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The transitional period and the institutional implications of enlargement

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Introduction[1]

The accession of Greece, Portugal and Spain, like any enlargement of the Community, will obviously necessitate adjustments and transitional arrangements. But these familiar concepts gain a new dimension when applied to a Community which will have lost much of its homogeneity by a two-phase doubling of its membership. If the Community is to be preserved and developed so that it can integrate the new Member States and live up to their expectations, there can be no thought, in the period leading up to enlargement, of any relaxation of efforts to complete the common market, to move towards economic and monetary union and to formulate common policies on energy, regional development and tax harmonization.

This is why this paper is not content to outline a simple transitional formula based on that worked out for the 1973 enlargement and list the unavoidable, more or less numerical adjustments. Far more attention has had to be paid to the need first to devise a genuine transitional strategy to facilitate full integration of the new members and second to plan adjustments which would help to keep the Community running smoothly.

[1] This Commission Communication is the second part of the general considerations on the problems of enlargement (Supplement 1/1978). Supplement 3/1978 analyses the economic and sectoral aspects of enlargement.

Part One

Transitional period

Basic approach

1. At the time of the first enlargement it was decided that the acceding countries would be allowed a transitional period in which to adjust to existing Community legislation (*acquis communautaire*). This was essentially the same for all sectors and featured fixed, relatively short timetables. In addition, the three countries were involved in the Community's decision-making procedures and in political cooperation activities as soon as the Accession Treaty was signed and participated fully in the work of all the institutions once it entered into force. The choice of transitional arrangements was in fact dictated by the largely comparable situations of the 'Six' and the 'Three'.

2. The accession of Greece, Portugal and Spain presents rather different transitional problems. The solutions to be devised must promote the integration of countries with a level of development well below the Community average; they must allow for an additional effort to reorganize structures within the existing Community; and they must be conceived in such a way that the enlarged Community can be consolidated without impeding progress.

3. This being so, the end result of any attempt to plan and regulate the transition along the strict lines of the first Accession Treaty might be the opposite of that intended: instead of guaranteeing orderly integration of the acceding countries into the Community system, the enlarged Community might seize up or the new members, and perhaps certain existing members, might find it impossible to honour their obligations. It would be preferable therefore to find a simple formula that would allow a measure of flexibility in the management of the transitional period. The considerations which follow are based on this pragmatic approach. They set out to establish a general framework for reflection without prejudice to any special arrangements which may be found necessary during the negotiations to deal with the special situation of one or other of the applicants.

Negotiating period

4. Given the extent of the adjustment problems, it would seem advisable to tackle them during the negotiating period, without, however, delaying accession. The Community could go beyond mere encouragement of unilateral initiatives designed to facilitate integration of the applicant countries. The structural redevelopment policies applied by the Community and the applicant countries should be coordinated, if not actually harmonized, in preparation for enlargement. The two sides should also endeavour to make their economies as complementary as possible. Enlargement must not be allowed to aggravate the sectoral or regional problems already facing the Community, many of them shared by the applicant countries (for example, problems in Mediterranean agriculture and in the steel, textile, footwear and shipbuilding industries). With this in mind the Commission could liaise with the applicant countries and organize consultations on any important measures either side might be planning to introduce.

Interim period between signature and entry into force of the act of accession

5. Once the act of accession was signed the acceding States would be progressively involved in Community procedures and political cooperation, although they would have no formal rights in the matter. In particular, they would have to be associated in some way or other with the formulation of new policies and the revision of existing ones. This brings to mind the favourable experience acquired at the time of the first enlarge-

ment, when all important Community decisions liable to affect the acceding countries were discussed in detail by the two sides. These preliminary contacts and consultations were taken care of by the Commission itself as far as Commission proposals and decisions were concerned. On the Council side contacts were organized within an interim committee consisting of representatives of the Community and the acceding States on the basis of common guidelines agreed by the Six. Furthermore, during the months immediately preceding entry, the acceding States actually played quite a large part in Council deliberations.

Following this precedent the countries now applying for membership would have to undertake to consult the Commission in advance on any national measure, legislative or otherwise, which might affect the functioning of the Community after enlargement.

The transitional period proper

6. Accession of the new Member States would involve their immediate and full participation in all Community institutions and bodies and in the decision-making process. This equality of rights would have to be matched by an equality of obligations, with the sole exception of obligations—limited in extent and in time—peculiar to the transitional period.

7. Given the larger scale of the adaptation exercise, it is obvious that the transitional period (the content of which would have to be determined in the act of accession) cannot be any shorter than that adopted for the first enlargement (five years). It would have to end on a fixed date and could not be too long lest the incentive to reform be lost and Community cohesion compromised. Furthermore, the transitional period actually necessary will depend in each case not only on the initial situation of the new member but also on the development of the economic situation in Europe and the world during the period of integration. Depending on the situation, ten years might be regarded as the maximum and five years as the minimum necessary to complete the transition.[1]

8. The scale and complexity of the integration problems to be resolved call for a greater degree of flexibility in the transitional procedures than at the time of the first enlargement. A possible basis here would be some of the rules established for the progressive establishment of the common market (Article 8 of the EEC Treaty). It would also seem appropriate to divide the transitional period (if it were longer than five years) into two stages, each with a clearly defined programme.

9. This general arrangement should have sufficient built-in flexibility to allow for the differences between the adaptation difficulties peculiar to each sector—which rules out a uniform conception of the transitional period. The progress to be made during each of the stages would be set out in specific programmes for individual sectors or groups of sectors, account being taken of the clear interdependence of the formulas to be adopted. In each case it would be necessary to determine the correct blend of automatic and flexible elements in the integration process. The solutions chosen should not only promote rapid, effective integration of the new Member States, they should also cater for existing needs in the Community of Nine and guarantee the subsequent development of the Community of Twelve.

10. The first stage should see the attainment of precise objectives in each sector in line with a timetable designed to ensure that, by the end of that stage, the new Member States are as fully integrated as possible. In view of the adaptation effort that would be required, it seems logical that the Community should use the financial instruments at its

[1] It is true that the Treaty of Rome (Article 8 of the EEC Treaty) provided for a twelve-year transitional period. But the comparison is not a valid one. The provisions in question were experimental. In practice it proved possible to shorten the period and many of the clauses dictated by caution during negotiation of the Rome Treaties proved unnecessary in the end. Indeed some were never used.

disposal to channel maximum special assistance to the new Member States during this period, and also set aside sufficient funds to assist the Nine in making any adjustments that might be necessary on their side.

11. Should it become factually apparent that the key objectives set could not be attained in time, a decision might be taken by the Council, on a proposal from the Commission, to extend the first stage. The decision would be taken by a qualified majority in the case of an initial extension (length to be determined). If a second extension proved necessary, unanimity would be required. The decision would be taken well before the end of the first stage and would mean an automatic reduction in the length of the second stage.

12. Over and above the measure of flexibility thus added to the transitional period, the second stage would serve to complete integration in sectors where the adjustments were so complicated or so extensive as to need the full transitional period.

13. In addition to the provisions peculiar to each stage, a number of clauses would be valid for the entire transitional period. For example the requirement to adopt the *acquis communautaire* should be qualified in certain cases by special safeguard clauses to cope with unforeseeable difficulties. The same would apply to the Nine, in view of the dangers enlargement could present for some sensitive sectors. A general safeguard clause of the type provided for in Article 135 of the first Act of Accession could be invoked throughout the transitional period.

14. The new accession treaty should not be content to regulate, with the necessary precautions and flexibility, arrangements for the adoption of the *acquis communautaire*. It should also provide for the development of the Community during the transitional period. It could happen that one or other of the new Member States might not be able, for serious reasons, to participate from the outset in the implementation of a new policy. A standstill in Community activity must be avoided at all costs. A possible response to these problems would be derogation or safeguard clauses for a limited period. Provisions of this kind would not be a new departure for the Community: the protocols to the EEC Treaty afford numerous examples. In framing a new policy and exceptions of this kind, the Community should approve special measures which would allow the Member State in question to catch up. The same consideration would apply in the event of far-reaching changes to existing policies if the policy in question had still to be applied by the new Member State.

15. Provision should therefore be made in the accession treaty for the possibility of recourse to such formulas (derogation and catching-up) to deal with developments arising during the transitional period. The decision to invoke a clause of this kind should be taken within the Community institutions in accordance with normal procedures. If exceptions to the fundamental principle of full participation by all Member States in the decision-making process were contemplated, exceptions should be strictly limited to acts of short duration, confined to the transitional period (compare non-participation in the machinery of the European Development Fund after the first enlargement), or to simple administrative measures of no interest to the acceding State or States. However, if it were necessary to provide for *ad hoc* decision-making procedures, the weighting applicable to qualified majority voting would have to be adjusted. Furthermore, allowance would have to be made for the fact that there will doubtless be three different transitional periods. These complications militate in favour of an alternative approach—namely, abstention.

16. Subject to any strictly limited exceptions or derogations specified in the accession treaty, the end of the transitional period would represent the ultimate deadline for entry into force of all Community rules and application of all measures associated with enlargement.

Part Two

Adjustments to the Treaties necessitated by enlargement

17. For political reasons the only adjustments made to provisions of the Treaties by the first Accession Treaty in 1972 were those directly reflecting the increase in the number of Member States. With the new accessions there will be twice as many Member States as in the Community as originally constituted. The Community will find itself less homogeneous as a result of the different political, economic and social structures of the new members, and this will make it more difficult to reach joint decisions and apply them properly.

18. The Community institutions were designed with six countries in view. Experience in the changeover from six to nine members has already revealed that it is difficult or even impossible to act and react in concert. When there are twelve members the institutions and decision-making procedures will be under considerable strain; holdups and second-best compromises are inevitable if the Community's *modus operandi* is not improved. Various practical administrative considerations, such as the use of languages, will have to be borne in mind too. The questions arising in this connection require further study; it would be premature to suggest answers at this stage.

More far-reaching changes will therefore be necessary this time if the enlarged Community is to work properly. From the legal angle there is no reason why the concept of adjustment of the Treaties of Rome (Article 237 of the EEC Treaty and 205 of the Euratom Treaty) should not be interpreted more broadly than in the past, as long as there is a definite causal link between the adjustments to the Treaties and the enlargement of the Community and as long as it is borne in mind that any change in the fundamental principles of the Treaties can be made only by the special procedure laid down for that purpose. The position as regards adjustments to the ECSC Treaty is rather different and will be considered separately.[1]

'Numerical' changes

19. When considering what 'numerical' changes in the composition and operation of the institutions will be entailed by the increase in the number of Member States we can only refer to the rule, defined when the institutions merged in 1967 and confirmed at the time of the 1973 enlargement, that all the Member States must be represented in every Community institution and body. The Community must also remain consistent and avoid any appreciable shift in the existing balance of power between Member States. Similar decisions taken in the past, when the Community was established and later when it was enlarged for the first time, were based on a combination of factors: the Member States were ranked in order of size measured by population, but political considerations also entered into the calculation (see Table 1, p. 11) gives certain basic statistics for all Member States and the States that have applied for membership. There can be no golden rule, but the table suggests that Greece and Portugal should occupy much the same position as Belgium and the Netherlands, whereas Spain lies between this group and the big countries (Germany, Italy, the United Kingdom and France).

20. For the distribution of seats in the directly elected European Parliament, it would follow from the calculation method adopted by Parliament itself[2] that Spain would have 50 seats while Greece and Portugal would elect 23 members each. But, as the Nine departed from Parliament's proposal when

[1] Points 23 and 47.

[2] Parliament's method of calculation gave a variable number of seats for each population bracket to offset the excessive power that would have been held by the larger countries on a strict population yardstick (draft convention adopted by Parliament on 14.1.1975; Bull. EC 1-1975, point 2501).

adopting the definitive distribution, these figures will have to be adjusted slightly. Greece and Portugal should have the same number of members as Belgium (24), which was given one more member than it would have had under Parliament's method. Spain might be given something like 58 seats since, among the Nine, the four large countries were given 81 each (instead of 65, 66, 67 and 71 under Parliament's method); this figure, reflecting population levels, would put Spain roughly half way between the large and the medium-sized countries (in proportions of 5:8:10). While the total number of Members of the European Parliament (516) might seem rather large, it would not be a good idea to try and reduce the figure by altering the distribution of seats among the Nine.

21. Where the Council is required to act by a qualified majority, the weighting of the votes of the new Members will have to be established. Using the same basis as in the Community of Nine (Article 148(2) of the EEC Treaty and Article 118(2) of the Euratom Treaty), Greece and Portugal would have five votes each, the same as Belgium and the Netherlands. As the four large Community countries have ten votes each, the figure for Spain might be eight. This would give a total voting strength of 76. The number of votes required for a qualified majority could be set at 51. Council decisions not taken on a Commission proposal should require the votes of at least eight countries, corresponding to the two-thirds proportion required in the Community as at present constituted (6 out of 9) and as originally constituted (4 out of 6).

22. The existing balance of power between the Member States would thus be broadly preserved. In the Community of Nine, the four large countries together cannot constitute a qualified majority (41 votes) without the support of at least one of the smaller countries; a comparable situation would obtain in the Community of Twelve, since those four countries plus Spain would still not be strong enough. Two large countries acting together would still not be able to raise between them the 25 votes required to block a measure—or (in the budgetary context) to pass it: they would still require the votes at least of one or more of the smaller countries.

23. The special rules in the ECSC Treaty (second and fourth paragraphs of Article 28) which refer to shares in aggregate coal and steel output in the Community would not appear to be affected by enlargement, as none of the applicant countries accounts for one eighth of output (Spain currently accounts for between 10 and 11%). The eight-ninths majority required for certain amendments to the Treaty by the second and third paragraphs of Article 95 of the ECSC Treaty should be changed to five-sixths (ten-twelfths) in a Community of Twelve; this would bring back the quorum that applied in the Community of Six but was subsequently abandoned for arithmetical reasons in the Community of Nine.

24. As for the future composition of the Commission the guiding principle, as for the other institutions of the Community, should be to assure its efficient functioning. Various formulas would be possible: one possibility, already suggested by the Commission and favourably considered by the Ministers of Foreign Affairs (informal meeting at Leeds Castle) is that the College would be composed of one national of each Member State. However, it would result in a marginal reduction of the number of Members of the Commission from the existing level of thirteen, which would pose certain practical problems in view of the increased burden of work in a wider Community, particularly during the transitional period.

25. The changes in the composition and operation of the Court of Justice required by enlargement will be considered in an opinion which the Commission has already asked the Court itself to give. Even before that opinion has been given, it may be stated that application of the existing criteria (Articles 165 of

[1] Total number of votes for all the Member States (76) less the minimum required for a qualified majority (51).

Table 1 — *Numerical participation in the Community institutions*

	Indicators of size of country			Participation in institutions					
				European Parliament					
	Surface area (1 000 km²)	Population 1976 (millions)[3]	GNP 1976 (USD thousand million)[4]	Now	Directly elected	Council weighting[10]	Commission	Court of Justice (Judges)[8]	Economic and Social Committee
Germany	248.6	61.5	445.30	36	81	10	1 [7]	1	24
United Kingdom	244.0	56.0	218.50	36	81	10	1 [7]	1	24
Italy	301.3	56.2	170.80	36	81	10	1 [7]	1	24
France	547.0	52.9	346.70	36	81	10	1 [7]	1	24
Spain [1]	504.8	36.2	104.62	—	58 [6]	8	1	1	18 [9]
Netherlands	41.2	13.8	89.30	14	25	5	1	1	12
Belgium	30.5	9.8	66.35	14	24	5	1	1	12
Greece [1]	132.0	9.2	22.04	14 [5]	24	5	1	1	12
Portugal [1]	91.6	9.7	14.95	—	24	5	1	1	12
Denmark	43.1	5.7	38.90	10	16	3	1	1	9
Norway [2]	323.9	4.0	31.30	10	—	3	1	1	9
Ireland	70.3	3.2	8.05	10	15	3	1	1	9
Luxembourg	2.6	0.4	2.20	6	6	2	1	1	6

[1] Participation in the different institutions as suggested in the present report. Greece has proposed the same figures.
[2] Participation levels in 1972 Act of Accession.
[3] Source: SOEC and Commission.
[4] Source: Commission.
[5] Level proposed by Greece.
[6] Based on proposed Council weighting for Spain of 8 votes i.e. between groups of medium-sized and large countries in ratio of 5:8:10. Calculated figure = 58.2 with medium countries having 24 seats, 58.6 if assumed to have 25.
[7] Possible level, instead of 2 each as at present.
[8] Subject to view of Court of Justice.
[9] Calculation on same basis as for elected parliament = 19.2 seats. Rounded down to 18 to allow for equal size of three interest groups.
[10] It is unlikely that the coal and steel output of any of the applicant States will reach one eighth of the total value of output of the enlarged Community. This aspect of Article 28 of the ECSC Treaty will therefore be unaffected by enlargement.

the EEC Treaty, 137 of the Euratom Treaty and 32 of the ECSC Treaty) would mean that the Court should consist of thirteen judges (an odd number to avoid tied votes).

26. The Court of Auditors will have to have one new member for each new Member State.

27. In the Economic and Social Committee there should be twelve seats each for Greece and Portugal (as for Belgium and the Netherlands) and eighteen for Spain to reflect the relative sizes of the applicant countries.

28. The ECSC Consultative Committee (Article 18 of the ECSC Treaty) and the Euratom Scientific and Technical Committee (Article 134(2) of the Euratom Treaty) will have to be expanded to make room for representatives from the new Member States—the number of extra seats can be settled later.

29. The European Investment Bank will presumably give its opinion on the changes that will have to be made to the EIB Protocol to the EEC Treaty, chiefly Articles 3, 4, 11 and 12.

Adjustments required to enable the enlarged Community to operate properly

30. Above and beyond these inevitable adjustments the Treaties will have to be changed further if the functioning of the Community institutions is to be improved to

combat the tendency for decision-making procedures to become more cumbersome as a larger number of States are involved. The main changes would be to make greater use of majority voting on matters which practical experience has shown to be suitable for it, to have the Commission, as a rule, exercise administrative and executive functions and to take greater care in deciding which of the legal instruments provided for by the Treaties is to be used in each case and how it is to be implemented.

Use of the qualified majority

31. In a twelve-member Community the Council's ability to reach decisions within acceptable periods of time is likely to be compromised. This 'mechanical' hitch could to some extent be repaired by more frequent use of majority voting, notably in cases where experience in the Community of Nine has shown that holdups are likely to occur. Naturally the Commission has no intention of reviving an old quarrel on a particularly delicate point, on which the Member States agreed to disagree when it last came to a head. The idea now is not to go back on that 'agreement' but rather to take up the approach adopted by the Heads of State or Government at their Paris Summit at the end of 1974 and expressed in their communiqué: 'In order to improve the functioning of the Council of the Community, they consider that it is necessary to renounce the practice which consists of making agreement on all questions conditional on the unanimous consent of the Member States, whatever their respective positions may be regarding the conclusions reached in Luxembourg on 28 January 1966'.[1]

32. The value of this approach has been confirmed by a practice which has been developing gradually since 1975. Majority voting in the Council has been extended pragmatically. Ever greater use is being made of the procedure in all matters which raise no important political questions such as might give a Member State a valid reason for demanding a unanimous decision despite the legal possibility of a majority decision. A political code of conduct has gradually emerged and is now accepted by all the Member States.

33. Considering this development and the implications of enlargement, it may legitimately be asked whether the Community would not gain valuable room for manoeuvre if the areas in which this code applies were extended. A number of cases are currently outside its purview since the very text of the Treaty is against it, requiring a unanimous decision although there are valid reasons for preferring a more open-minded attitude. In other words, the point is to consider in each case whether the unanimity rule should be maintained in all its rigour, even where experience suggests that there is no imperious reason for doing so.[2] The working assump-

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[1] Point 6 of the communiqué; Bull. EC 12-1974, point 1104.

[2] The unanimity rule would therefore continue to apply in all cases involving a decision to determine or specify the scope of the Treaties:

- second paragraph of Article 59 of the EEC Treaty (extension of provisions relating to freedom to provide services to nationals of non-member countries);
- Article 223(2) of the EEC Treaty (list of war materials);
- Article 227 of the EEC Treaty (overseas departments);
- Article 235 of the EEC Treaty and Article 203 of the Euratom Treaty (cases where the Treaties do not confer the necessary powers);

or where the Treaties are to be supplemented or adjusted:

- Article 138(3) of the EEC Treaty and Article 108(3) of the Euratom Treaty (direct elections);
- third paragraph of Article 201 of the EEC Treaty and third paragraph of Article 173 of the Euratom Treaty (replacement of financial contributions by own resources or levies);
- Article 76 of the Euratom Treaty (amendment of provisions relating to supplies);
- Article 85 of the Euratom Treaty (safeguards);
- Article 90 of the Euratom Treaty (system of ownership for fissile materials.

Nor is there to be any change in the unanimity rule for provisions concerning enlargement:

- first paragraph of Article 237 of the EEC Treaty and first paragraph of Article 205 of the Euratom Treaty;

or those concerning the association of countries and territories outside the Communities:

tion underlying the considerations below is based on a conviction that a more flexible approach would make it possible to eliminate the sources of holdups arising exclusively from actual Treaty provisions, without depriving the fundamental interests of the Member States of the full protection given by a political safety net whose *raison d'être* is nowadays uncontested.

34. The approach that we have taken in what follows involves excluding all cases that might affect the principles and bases of the Community (these would in any event be excluded under Article 237 of the EEC Treaty or Article 205 of the Euratom Treaty) or raise particularly delicate or difficult political problems.

35. In view of the foregoing, there are few cases where the formal voting rules can be reviewed. The logic of our argument applies first and foremost to the vast field of approximation of laws under Article 100 of the EEC Treaty, where majority voting will have to be the rule if progress is not to become inextricably bogged down: take in particular customs legislation and the elimination of technical barriers to trade. But unanimity should still be required where the proposed Community rules relate to a subject which, in at least one Member State, is regulated by (parliamentary) legislation or involves a point of public policy, public security or public health. There are different grounds for these criteria, which demarcate the residual scope of the unanimity rule. One concerns the type of provision which would be affected by harmonization in line with the logic inherent in the second paragraph of Article 100 and Article 57(2) of the EEC Treaty.[1] The other concerns the interests which the authors of the EEC Treaty manifestly wished to give special protection (Articles 36, 48, 53, and 56).

36. Applying the first criterion, the harmonization of tax legislation will continue to be a matter for a unanimous decision. Article 99 of the EEC Treaty should therefore not be amended, at least at the current stage of Community development. The same conclusion applies where tax harmonization would come under Article 100 (direct taxation).

37. It would also be of practical use to amend Article 28 of the EEC Treaty (autonomous alteration or suspension of customs

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second paragraph of Article 136 of the EEC Treaty (association of the overseas countries and territories) second paragraph of Article 238 of the EEC Treaty and second paragraph of Article 206 of the Euratom Treaty (association with non-member countries and international organizations).

Likewise, the unanimity rule must be maintained for any decision concerning the structure or composition of the institutions:

Article 10(1) of the Merger Treaty (number of Members of the Commission);
second paragraph of Article 12 of the Merger Treaty (replacement of Members of the Commission);
fourth paragraph of Article 165 of the EEC Treaty and fourth paragraph of Article 138 of the Euratom Treaty (increase in the number of Judges);
third paragraph of Article 166 of the EEC Treaty and third paragraph of Article 138 of the Euratom Treaty (increase in the number of Advocates-General);
second paragraph of Article 194 of the EEC Treaty and second paragraph of Article 166 of the Euratom Treaty (appointment of Members of the Economic and Social Committee).

For obvious reasons the rules governing use of languages fall into this category:

Article 217 of the EEC Treaty and Article 120 of the Euratom Treaty.

Nor should there be any departure from the unanimity rule where public policy, public security or public health is to be protected:

Article 56(2) of the EEC Treaty (public policy derogation from the right of establishment for foreign nationals—laws, regulations or administrative provisions);
Articles 24(2) and 25(3) of the Euratom Treaty (secret information);

or where the individual rights and interests of nationals of the Member States are to be protected:

Article 75(3) of the EEC Treaty (serious effect of the common transport policy on the standard of living and on employment in certain areas);
Article 76 of the EEC Treaty (effect on carriers in other Member States);
Article 93(2) of the EEC Treaty (aids regarded as compatible with the Treaty by way of exception from the general rule).

[1] Article 100 provides for further consultation of Parliament and the Economic and Social Committee on directives whose implementation would involve the amendment of legislation in one or more Member States; Articles 56(2) and 57(2) require unanimity on matters which are the subject of legislation but allow majority voting on subjects which are a matter for regulation or administrative action in each Member State.

duties). It is hardly logical to continue demanding unanimity here whereas similar decisions can be taken by qualified majority under Article 43 (agriculture) or Article 113 (commercial policy). There might also be some easing of the terms of the Article to allow more use of the possibilities afforded by the fourth indent of Article 155 of the EEC Treaty with respect to routine changes or suspensions.

38. If the Treaties are to be adjusted so that the enlarged Community can move more easily towards maturity, the possibility of qualified majority voting should be introduced at Article 103(2) of the EEC Treaty on measures of 'conjunctural policy'. If, as seems increasingly likely, progress is made towards economic and monetary union, the rules now used to implement other common policies (Articles 43, 75, 113 etc. of the EEC Treaty) would provide a useful guideline. The prospect of enlargement makes it all the more important to give greater bite to short-term economic policy.

39. On similar lines thought might be given, as progress is made towards monetary union, to the possibility of majority voting for directives concerning exchange policies under Article 70(1) of the EEC Treaty (capital movements between Member States and non-member countries).

40. Considerations of efficiency also indicate that the financial and accounting provisions referred to in Article 209 of the EEC Treaty and Article 183 of the Euratom Treaty (notably financial regulations) should be adopted by qualified majority, like the budget, whose establishment and implementation they serve. The enlarged Community with growing financial responsibilities should be in a position to adapt its management rules to new situations and new constraints without endlessly being faced with deadlock and paralysis. This will of course in no way affect the Council's undertaking to involve Parliament in the process of adopting these provisions.

41. Apart from the cases listed above, where the changeover from unanimity to majority voting would, at least potentially, be of substantial practical value, there are other Articles whose amendment, although of lesser importance, would help to streamline the enlarged Community's decision-making procedures.

42. The introduction of majority voting in Article 51 of the EEC Treaty would make for greater simplicity and consistency in the rules governing the free movement of migrant workers, the principle of which is laid down in Article 48 and is to be put into effect progressively by the Council, acting by simple majority under Article 49. The specific aim of Article 51 is to facilitate freedom of movement for workers by means of social security arrangements.

43. Following the reasoning already set out in relation to Article 100 of the EEC Treaty,[1] the unanimity rule should apply in relation to right of establishment under Article 57(2) only on decisions that involve the amendment of national legislation or affect public policy, public security or public health.

44. Majority voting could also be envisaged for decisions as to new tasks for the Social Fund (Article 126(b) of the EEC Treaty), though such tasks must remain within the objectives set out in Article 123.

45. On the same criteria, adjustments to be recommended for the Euratom Treaty would concern only the first paragraph of Article 7 (multiannual programmes), Articles 47 and 48 (joint undertakings) and the first paragraph of Article 69 (prices fixed under the supplies provisions). The substance of these Articles corresponds to that of the EEC Articles relating to the management of common policies, where majority voting is generally provided for (Articles 43, 75 and 113). There should therefore be no basic objection to dropping the formal requirement of unanimity here.

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[1] Point 35.

46. Experience has shown that only the reform of the first paragraph of Article 7 of the Euratom Treaty is of major practical interest; this provision concerns one of the most important decisions required for the implementation of a common nuclear research policy, namely the adoption from time to time of multiannual programmes. In the past the procedure here has been particularly slow and cumbersome because of the need for unanimity, and Euratom has suffered as a result. At the beginning of the atomic age, when Community action was only just getting under way, it was understandable that the Member States should insist on a unanimous decision. But a more flexible attitude is now possible, and indeed necessary, if an enlarged Atomic Energy Community is to work. Since the general orientation of Euratom research policy is no longer disputed, it would seem reasonable to agree to majority decisions being taken on programmes to give practical expression to this policy, as is the case with the common policies worked out under the EEC Treaty. In addition there is a budgetary argument: because of the recent changes in the budgetary procedure and of the power that Parliament has acquired in this field, decisions taken under the first paragraph of Article 7 of the Euratom Treaty have now lost part of their earlier importance.

47. The question of adjustments to the ECSC Treaty has to be seen in different terms, since the general system of this Treaty is different from that of the EEC or Euratom Treaty. The ECSC Treaty is a 'traité-loi', which is to say that the rules governing ECSC activities are laid down in the Treaty itself. When the institutions act under the Treaty, they simply apply those rules and have very little in the way of a subordinate law-making function. Leaving aside Article 78f of the ECSC Treaty (adoption of financing and accounting provisions), which would have to be amended along with Articles 209 of the EEC Treaty and 183 of the Euratom Treaty,[1] it is only in those rare cases where the Commission must obtain the Council's assent (which requires unanimity) that there is any need to consider converting the requirement of unanimity into the possibility of a qualified majority. But Article 98 of the ECSC Treaty does not allow for such far-reaching action as Article 237 of the EEC Treaty or Article 205 of the Euratom Treaty, since it is for the Council alone to determine the conditions of accession and national Parliaments have no role to play. This is not to say that the conditions of accession cannot entail minor adjustments inspired by a reasoning similar to that behind the adjustments to the EEC and Euratom Treaties, going beyond purely 'numerical' changes. It might be possible, for instance, to enter in the ECSC Treaty the rule (already in the EEC and Euratom Treaties) that an abstention shall not prevent the adoption of acts which require unanimity (see the third paragraph of Article 28 of the ECSC Treaty).

Adjustment in matters of substance

48. The EEC Treaty (Article 84(2)) makes rather special, not to say unique, provisions for sea and air transport. But in view of developments in Community law there have been moves towards common action in these sectors. Both areas took on added significance when the Community increased from Six to Nine, and the process will be repeated when the Community expands to Twelve. The advent of Greece will swell the tonnage of the fleet sailing under Community flags by one third, and there will be considerable expansion in the air transport sector when the Spanish, Greek and Portuguese air traffic, airports and airlines are counted in. It therefore seems advisable to adjust the Treaty to enable the common transport policy to develop in respect of shipping and air transport, allowing for the rather special nature of these two sectors. Any adjustment should also include the possibility of voting by qualified majority, as is the case under the other common policies.

[1] Point 40.

Exercise of administrative and executive powers

49. The point has been made on numerous occasions that subsidiary Council bodies are so overburdened with secondary matters that they are unable to concentrate on really important issues and prepare the ground thoroughly for discussions by the Council itself. Despite the practical value of conferring administrative and executive powers on the Commission for the implementation of Community Regulations, the Council still does not make adequate use of the possibility offered by the fourth indent of Article 155 of the EEC Treaty (fourth indent of Article 124 of the Euratom Treaty). In certain cases the Council, by reserving for itself the power to take individual executive measures, notably where there are budgetary implications, is in strictly legal terms encroaching on the fields reserved for the Commission by the Treaties. The Commission recently forwarded a paper to the European Council listing fields where it should systematically be given full administrative and executive powers.[1]

50. When the Community has a greater number of members it will be even more necessary to relieve the Council and its subsidiary bodies of preparatory work on technical implementation matters and to use decision-making procedures which guarantee flexibility and speed—which have been achieved, as abundant experience shows, whenever a decision has been left to the Commission with the assistance, more and more often, of management and legislative committees. The simplest approach would be to alter the fourth indent of Article 155 of the EEC Treaty (and the fourth indent of Article 124 of the Euratom Treaty) to provide that the Commission shall exercise administrative and executive powers unless the Council decides otherwise. This would introduce into the Community legal order a method of action whose value has been recognized in the many official statements in the past (the most important being the communiqué put out by the Heads of State or Government at the 1974 Summit).[2] The Council would still have the power to reserve a decision for itself whenever it considered the matter under consideration to be politically sensitive. For implementing measures it could also make provision for committees of Member States' representatives according to the usual procedures, and the possibility of difficult decisions being referred back to the Council itself. The tried and tested arrangements now being used would continue to apply.

Choice of legal instruments

51. Most of the articles of the EEC and Euratom Treaties either state that they are to be implemented by any of the legal instruments (notably regulations directives or decisions) specified in Articles 189 of the EEC Treaty and 161 of the Euratom Treaty, or are silent on this point—which boils down to the same thing. Some articles, in contrast, prescribe the exclusive use of a given instrument. A case in point is Article 100 of the EEC Treaty, which prescribes the use of directives for the harmonization of such national provisions as directly affect the establishment or functioning of the common market.[3] But these directives are sometimes so detailed that national authorities (and national parliaments in those cases where it is up to them to take the necessary implementing measures) have virtually no freedom of action. The result is either lack of interest or blatant hostility, frequently leading to delays, which can be considerable, in the transposition of directives, not to mention the difficulty of checking national provisions for conformity with the directives. For this reason provisions such as Article 100 could be amended to advantage to give the Community legislator the right to choose the legal instrument (regulation or directive) to be used in each case.

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[1] Bull. EC 11-1977, point 2.3.23.

[2] Point 8 of the communiqué; Bull. EC 12-1974, point 1104.

[3] See also the following Articles of the EEC Treaty: 56 and 57 (coordination in the matter of right of establishment), 70 (coordination of exchange policies) and 99 (tax harmonization).

52. The basic feature of the Community's legal system is the principle that there should be a single body of secondary legislation. This principle is clearly set out in the second paragraph of Article 189 of the EEC Treaty, which states that a regulation shall be binding in its entirety and directly applicable in all Member States.

This principle of universality does not imply the uniformity of Community law. On the contrary, the Court of Justice has ruled that the principle of non-discrimination is a general principle of law binding on all Community bodies. So different cases must be handled in different ways. And the only way of distinguishing between fundamental and incidental differences is to refer to the principles and objectives on which the Treaty is founded. This means, for instance, that the unity of the common market should not be put at risk, that—in the context of the harmonization of legislation—existing differences between Member States should not be aggravated, and that any deferred or differentiated application of Community law should cease as soon as circumstances allow.

Given the greater heterogeneity of an enlarged Community, it might be advisable to write into the Treaty itself some definition of the criteria and limitations governing the type of differentiated application that would be compatible with the principles and aims of the Community.

Parliament

53. In this paper we have proposed a number of adjustments to the Treaties which, following enlargement, should help to improve the *modus operandi* of the Community's institutions, with particular reference to decision-making. These proposals would be incomplete if there were no reference to the potential implications for Parliament.

In purely formal terms, it must be stated that adjustments under Articles 237 of the EEC Treaty and 205 of the Euratom Treaty, to which this paper is devoted, cannot alter provisions of the Treaties which affect Parliament's role. Any change in the balance of power between institutions would have to be effected under Articles 236 of the EEC Treaty and 204 of the Euratom Treaty. But in practice it would be possible, without amending the Treaties themselves, to extend the 'conciliation procedure' that already exists between Parliament, the Council and the Commission beyond its current field of application, namely general Community instruments having substantial financial implications.[1] There is no reason why the institutions should not agree between themselves to apply this procedure to legislation on other matters.

[1] The conciliation procedure instituted in March 1975 by a joint declaration of Parliament, the Council and the Commission involves a conciliation committee which allows direct negotiation to take place between the Council and representatives of Parliament. The Commission sits in.

European Communities — Commission

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If the Community is to develop in order to be able to integrate the new Member States and to satisfy their hopes, there must be no slackening of efforts to complete the common market and to achieve economic and monetary union. 'The transitional period and the institutional implications of enlargement' supplements the Commission's Communication to the Council setting out its general considerations on the problems of enlargement.

In spotlights the need to develop a real transitional strategy which will see the harmonious integration of the new members and to plan adjustments to the Treaties which are not simply numerical changes but will help the enlarged Community to run smoothly.