Commission or the Council (1).

Additional Opinions enable the ESC to amplify its views in the light of legal or other developments.

c) Information reports (Article 24 of Rules of Procedure)

Article 24 states that the Chairman, in agreement with the Bureau, may instruct a section to compile an information report for the members of the Committee.

When Article 24 was drawn up, the ESC had no right of initiative. This Article must therefore be interpreted flexibly, to allow for the new situation.

The phrase "When the Council or the Commission lays a question of particular importance before the Committee for information purposes" was written at a time when the Committee could act only on matters referred to it by the Commission or the Council. It is redundant now that the Committee has a right of initiative.

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- (1) It allows the Committee, for instance, to amplify a previous Opinion which it had to produce without sufficient time for exhaustive evaluation.

An information report might clarify matters where the ESC had still to make up its mind whether a given issue was a suitable topic for an own-initiative Opinion. On the basis of the information report, the Committee could decide whether or not to draw up an own-initiative Opinion.

Such information reports might consist of research findings without the Committee having to take a stand on the document under examination.

"Once the Plenary Session has taken cognizance of an information report, it should decide whether a brief own-initiative Opinion should be drawn up on the basis of this document. If so, the information report would take the place of the usual report". (1)

In sum, information reports could be used to sound out the extent to which the Committee as a whole has an interest in drawing up an own-initiative Opinion or a Study on a particular issue or issues.

By contrast, Studies should be embarked upon when there is obviously a case for the ESC's taking a stand, but it is not clear whether this should ultimately take the form of an own-initiative Opinion.

(1) See the Bureau's Standing Orders, p. 48.

Information reports could be used in conjunction with the right of initiative. The ESC could instruct a Section to follow up an issue of interest to a particular sector before any decision is taken as to whether to draw up an own-initiative Opinion at some future date.

In addition, information reports could be employed where (a) the own-initiative Opinion procedure seems to be too ponderous, (b) the issue is highly technical and sectoral and (c) the Commission and the Council would be keen on ascertaining the views of figures and organizations representing the categories directly affected. These views could be expressed in an information report prepared by the appropriate ESC Section.

It is worth bearing in mind here that the Bureau's Standing Orders (1) provide that the Committee may, without expressing its views on the substance of the document in question, decide to forward a given information report to the appropriate institutions.

Under the fourth paragraph of Article 20 and Article 24 of the Rules of Procedure, information reports could be used to pass on to the Commission and the Council specific technical particulars provided by the relevant organizations represented on an ESC Section.

(1) See ESC Basic Documents, p. 49.

In practice the ESC could :

- a) instruct a Section to draw up an information report (Article 24 of the Rules of Procedure);
- b) request that Section to submit the information report to the Plenary Session on completion;
- c) inform the appropriate Institutions that the ESC Section will be drawing up an information report on a particular topic.

To this end the Section responsible would assemble the necessary documentation for eventual transmission to the Council and the Commission.

Using information reports in this way could revitalize a device which, in recent years particularly, has been falling out of use.

Such a conjunction of the right of initiative and information reports (which are provided for in the Rules of Procedure) could enable socio-economic interest groups to hold highly-technical consultation at the ESC. This might often rule out the need for sectoral advisory committees to deal with fields where the Commission has need of such consultations.

However, this device should not be thought of as opening all doors, since even by appointing experts and assistants under Articles 15-16 of the Rules of Procedure, it would not always be possible to obtain sufficient representation from certain sectors.

E. THE EXERCISE OF THE ESC'S RIGHT OF INITIATIVE AND RELATIONS WITH THE EUROPEAN PARLIAMENT

1. Situation at present

Recognizing the particular role played by the ESC in the ambit of the European Communities, Mr CANONGE, the then Chairman, was concerned to put the relations between the Committee and the Parliament on a formal basis (1), at the same time as the right of initiative was finally being written into the ESC's Rules of Procedure.

After talks and exchanges of letters (2) in early 1975 between Mr CANONGE and the Presidents of the European Parliament, Mr BERKHOUWER and Mr SPENALE, the basis was laid for pragmatic, ongoing cooperation. Since then, steps have been taken to enable a more judicious distribution of Committee documents to members of Parliament to be made.

On top of this, ESC Rapporteurs have been invited to address EP Committees on certain ESC Opinions. This new form of cooperation was also the outcome of an exchange of letters, which dealt in particular with the ESC's right-of-initiative Opinions.

But it goes without saying that "hearings" on own-initiative Opinions will become much more important when the European Parliament is directly elected and its political influence enhanced accordingly.

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- (1) See, for example, the visit of ESC Chairman, Louis MAJOR, to President of the European Parliament, Alain FOHER, 21.2.1967 (R/CES 79/67) - Definition of the specific role of the ESC, see pp. 81 et seq.
- (2) See letter of 4.2.1975 from Mr CANONGE to Mr BERKHOUWER, p. 2, and Mr BERKHOUWER's reply of 10.3.1975; letter of 21.3.1975 from Mr SPENALE to the Presidents of the Parliamentary Committees.

Under this informal agreement, ESC Rapporteurs have addressed European Parliament committees on a number of Opinions, Reports and Studies (1).

Arranging for Rapporteurs from the Committee to address EP committees seems at present to be the best method of briefing the European Parliament, bearing in mind that although that Institution has no real legislative powers, it is aiming to play an increasingly vital part in the Community's decision-making process.

2. Outlook for 1978 : Direct Election of the European Parliament

As the European Parliament steps up its activities the ESC should do likewise. In this way as soon as the EP has real powers, the Committee will be able to advise it as well as the Commission and the Council (2).

The Committee is conscious that its role is fundamentally different from that of the European Parliament. Mr CANONGE described the position as follows in very general terms in his speech to mark the end of his term of office (3) :

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- (1) See Appendix III - list of ESC Rapporteurs invited to address European Parliament Committees
 - (2) See interview with Roger LOUET published in "30 Jours d'Europe" No. 188, March 1974, p. 30 and ETUC statement urging improvements to the operation of the Economic and Social Committee, pt C 4, p. 2; Agence Europe Monday/Tuesday, 25 and 26 April 1977 No. 2204 (new series), p. 8
 - (3) R/CES 927/76, Appendix 2, pp. 5, 6 and 24.

"Democratically-elected Parliaments are the essential and most general expression of the aspirations and will of the people.

"The two sides of industry and professional organizations, and the assemblies and bodies in which they are represented, have a legitimate claim to speak out for economic and social groups, expressing their fears and needs, and putting forward their proposals."

This definition of the ESC's role should provide the basis for "hierarchical" and "informal" links between the Committee and the Parliament. While the Committee would continue to step up its activity, it would retain its consultative role and the Parliament would acquire more and more political authority.

Elections under universal suffrage would make the Parliament more representative. Two factors must be borne in mind here : direct elections by the Community electorate and an increase in the number of MP's from 198 to 410.

At European level, this would ensure that the Parliament would serve a wider and more representative cross-section of the electorate of the regions and, by the same token, of economic and social interests.

The Parliament's greater representativity and new political powers would encourage the Committee to step up its activity in the consultative field (1).

Direct elections to the Parliament would (2) lead to a significant, not to say decisive, shift in the Community's internal balance, which would promote the development of common policies based on common institutions. There could be certain spin-off benefits for the Committee inasmuch as the revamped Parliament would become even more political than the present one. It is to be hoped that this would subsequently foster closer contact with the Committee in the context of economic and social democracy.

Seizing the opportunities provided by its right of initiative, the Committee must, when the time is ripe, exploit the Parliament's new powers and, in conjunction with the various Parliamentary sub-committees, develop appropriate consultation machinery.

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- (1) Speech by Mr CANONGE to mark the end of his term of office (op. cit., p. 83, footnote 1), p. 24 :
"... But once this new Parliament is in being, there is a risk of an increasing imbalance between the political powers of Parliament and the powers of what we know as the economic and social consultative assembly."
- (2) In this connection, cf. the interview which Mr Basil de FERRANTI, current ESC Chairman, gave to "Comunità Europea", May 1977 edition.

A P P E N D I X I

LIST OF OPINIONS DRAWN UP BY THE ESC ON ITS OWN INITIATIVE

- Opinion on GATT (overall approach), 111th Plenary Session held on 23-24.5.1973; Opinion Doc. CES 438/73 + Appendices. Record of Proceedings Doc. CES 449/73 + Appendices, OJ No. C 115 of 28.9.1974
- Opinion on the Technological and Industrial Policy Programme, 115th Plenary Session held on 28 and 29.11.1973; Opinion Doc. CES 881/73 + Appendices. Record of Proceedings Doc. CES 889/73. OJ No. C 115 of 28.9.1974
- Opinion on Economic and Monetary Union, 116th Plenary Session held on 12 and 13.12.1973; Opinion Doc. CES 928/73 + Appendices. Record of Proceedings Doc. CES 934/73 + Addendum. OJ No. C 115 of 28.9.1974
- Opinion on the Common Agricultural Policy, 117th Plenary Session held on 30 and 31.1.1974; Opinion Doc. CES 213/74 + Appendices. Record of Proceedings Doc. CES 223/74. OJ No. C 115 of 28.9.1974
- Opinion on GATT (Agricultural Aspects), 118th Plenary Session held on 27 and 28.2.1974; Opinion Doc. CES 215/74. Record of Proceedings Doc. CES 225/74. OJ No. C 115 of 28.9.1974
- Opinion on the Place and Role of the Economic and Social Committee in the Institutional Machinery of the Communities, 119th Plenary Session held on 27 and 28.3.1974; Opinion Doc. CES 331/74 + Appendices. Record of Proceedings Doc. CES 341/74. OJ No. C 115 of 28.9.1974
- Opinion on Employment and the Change of Situation in the Community, 120th Plenary Session held on 29 and 30.5.1974; Opinion Doc. CES 571/74. Record of Proceedings Doc. CES 594/74; OJ No. C 109 of 19.9.1974.

- Opinion on Development Cooperation, 121st Plenary Session held on 26 and 27.6.1974; Opinion Doc. CES 703/74. Record of Proceedings Doc. CES 720/74; OJ No. C 116 of 30.9.1974
- Opinion on the Conditions for granting National Aid under the Common Structural Policy for Sea Fishing, 121st Plenary Session held on 26 and 27.6.1974; Opinion Doc. CES 704/74 + Appendices. Record of Proceedings Doc. CES 724/74; OJ No. C 116 of 30.9.1974
- Opinion on the Situation of the Community, 122nd Plenary Session held on 17 and 18.7.1974; Opinion Doc. CES 774/74. Record of Proceedings Doc. CES 795/74 + Corrigendum; OJ No. C 125 of 16.10.1974
- Opinion on the Mediterranean Policy of the Community, 127th Plenary Session held on 29 and 30.1.1975; Opinion Doc. CES 91/75 + Appendices. Record of Proceedings Doc. CES 106/75; OJ No. C 62 of 15.3.1975
- Opinion on Developing Countries in the GATT Negotiations, 127th Plenary Session held on 29 and 30.1.1975; Opinion Doc. CES 92/75 + Appendices. Record of Proceedings Doc. CES 107/75; OJ No. C 62 of 15.3.1975
- Opinion on Education in the European Community, 129th Plenary Session held on 23 and 24.4.1975; Opinion Doc. CES 487/75. Record of Proceedings Doc. CES 505/75; OJ No. C 255 of 7.11.1975
- Opinion on a Community Policy on Data-Processing; 129th Plenary Session held on 23 and 24.4.1975; Opinion Doc. CES 485/75. Record of Proceedings Doc. CES 503/75; OJ No. C 255 of 7.11.1975
- Opinion on European Union, 132nd Plenary Session held on 16 and 17.7.1975; Opinion Doc. CES 805/75; Record of Proceedings Doc. CES 811/75; OJ No. C 270 of 26.11.1975

- Opinion on Transport and Telecommunications, 133rd Plenary Session held on 24 and 25.9.1975; Opinion Doc. CES 963/75. Record of Proceedings Doc. CES 974/75; OJ No. C 286 of 15.12.1975
- Opinion on Development Cooperation Policy - Convention of Lomé; 135th Plenary Session held on 26 and 27.11.1975; Opinion Doc. CES 1224/75. Record of Proceedings Doc. CES 1244/75; OJ No. C 35 of 16.2.1976
- Opinion on the Economic and Social Situation of the Woman in the European Community; 137th Plenary Session held on 25 and 26.2.1976; Opinion Doc. CES 215/76 + Appendices. Record of Proceedings Doc. CES 228/76; OJ No. C 131 of 12.6.1976.
- Opinion on Unemployment in the Community, 137th Plenary Session held on 25 and 26.2.1976; Opinion Doc. CES 216/76. Record of Proceedings Doc. CES 229/76; OJ No. C 131 of 12.6.1976
- Opinion on the Coordination of National Employment Policy Instruments, 138th Plenary Session held on 31.3. and 1.4.1976; Opinion Doc. CES 376/67. Record of Proceedings Doc. CES 387/76; OJ No. C 131 of 12.6.1976
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A P P E N D I X I I I

ESC MEMBERS INVITED TO ADDRESS
THE EUROPEAN PARLIAMENT

DATE	ESC MEMBERS	PARLIAMENTARY COMMITTEES	MATTERS DEALT WITH
18.04.75	F. BOUREL	Agriculture	Statement on the Stock-taking of the Common Agricultural Policy.
29.09.75	C. EVAIN	Development and cooperation	Statement on the 1976 Generalized Scheme of Preferences.
19.05.76	A. LAVAL	Social Affairs, Employment, Education (in anticipation of the next Tripartite Conference)	State of ESC work on Employment, in the light of the Committee Opinion on the Coordination of National Employment Policy Instruments.
22.06.76	T.J. MAHER	Regional Policy, Land Use and Transport	Outline of the ESC Opinion on Regional Policy.
20.10.76	K.H. HOFFMANN and J. ROUZIER	Social Affairs, Employment and Education	Contribution to the Parliamentary Committee's work on the Harmonization of Certain Social Provisions in Road Transport.

DATE	ESC MEMBERS	PARLIAMENTARY COMMITTEES	MATTERS DEALT WITH
24.11.76	C. EVAIN	Development and Cooperation	Talks based on the ESC Opinion of November 1975 on the Involvement of Socio-economic Interest Groups in the Implementation of the Lomé Convention.
20.01.77	Mr DE GRAVE	Environment, Public Health and Consumer Protection	Exchange of views on the Proposal for a Council Directive on the Approximation of the Laws of Member States on Articles of Precious Metals.
14.02.77	Mr DE GRAVE	Environment, Public Health and Consumer Protection	Invitation to attend a hearing organized by the Parliamentary Committee and the Consumers' Consultative Committee on the Proposal for a Council Regulation relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States concerning Liability for Defective Products
23.03.77	G. de CAFFARELLI		Attendance at European Parliament discussions on Farm Prices.
24.05.77	Mr BERNS	Agriculture	The Common Agricultural Policy in the International Context.
R/CES 628/77	as		.../...

A P P E N D I X I V

ECONOMIC AND SOCIAL COMMITTEE CHAIRMEN
AND VICE-CHAIRMEN SINCE 1958

<u>1958-1960</u>	<u>CHAIRMAN</u>		
	Mr de STAERCKE	Belgium	Group I
	<u>VICE-CHAIRMEN</u>		
	Mr CANTONI	Italy	Group III
	Mr ROSENBERG	Germany	Group II
<u>1960-1962</u>	<u>CHAIRMAN</u>		
	Mr ROSENBERG	Germany	Group II
	<u>VICE-CHAIRMEN</u>		
	Mr de STAERCKE	Belgium	Group I
	Mr CANTONI	Italy	Group III
<u>1962-1964</u>	<u>CHAIRMAN</u>		
	Mr ROCHE	France	Group III
	<u>VICE-CHAIRMEN</u>		
	Mr JONKER	Netherlands	Group I
	Mr ROSENBERG	Germany	Group II
<u>1964-1966</u>	<u>CHAIRMAN</u>		
	Mr GIUSTINIANI	Italy	Group I
	<u>VICE-CHAIRMEN</u>		
	Mr COOL	Belgium	Group II
	Mr GENIN	France	Group III

<u>1966-1968</u>	<u>CHAIRMAN</u>		
	Mr MAJOR	Belgium	Group II
	<u>VICE-CHAIRMEN</u>		
	Mr KRAMER	Germany	Group I
	Mr GERMOZZI	Italy	Group III
<u>1968-1970</u>	<u>CHAIRMAN</u>		
	Mr BERNIS	Luxembourg	Group III
	<u>Vice-CHAIRMEN</u>		
	Mr de PRECIGOUT	France	Group I
	Mr BRENNER	Germany	Group II
<u>1970-1972</u>	<u>CHAIRMAN</u>		
	Mr KUIPERS	Netherlands	Group I
	<u>VICE-CHAIRMEN</u>		
	Mr ASCHOFF	Germany	Group III
	Mr BOULADOUX	France	Group II
<u>1972-1974</u>	<u>CHAIRMAN</u>		
	Mr LAPPAS	Germany	Group II
	<u>VICE-CHAIRMEN</u>		
	Mr CANONGE	France	Group III
	Mr MASPRONE	Italy	Group I

1974-1976

CHAIRMAN

Mr CANONGE France Group III

VICE-CHAIRMAN

Mr AMEYE Belgium Group I

Mr CARROLL
(23.5.1975) Ireland Group II

Mr van GREUNSVEN Netherlands Group II
(25.6.1975)

1976-

CHAIRMAN

Mr de FERRANTI United
kingdom Group I

VICE-CHAIRMEN

Mr BERNS Luxembourg Group III

Mr van GREUNSVEN Netherlands Group II

European Communities - Economic and Social Committee
The Right of Initiative of the Economic and Social Committee
Documentation of the General Secretariat
Brussels : General Secretariat of the Economic and Social
Committee

1977 - 124 pages

DK, D, E, F, I, N

The document starts by reviewing the ESC's scope of action in 1958-72 when it was unable to take up matters in connection with European integration on its own behalf.

The core of the document consists of a description of the possibilities for exerting influence that the ESC obtained when it had the right of initiative conferred on it. Mention is made of how it is now possible for the ESC to be active throughout the Community legislative process and the new opportunities which are afforded by joint use of the right of initiative and the other instruments provided for in its Rules of Procedure.

Finally, the document also looks into the nature of the ESC's relations with the European Parliament, which is becoming increasingly involved in the Community's decision-making process.