

COMMISSION
of the European Communities

**Report of the Working Party
examining the problem
of the enlargement of the powers
of the European Parliament**

« Report Vedel »

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Bulletin of the European Communities
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In this report, which the Commission has decided to make public, all the problems connected with the increase in the powers of the European Parliament and the institutional development of the Communities are considered.

The report, which will furnish the Commission with some very useful ideas for consideration, has been drawn up completely independently by fourteen well-known authorities under the chairmanship of Dean Georges Vedel; they alone are responsible for the views expressed.

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INTRODUCTION

With the creation of the Communities' independent financial resources by the decision of 21 April 1970¹ and the amendments made to the budgetary provisions of the treaties by the treaty of Luxembourg of 22 April 1970,² the problem of the strengthening of the legislative and budgetary powers of the European Parliament has assumed a new topicality. This is further reinforced by the prospects opened up by the resolution of the Council and of the Representatives of the Governments of the Member States of 22 March 1971 concerning the introduction by stages of economic and monetary union.³ For its part the Commission has formally undertaken vis-à-vis both the European Parliament and the Council to submit proposals for such strengthening.⁴

With a view to preparing the measures for which it will thus have to take the initiative, the Commission decided at its meeting of 22 July 1971 to set up an *ad hoc* Working Party of independent experts to examine the whole corpus of problems connected with the enlargement of the powers of the European Parliament.

The Working Party, under the chairmanship of Professor Georges Vedel, Honorary Dean of the Paris Faculty of Law and Economic Sciences, was composed of:

Jean Buchmann, Professor in the University of Louvain;
Leopoldo Elia, Professor in the University of Rome;
Carl August Fleischer, Professor in the University of Oslo;
Jochen A. Frowein, Professor in the University of Bielefeld;
Giuseppe Guarino, Professor in the University of Rome;
Paul Kapteyn, Professor in the University of Utrecht;
Maurice Lagrange, Honorary Counsellor of State, Paris;
John Mitchell, Professor in the University of Edinburgh;
Mary Robinson, Professor in the University of Dublin;
Ulrich Scheuner, Professor in the University of Bonn;
Andrew Shonfield, Director of the Royal Institute of International Affairs, London;
Max Sørensen, Professor in the University of Aarhus;
Félix Welter, Honorary President of the Council of State, Luxembourg.

¹ See *Journal officiel* L 94, 28 April 1970, p. 19.

² *Ibid.* L 2, 2 January 1971, p. 1.

³ *Ibid.* C 28, 27 March 1971, p. 1.

⁴ See on this point the declaration included by the Council in its minutes concerning the Treaty of 22 April 1970 and "Les ressources propres aux Communautés européennes et les pouvoirs budgétaires du Parlement européen", published by the European Parliament, 1970, p. 204.

The Working Party's terms of reference were as follows:

- (a) The *ad hoc* Working Party will examine all the implications of extending the powers of the European Parliament:
 - (i) bearing in mind the possibility of a gradual extension of the powers of the Community and of the gradual transfer of certain prerogatives from the institutions of the States to the Community institutions to be carried out with the free consent of all Member States;
 - (ii) with a view to providing the Community with an effective institutional system;
 - (iii) with a view to ensuring that Community decisions are taken within a framework of democratic legitimacy;
 - (iv) taking into consideration the constitutional principles and practices of the Member States of the Community.
- (b) To carry out this task, the *ad hoc* Working Party should examine in particular the following subjects:
 - (i) the participation of the European Parliament in the continuous evolution of the constitution of the Community, namely in the complex process which involves in various ways the Commission, the Council, the national governments and parliaments, and in some cases, people directly by referendum, and which aims at giving the Community further powers, reforming its institutions and thus at gradually building political union;
 - (ii) the participation of the European Parliament in the Community legislative process in all fields which are or will be covered by Community powers. This study should cover in particular: the relationship between Community law and municipal law; the relationship between the various legal "acts" provided for in the Treaties; the nature of the decisions taken by the Council which are sometimes legislative in character, sometimes governmental and sometimes have an inter-State diplomatic character; the division of legislative and other powers between the Parliament and the Council; the Parliament's power of initiative;
 - (iii) the definition of the European Parliament's power in budgetary matters;
 - (iv) the European Parliament's functions in political control over the governmental power of the Community;
 - (v) the effects of increasing the powers of the Parliament on the relationship between the various Community institutions, on their structure and on their working methods;
 - (vi) the relationship between reinforcing the Parliament's powers and its election by direct universal suffrage.

Between 26 October 1971 and 25 March 1972 the Working Party held 11 sessions, some of them lasting one day, but most of them two. The last went on for five days.

The Working Party drew up its report on the basis of preparatory reports drawn up by its members and of the documentation made available to it. It also heard evidence from leading personalities in the Commission and outside it.

After setting out the method which the Working Party followed in its thinking and in its choices (Chapter I), the report describes the state of the Community in 1972 (Chapter II) and the present institutions and practice in the light of the tasks awaiting the Community (Chapter III). It is on this analysis that the proposals in the report are based. They deal chiefly with the organization of parliamentary control and to this end envisage successively the extension of the powers of the European Parliament, which lies at the heart of the Working Party's terms of reference (Chapter IV), its composition (Chapter V) and relations between it and the national parliaments (Chapter VI).

However, the problem of parliamentary control cannot be considered in isolation. It therefore seemed necessary then to take a wider view of the adjustments to be made to the whole institutional system of the Community in order to enable the latter to exercise a greater dynamism in the discharge of the responsibilities which may be expected to be further extended in the years to come (Chapter VII).

Finally, the Working Party felt it could not conclude its report without indicating the ways in which the proposed reforms could be implemented (Chapter VIII).

Methods and selection criteria

The collective task entrusted to the Working Party by the Commission presupposed a concerted effort by its members on a continuing basis to arrive at common points of view, solutions and judgments. This concerting of efforts was bound to be rendered easier by the fact that the subject could be approached objectively and functionally.

The approach was *objective* in that the point of departure for the analysis was a statement of facts which form the basis of the two following chapters on "The Community in 1972" and on "The institutions and current practice in the light of the tasks awaiting the Community".

It is observed that the Community has made considerable progress in its development but that it is far from having come to full growth. If, as regards both structure and activities, other results must be achieved in the future, this is so not only because such results appear desirable, but first and foremost because they correspond to the full accomplishment of the stipulations of the Treaties and what is even more important, because they correspond to the political will clearly expressed by the Member States to give the Community new tasks.

Furthermore, the objectivity of the method is due to the Working Party having based its activities on the two criteria laid down in the mandate given to it by the Commission : *democracy* and *effectiveness*.

Very fortunately, the criterion of *democracy* does not lend itself, in the present case, to any form of subjective interpretation. Even though the institutions of the States which form or will form the Community may exhibit appreciable differences, these differences do not call into question the fundamental concept of democracy. In all the States, this is essentially conceived in identical terms : the citizens of the country are the sole source of power; they possess rights and liberties valid as against the State and its organs; those who wield power are designated by genuine and meaningful elections; the political parties are free; the right of opposition is a fundamental fact of political and social life; the status and role of the parliament with regard to the executive are an essential part of democracy; in relation to law-making, the parliament is vested with the highest power; in one form or another, it exercises supervision over the government.

In addition, the Working Party based itself on the institutions of the different Member States or future Member States of the Community, as the Commission requested it to do.

Admittedly, it would not be possible to apply these general principles to the Community framework automatically. The Community is equipped with original

structures which correspond, at a given moment, to its nature and its tasks and which prohibit the drawing of over-simple and basically inaccurate parallels such as those which would misconstrue the complex role of the Council (which is governmental and legislative at the same time) or which would reduce the Commission to the level of a mere administrative machine (whereas the treaties involve it fundamentally with Community responsibilities).

It must also be borne in mind that the origin of the Governments represented in the Council and that of the members of the European Parliament is such that their Community powers actually rest on a process of democratic legitimacy in the national framework. But the requirement of democracy common to the Member States, which is going to be reaffirmed through the accession of new States, tends and will probably tend more and more, to develop really Community democratic mechanisms.

Whatever the priority which, according to one view or another, should be attributed in the building of Europe to this or that instrument of Community action, the European Parliament's position in the Community constitutes in itself a problem which is very important and, from the point of view of democratic legitimation, fundamental. Moreover, it is this problem that the Commission has designated as central to the report required from the Working Party.

The criterion of *efficacy*, in so far as it entails conjectures on the consonance of the means with the ends pursued, involves judgments which cannot be altogether objective. For, especially when it is a matter of foreseeing what the results will be, in the more or less long term, of one or other legal rule or practice, the calculation of efficacy contains a large element of judgement which is personal and hence subjective. The Working Party could neither avoid this fact nor adopt the easy solution of listing the possible choices without reaching any conclusion.

It has therefore tried to solve this problem in three ways. Firstly, acting as a body, it has not taken its stand on ideological or theoretical structures apart from the democratic principle itself. It has looked for practical ways of making progress along the road of a democratic Community. Secondly, the Working Party's discussions have tended not primarily to reach a majority point of view but to find a general consensus on solutions which, as often as not, are not the results of simple compromises but rather from a common conclusion.

Finally, on certain points where subjective evaluations prevented a single opinion from being reached, the fact has been mentioned in the report, to enable the Commission to take note of the difficulty.

These premises explain why the Working Party can also describe its approach as *functional*. This term, which expresses the Working Party's fidelity to its remit, has various meanings, but they all tend in the same direction.

The first sense of the term translates the idea that the concrete proposals to be presented are not the result, either of theories or of purely personal preferences. However, it has been possible to arrive at overall views simply by asking what democratic and effective instruments were required in order to achieve the European objectives desired and affirmed by the Member States. Proceeding from what exists and has its value, what is needed is an unbroken evolution. Accordingly, the Working Party has taken as a guiding principle the rejection of all complicated, useless and dangerous mechanisms which would place the concerted actions envisaged by the Member States outside the framework of the Community.

The second meaning which can be given to the idea of a functional method leads to our discarding, where they arise, categories which are no doubt generally accepted but which cannot be applied in the Community sphere. There may be no absolute equivalence, especially in a phase of construction, between the role of a national parliament and that of a European Parliament, between the role of a national executive and that of a European executive. Already, in some of our national contexts, the political reality of the exercise of legislative power or budgetary power, or the political responsibility of government to parliament, is no longer in conformity with the theories of classic constitutional law. This is one more reason for not taking *a priori* views between which it would be sometimes difficult to choose.

Thirdly, a functional method entails a search for minimum legal modifications in order to achieve maximum political results and a preference for what is effective to what is spectacular.

Finally, a functional method presupposes that one does not put forward the hypothesis that everything which is desirable is immediately possible, as though the changes of a society could be decreed without taking into account the real situation of political and social forces. At times, a solution which is more practically feasible—provided it represents a step towards the final objective—has to be preferred to a solution which is ideally better. It is necessary to take account of time, which is a factor of development in itself because it bears experience with it. This means that just as in the past in the Community, an important place will have to be given to the idea of *gradualness*, which often reconciles the desirable and the possible.

The present report will therefore in no way be a theoretical list of instant reforms. As has been said, its starting point has been the existing Treaties and the Working Party, though it has not abstained from suggesting certain precise revisions, has neither been naive enough nor presumptuous enough to believe that the Commission's mandate invited it to rewrite the Treaties.

Certainly it has not been possible to mention all the problems raised by the progress of the European institutions—especially in view of the fact that, broad

though they were, the Working Party's terms of reference were none the less precise. For instance, it did not seem possible to deal with the question, often put forward in the most widely differing circles, of the link which might be established between regional structures and Community structures.

On the basis of the terms of reference laid down, the report therefore endeavours to ascertain the points on which progress, combining democracy and efficacy, will have the threefold merit of being founded on what already exists; of only modifying the present system as far as is strictly useful and finally, of shaping the future not by pure legal fiats but by setting in motion socio-political processes which carry conviction, are progressive, and for this very reason, compulsive.

CHAPTER II

The Community in 1972

SECTION I

RESULTS TO DATE

Notwithstanding all the crises in its fortunes the *European Economic Community* (EEC), set up in 1958, has changed the face of Western Europe. ECSC was the start of a process brought temporarily to a halt when the project for a European Defence Community foundered. *Euratom* is an important, but a highly specialized body. In the merger of the three sets of institutions, it is the EEC which forms both the central core and the primary field of action of Community Europe. And now, hard upon the Community's entering its "definitive period", the accession of a number of new States is going to add still more to its weight in Europe and in the world.

Though yet incomplete, the Community's achievements are impressive—the customs union fully in place, the single agricultural market established, the main obstacles to free movement of workers disposed of, Community law on competition duly framed and in the safe keeping of the Commission and the Court of Justice, insufficient but not inconsiderable progress made on harmonization of legislation, freedom of establishment and freedom to provide services.

Association agreements with many countries and the conclusion of trade agreements with others are witness to the Community's ramifying relations with the world outside.

And last but not least, the Community institutions are joining with the Member States in preparing a development policy in respect of the Third World.

SECTION II

THE TASKS AWAITING THE COMMUNITY

1. Achievement of the assignments laid down in the Treaties

However, the Community has by no means done all it set out to do, even in regard to matters on which specific actions should have been completed before the end of the transitional period. The common transport policy has made little headway; free movement of capital is only in its earliest beginnings; all the restrictions on freedom of establishment to provide services especially in the case of the liberal professions are far from having been abolished.

The coordination of economic policies provided for in Article 105 of the EEC Treaty has encountered even more difficulties than the more clear-cut processes just referred to. And yet the distortions in the short-term state of the individual national economies have often been alarming, giving rise to imbalances which have been at any rate partly responsible for the erratic course of the rates of exchange since the devaluation of the French franc and revaluation of the mark in 1969. The makers of the Treaty never visualized the possibility of the problems assuming such proportions, and provided only for incidental *ad hoc* action, notably in Article 107 EEC. But in fact these changes in exchange rates were to interfere most seriously with the whole concept of a common market, especially a common market in agricultural products. It is becoming apparent that unless the very foundations of the Common Market are to be ruined monetary policy must be a European-level affair. Upon this premise is based the project for economic and monetary union.

2. The political will to extend the tasks of the Community—Economic and monetary union

It was the Governments themselves which made the first move towards extending and reinforcing the Communities' operations by the establishment of an economic and monetary union. At The Hague Conference of 1/2 December 1969, the Heads of State or Government agreed to expedite the transition from customs union to economic union.¹

Pursuant to this agreement, a Working Party headed by the Luxembourg Prime Minister, Mr Werner, was set up by Council decision to prepare a report on the phased establishment of economic and monetary union. An interim report by the Working Party on 20 May 1970² was considered by the Council; the final report, known as the Werner Report,³ was delivered to the Council and Commission on 13 October 1970, and communicated to the Parliament and the Economic and Social Committee.

On the basis of the Report the Council and the representatives of the Governments of the Member States, on 22 March 1971, passed a resolution on the establishment of economic and monetary union. In this they recorded their political will to introduce economic and monetary union over the next ten years, in accordance with a phased plan commencing on 1 January 1971. At the end of this process, the resolution went on, the Community must:

1. constitute a zone within which persons, goods, services and capital will move freely and without distortion of competition, without, however, giving

¹ *Journal officiel* C 136, 11 November 1970, p. 15.

² *Ibid.* C 94, 23 July 1970, p. 1.

³ *Ibid.* C 136, 11 November 1970, p. 1.

⁴ *Ibid.* C 28, 27 March 1971, p. 1.

rise to structural or regional imbalances and in conditions which will allow economic factors to operate on a Community scale;

2. form a distinctive monetary unit within the international system, characterized by the total and irreversible convertibility of currencies, the elimination of margins of fluctuation of rates of exchange and the irrevocable fixing of parity rates—which is the indispensable condition for the creation of a single currency—and including a Community system for the Central Banks;

3. hold the powers and responsibilities in the economic and monetary field enabling its institutions to organize the administration of the union. To this end the required economic policy decisions shall be taken at Community level and the necessary powers shall be given to the institutions of the Community.

Powers and responsibilities (the resolution continues) shall be distributed between the institutions of the Communities on the one hand and the Member States on the other hand, in accordance with the requirements for the cohesion of the union and the effectiveness of Community action.

The institutions of the Community shall be enabled to exercise their responsibilities with regard to economic and monetary matters with efficacy and speed.

The Community policies implemented within the framework of the economic and monetary union shall be subject to discussion and control by the European Parliament.

The Community system for the Central Banks shall assist, within the context of its own responsibilities, in achieving the objectives of stability and growth of the Community.

The principles laid down above shall be applied to the following subjects:

- the internal monetary and credit policy of the union;
- monetary policy vis-à-vis the external world;
- policy in respect of the unified capital market and movements of capital to and from third countries;
- budgetary and fiscal policy as it affects the policy of stability and growth: as regards budgetary policy proper, the margins within which the main items of all the public budgets must be situated shall be determined at Community level, with particular reference to the variation in their sizes, the extent of the balances and the methods of financing and using the latter;
- the structural and regional measures called for in the context of a Community policy possessing appropriate means so that it may likewise contribute to the balanced development of the Community, in particular with a view to solving the most important problems.

The resolution does not, incidentally, refer to certain institutional proposals in the Report, one of which was that there should be set up a "centre of decision for economic policy" to "exercise independently, in accordance with the Community interest, a decisive influence over the general economic policy of the Community". Concerning the European Parliament, the Werner Report added: "The centre of decision for economic policy will be politically responsible to a European Parliament. The latter will have to have a status corresponding to the extension of the Community's tasks, not only from the point of view of the extent of its powers, but also having regard to the method of election of its members."

The Parliament's own resolution¹ on the Werner Report also emphasized that "any transfer of powers in economic and monetary matters from the national authorities to the Community must be accompanied, to ensure democratic control, by an increase in the powers of the European Parliament".

A last point to be noted on this vital subject of economic and monetary union is that it is not expressly covered as such by the EEC Treaty, despite the fact that the Treaty does provide—even beyond the customs union—for coordination of economic policies (Article 105), and includes as "matters of common concern" short-term economic policy ("conjunctural policy") and policy on rates of exchange (Articles 103 and 107). It does not necessarily follow from this that economic and monetary union would in any event involve revising the Treaty as Article 235 EEC could serve as the basis for a number of moves in this field. The essential point is that, in one way or another, economic and monetary union will require the further development of Community organs.

3. Regional and social policy

The resolution of 22 March 1971 expressly recognizes the responsibility of the Community in respect of regional policy. In an economic and monetary union, where all barriers have been abolished, not only for free movement of goods and of workers but also for capital and investment, it is the role of regional policy to ensure the development of those areas which are under-industrialized or in need of structural change. The Community has already taken various steps in this connection. The Commission has submitted proposals for the organization of Community means of action in regard to regional development and in particular for the setting-up of a Regional Fund but these have not yet been accepted by the Council.

On social policy, concerning which the Treaty makes explicit provision in Article 117 *et seq.*, there has been extensive Community activity. The

¹ *Journal officiel* C 151, 29 December 1970, p. 23.

Commission's views on the subject were recently set forth in the Preliminary Guidelines for a Community Social Policy Programme, of 17 March 1971,¹ which listed the following priority objectives for concerted Community action in the first stage of economic and monetary union:

- expedited completion of the common employment market;
- absorbing underemployment and structural unemployment;
- improved safety and health conditions both at work and otherwise;
- improving the status of working women;
- encouraging the absorption of handicapped persons into normal working life;
- institution of medium-term social forecasting;
- securing closer cooperation by the two sides of industry.

The Preliminary Guidelines do not contain formal proposals. The Council has not yet made known its reactions to them.

4. Environmental policy

The last of the sectors on which the Commission has recommended a joint policy is the environment. This is the subject of the First Commission Memorandum on Community Environmental Policy, of 22 July 1971, which lists five sets of priority objectives:

- reduction of the concentration of some of the most dangerous air and water pollutants;
- reduction in pollution caused by the use of certain commercial products and by substances released in industrial production;
- fuller knowledge concerning pollutants (their origin, dissemination and effects), with special reference to achieving the above objectives;
- area and environmental planning;
- carrying-out of basic studies needed in order to understand, define and tackle more effectively environmental problems not included in those mentioned above.

The Commission adds that in addition to these activities there should be greater Community participation in the work of the international organizations and cooperation with third countries.

¹ Supplement 2-1971 : Annex to Bulletin of the European Communities 4-71.

5. Political union

Closer political cooperation between the Member States, especially on foreign policy, has inspired the work of the Community institutions from the beginning. This quest was also demonstrated at the top in December 1969 at the Hague Conference. The Hague Communiqué stresses that "the European Communities remain the original nucleus from which European unity sprang and developed" and records that the assembled Heads of State or Government "have instructed the Ministers for Foreign Affairs to study the best way of achieving progress in the matter of political unification, within the context of enlargement".

In due course the Foreign Ministers, basing themselves on the work of a Committee headed by M. Davignon, Director of Political Affairs in the Belgian Foreign Ministry, reported back to the Head of State or Government.¹ This document, the Davignon Report, makes a number of introductory points. First, "in line with the spirit of the preambles to the Treaties of Paris and Rome, tangible form should be given to the will for a political union which has always been a force for the progress of the European Communities". Secondly, "implementation of the common policies being introduced or already in force requires corresponding developments in the specifically political sphere, so as to bring nearer the day when Europe can speak with one voice; hence the importance of Europe being built by successive stages and the gradual development of the method and instruments best calculated to allow a common political course of action". And lastly, "Europe must prepare itself to discharge the imperative world duties entailed by its greater cohesion and increasing role".

To achieve these purposes, the Ministers' Report continues on, political cooperation must be intensified. The Foreign Ministers should meet at least every six months and their meeting should be prepared by the heads of the political departments in their respective Ministries, themselves meeting at least four times a year. If circumstances warrant it, conferences of Heads of State or Government should be convened.

The Report was adopted by the Foreign Ministers at the Council meeting on 27 October 1970.

A few weeks earlier, on 7 October, the European Parliament, acting on a report from its Political Affairs Committee, passed a resolution on the political future of the European Community.² This pointed out that "the process of economic and monetary union must accelerate political unification", and called upon the Foreign Ministers "to define without delay the role that an independent and democratic Europe can and must play in the world". More effective machinery for cooperation, the resolution urged, should immediately

¹ Bulletin of the European Communities 11-70, p. 9.

² *Journal officiel* C 129, 26 October 1970, p. 17.

be organized. Finally, stress was laid on the need to link up the inter-Governmental arrangements for cooperation on foreign policy with the Community institutions and to ensure that in any event the Commission took an active share in the process of European political unification.

In the Parliament's view, moreover, the planned cooperation should also cover defence and security policy.

6. Europe's responsibilities

As already noted, the Heads of State or Government at The Hague expressed the resolve to prepare the way for a united Europe capable of shouldering its responsibilities in the world of the future and of making a contribution commensurate with its tradition and its task. They laid stress on the part Europe could and should play in bringing about international *détente* and friendlier relations among all peoples. A united Europe was essential to the continuance of an outstanding focus of development, progress and culture, to world equilibrium and to the preservation of peace. It is upon the development of the Community that Europe's place in the world really depends.

It may be that Europe's responsibilities go even beyond what was envisaged by the statesmen at The Hague. The "crisis of civilization" in the world of today, the protest everywhere against existing societies, widely though they may vary, the emergence of issues, newly discovered or resurrected, which cast doubt on man's very reasons for living—all this would suggest that Europe's mission in the decades ahead is taking on a new dimension. Even were they fully consummated, the aims of peace, prosperity and material affluence in Europe are not the everything. They are blessings which the rising generation takes for granted. It demands more, far more—that they should be enjoyed by all peoples, and especially the poorest peoples; that we should think not merely in terms of standards of living but of quality of life; that above and beyond even freedom from hunger and freedom from war mankind, in dominating nature and organizing its social relationships, should acquire a new sense of purpose, a new freshness of the spirit.

Not that all this can be achieved by Europe alone. But what nobler ambitions could Europe entertain?

Doubtless institutions themselves form only a small part of the armoury that will need to be deployed in the service of this task, demanding as it will the commitment of all social, economic, and cultural forces. But political organization does appear to be a necessary stage along the way in any such direction and for that reason it is perhaps not going too far to include among the Community's tasks, in the longer or the shorter term, the assumption of a share in the civilizing enterprise called for by the late twentieth century.

The institutions and current practice in the light of the tasks awaiting the Community

SECTION I

THE INSTITUTIONS PROVIDED FOR IN THE EEC TREATY

The institutional balance created by the EEC Treaty is based on the distribution of powers between four institutions: an Assembly "which shall consist of representatives of the peoples of the States brought together in the Community"; a Council, which "shall consist of representatives of the Member States"; a Commission whose members "shall be chosen on the grounds of their general competence and whose independence is beyond doubt" and a Court of Justice which "shall consist of seven judges" and "shall be assisted by two Advocates-General" (Art. 4, 137, 146, 157, 165 and 166 EEC).

The authors of the EEC Treaty thus took the structure of the ECSC as their basis, though they did make some major changes in the roles attributed to each of the institutions and in the relationships between them.

1. The division of powers between the Council and the Commission

As in the case of the ECSC, the Treaty is applied and put into effect by the participation of an intergovernmental body in the power to take decisions. Under the Treaty of Paris, however, it was the independent body, the High Authority, which held the essential powers to act and take decisions, with the Council (or more precisely "Special Council of Ministers") intervening only in specific cases by giving opinions, or sometimes assent. In the EEC the Council became the centre of power. It has a dual, very broadly defined role (Article 145). It ensures the coordination of the general economic policies, of the Member States and it has the power to take decisions.

It is true that two restrictions are placed on the exercise of this power (ensuring that the objectives set out in the Treaty are attained in accordance with the provisions of the Treaty), one connected with the final result, the other with the rule about the attribution of powers already laid down in Article 4. But the general structure of the Treaty shows that as far as the application of Article 145 is concerned, the Council has been granted the essential normative powers for enacting regulations and directives. In some cases this power derives from relatively precise provisions setting objectives to be attained, procedures and final dates for the completion of the task: this is true for most of the objectives set for the transitional period and, in this respect, the Council's powers are

somewhat similar to those which a government enjoys for implementing a "framework law" (*loi cadre*). In other cases, above all now that the transitional period is over, the only restrictions on the Council's power are the requirements of a common policy which it is the Council's own task to define.¹ In this, the definitive period, the Council is therefore the Community's legislator.

The rules concerning majority voting in the Council are intended to develop with time, a qualified majority in many cases gradually replacing unanimity, as, once the essential options have been taken, an increasing solidarity is built up between the Member States and a right of veto is no longer justified.

There are three sides to the Commission's role:

1. It participates in the Council's legislative powers by means of the proposals which it submits: the organic association between the two institutions, one intergovernmental and the other independent, is the keystone of the system;
2. It exercises powers granted it by the Council;
3. It has independent powers of authorization and of supervision over the Member States² or individuals.

The Commission is thus the driving force in the system: closely associated with the drawing up of common policies and with the exercise of the legislative power, it is an independent institution in its own right as regards supervising the application of the Treaty and when solutions have to be found to difficulties in operating the common market.

2. Position and role of the Parliament

The European Parliament has powers in three fields, legislative power, budgetary power and parliamentary control of the Commission's activities.

A. In the *legislative field*, the Parliament operates only in a consultative capacity.³ In general, it is consulted by the Council on Commission proposals to the Council. However, the provision for this consultation procedure covers by no means all cases where the Council is required to take a decision,

¹ A characteristic example can be found in Article 75 (1 c).

² See Articles 73, 80, 107 and 169 of the EEC Treaty.

³ Leaving aside the "minor revision" provided for under Article 95, third and fourth paragraphs, of the ECSC Treaty. Article 235 of the EEC Treaty gives the European Parliament no power to take decisions.

even when it involves the enactment of legislation. It is difficult to say what was the line followed by the authors of the Treaty on this point.

Although the Treaty only assigned a consultative role to the Parliamentary Assembly, it sought to lay great weight on the opinion delivered: the relevant provision can be found in Article 149, second paragraph, which states that "as long as the Council has not acted (on a proposal of the Commission), the Commission may alter its original proposal, *in particular where the Assembly has been consulted on that proposal*".

B. *In the budgetary field*, apart from the right to draw up estimates of its own expenditure (a right accorded to each institution in dealing with its own affairs), Article 203 only enabled the European Parliament to propose amendments to the draft budget drawn up by the Council. The last word remains with the Council. Article 201 did not state explicitly that the budgetary procedure would have to be reformed when the time came for the changeover to the system of own resources. The Member States realized, however, that there was a logical link between the two operations and that once the Community was required to exist on its own income, the Parliament would have to have a more important role in the budgetary procedure.

This reform was carried out by the Treaty of 22 April 1970 amending Article 203 of the EEC Treaty and the corresponding Articles of the ECSC and EAEC Treaties.

C. *With regard to parliamentary control over the Commission*, the EEC Treaty (Art. 144) has the same arrangements which are laid down in Article 24 of the Treaty of Paris for the control of the High Authority: if the Commission is to resign as a result of a motion of censure, there must be an open vote and the motion must be supported by a two-thirds majority of the votes cast and a majority of the members of the Parliament.

3. The other Community bodies provided for by the Treaties

They can be divided into two kinds: those which have a supporting role alongside the four fundamental institutions, and the specialized bodies, some of which have legal personality and others which do not.

The first group includes bodies with a wide variety of functions. Some, such as the *Committee of Permanent Representatives* (COREPER) set up by the Council in accordance with Article 151, second paragraph of the EEC Treaty and confirmed by Article 4 of the Merger Treaty are working instruments for one of the institutions. Others are associated in an advisory capacity with

the exercise of the power to take decisions in many important cases: this is true of the *ECSC Consultative Committee* which is still very active today, and of the *EEC Economic and Social Committee*.

The second group contains too many bodies for them to be listed here.

SECTION II

PRACTICE

On a number of points the Community has in fact operated in accordance with the way in which functions were distributed by the Treaties—in the case of the functions of the Court of Justice, for instance. However, the fundamental institutional balance, that of the central decision-making body, has undergone amendments which require analysis.

1. The increasing predominance of the Council

The provisions and the general philosophy of the EEC Treaty, carrying on a trend which had already become visible in the ECSC, lay down that the Council shall be predominant in taking Community decisions. But practice has served only to increase this preponderance to such a point that the Council, acting in some instances as a Community body and in others as the States in concert, has become the sole effective centre of power in the system. This trend has certainly not had the effect of breaking the close organic connection which the Treaty sought to establish between the Council and the Commission—quite the contrary, but the collaboration between the two bodies has been marked by an increasing imbalance in favour of the Council.

Even in carrying out the administrative tasks proper which were apparently to be its attributes, the Commission, not having been given far-reaching enough powers (Art. 155), could not play its full part because in many cases the Council wanted to reserve the right to intervene at all stages of procedure, down to and including that of implementation.

The most noticeable institutional imbalance is, however, that which concerns the carrying out of the general political function, which⁵ includes the continuous exercise of legislative and executive power.

While the Treaties, here as in other places, endorse the powers of the Council, they in no way exclude the Commission from this political function. In fact, the opposite is true: the Commission has to participate in it through its power to make proposals and its role as a mediator.

Basically, there are three reasons for this weakening in the Commission's political function:

Firstly, the practice of unanimous voting in the Council effectively deprives the Commission of the right granted it under Article 149 which gives special legal force to its proposals;

Secondly, the uncertainties, discussions, restrictions, and in some cases, negative practices with regard to the Commission's activities in specific fields where the Member States have decided to cooperate, reduce the Commission's participation in the political function;

Finally, as will be seen below, the Commission's relations with the Parliament are impaired by the fact that its attention is, for obvious practical reasons, concentrated more upon negotiating with the Council or with bodies depending on the Council than upon parliamentary opinion.

2. The substitution of unanimity for majority

By its very nature the Council is both a Community decision-making body and an institution in which the national governments can work in concert. Since the institutional crisis of 1965, which was brought to a rather equivocal end by the Luxembourg compromise of January 1966, the practice of unanimity has prevailed in the Council and has led to the first role being neglected in favour of the second.

The compromise records the agreement of all the Member States that, on matters where a decision that could be taken by majority vote on a proposal from the Commission would affect very important interests of one or more partners, the members of the Council will endeavour to reach a unanimous decision, within a reasonable time.

The French delegation felt, however, that "where very important interests are at stake the discussion must be continued until unanimous agreement is reached".

This difference of opinion is noted but not settled in the compromise.

The consequence of this document has been that in practice not only France but other Member States too, invoking the principle of reciprocity, have referred in various cases to the concept of "very important interests" and this has meant that the principle of unanimity has been generally applied.

But the problem should not be seen as involving simply the clauses of the Luxembourg compromise or its direct consequences. What is in question is the practice of votes hardly ever being taken in the Council (except on budgetary matters). At all levels—experts, Permanent Representatives,

Ministers—all procedures except that of unanimous agreement have been rejected in advance, without any reference to the importance of national interests at stake in each case.

This practice does not enhance the Council's power to take decisions, not so much because it prevents majority decisions, but because, in rejecting this possibility, it robs discussions of a stimulus which could help efforts to bring together differing points of view and leads to a certain indifference over the search for solutions.

It also affects the institutional balance. Once it has been accepted that decisions in Council always require unanimous agreement, the Commission's proposals lose the privilege granted them by Article 149 of the EEC Treaty.

This has affected the Commission's activities. The dose of innovation which could and normally should be included in its proposals is likely to be sacrificed in the search for solutions which will meet with unanimous approval. The negotiations which the Commission holds with national administrations and even with the Permanent Representatives when it is working out proposals, while being a good thing in themselves, weaken the independence of its initiative. The division of work required by the Treaties is thus impaired.

It should moreover be realized, that faced with these difficulties, the Commission has not always been able or willing to use to the full the powers invested in it by the Treaties.

To sum up, it is clear that there is an increasing tendency for the Community decision-making process to consist of pure, diplomatic style negotiations. This situation arises not so much from a failure to follow the Treaties as from the practical distortion of powers and institutions. It would not be untrue to say that this negotiating procedure between seven partners (soon to be eleven) plus the assistance or intervention of other bodies, the systematic search for compromises by means of marathons or package deals, is not as foreign to collective decision-making as it might appear. Many equivalents can be found in the decision-making processes of States. No doubt... But it is quite clear from this comparison that if the process of concerting views, opinions and action is to be fully effective and achieve the best results possible, it must at all times be subject to the possibility of political arbitration in which the Parliament would have a real place. Although it might not appear to be so, the existence of a political decision-making power does not mean there is no need for negotiations; on the contrary, it helps to ensure that they will be successful.

3. New bodies not established by the Treaties of Paris and Rome

Once the Community institutions began to function, practice quite naturally gave birth to bodies for which no provision was made initially. But it should be

pointed out that, in general, these new bodies have helped to tip the institutional balance in the way mentioned above.

The Committee of Permanent Representatives, whose establishment was officially confirmed by the Merger Treaty, not only prepares Council decisions, but is also at least *de facto* if not *de jure* a genuine decision-making body with its own powers. This is due mainly to the special procedure (commonly called "A-points") which enables the Permanent Representatives once they have come to an agreement between themselves and with the Commission, to propose that the Council should adopt a decision without discussion on matters not of major importance but often of some substance. The existence of the Committee of Permanent Representatives and the practices followed, mean that the Commission holds talks in most cases with diplomatic representatives of the Member States whose roles are further enhanced by their rank and personal quality.

In connection with administrative matters, the Management Committees properly so called should be mentioned. These are intergovernmental technical bodies with a Chairman provided by the Commission whose task is to assist the Commission in operating certain common policies, in particular the agricultural policy. In this way, in cases where the Council confers on the Commission implementing powers under Article 155 of the EEC Treaty, the Council provides the Commission with highly valuable technical assistance without in fact encroaching upon its powers of decision, since the Council has only limited possibilities of intervention and has very rarely used them.

On the other hand, the Commission does not enjoy the same freedom of action under the rules of procedure of the regular committees because in the event of disagreement between the Commission and such a committee, the Council is called on to arbitrate between them.

More significance should probably be attached to the appearance and proliferation of bodies in which the Governments work together and which jeopardize the unity of the Community institutions in fields important for the future. If the Commission were to be pushed to one side or made to play a minor role, this would presage "a Europe of bits and pieces".

Finally and in another respect the appearance at the highest level of a *de facto* organ which will probably have an essential role to play for the future of the construction of Europe: the Summit Conference, should be welcomed. This practice is the one most likely to provide the major developments and the new fields of action for the Community, not to speak of the action which all too often has to be taken to break the logjams which occur through the faulty working of the Community institutions.

Paradoxically the problem raised by the Summits is not that of the political will of the States, as expressed in the solemn resolutions, but that of giving

effect to these resolutions. The impression sometimes prevails that the inter-governmental bodies of lower rank, which in principle have to see to implementation, do not feel as intensely as might be expected the political will expressed at top level. Experience seems to show that by making the Community institutions responsible for putting into effect the decisions taken at the Summits, progress would be more rapid and more direct.

4. The life of the European Parliament

As the authors of the Treaties were interested more in the construction than the government of Europe, they did not give the Parliament a very important place among the Community institutions, no doubt thinking that the matter would have to be reviewed when the time came: hence the legal and political ambiguity of the European Parliament's position.

From a sociological rather than legal point of view, it can be seen that the Parliament is to no small degree democratically representative. The major political groups of the member countries are present. In addition to this they are to no small extent grouped together at European level, although certain gaps exist and some uncertainty is being caused by the arrival of the new countries which—in particular Britain—have original party systems.

But if Parliament is representative, it also works in a vacuum. Its debates and other work and the tensions which arise and which bear witness to its nature as a political institution, have almost no impact on the press, public opinion and the life of the political parties. The Parliament thus falls far short of fulfilling its normal tasks of expressing and shaping political opinion. This state of affairs can be explained basically by its limited powers.

Parliament has powers to take decisions, limited powers to be sure, only on budgetary matters and in connection with the "minor revision" of the ECSC Treaty. In one way it is also a victim of the institutional imbalance referred to above, because the role of the Commission, the body over which it has some power, has become much less important than that of the Council, with which political communication is much less direct. Its consultative function is impaired by the fact that, although the Commission seeks the support of the Parliament, it enters into negotiations with the Council, even before submitting its formal proposals to the latter. It is always difficult for a parliamentary body to be associated with negotiations, even in a consultative capacity. Sometimes, when faced with an implicit prior agreement between the Commission and the Council, the Parliament feels that its opinion can be of no substantial significance.

Admittedly, the technical quality of its work and on a political plane, the links its members have with public opinion in the various countries, may give the

Parliament a genuine hearing in the Council. But this is not so much an institutional arrangement as a practice which can become intermittent.

There should be no illusions about the Parliament's budgetary power, even after being strengthened by the Treaty of 22 April 1970. In the Community as in the States, the budget, in the main, does nothing more than put figures to decisions taken "upstream". It is in their capacity as legislators much more than as budgetary authorities that the national parliaments control public finances. As it does not form a legislature, the European Parliament can do no more than check the sums for almost all sections of the budget.

Fortunately, the exercise of the power of control by the Parliament over the Commission has never yet taken the form of a censure motion. This is no doubt proof of the agreement between the two institutions and the quality of the Commission's activity. Even more welcome is the dialogue involving both trust and criticism which has grown up between the two institutions through the committees and the written questions procedure. It must, however, be recognized that in these processes of control and dialogue, the main party concerned, the Council, is absent, despite attempts made to associate it with the work, attempts which in fact have not always met with its resistance.

It would scarcely be possible, without undermining the very foundations of institutional balance, to establish a process of control giving the European Parliament a power of sanction over the Council, whose members are politically responsible before their own national Parliaments. It is, however, debatable whether all possibilities of procedures, involving questions and answers, explanations, and in brief, dialogue and communication, have been explored.

It is true that some of the problems mentioned could be solved through the relationships between the European Parliament and the national Parliaments. By a sort of coming and going between the European Parliament and their national Parliament, Members of the European Parliament could build a bridge between national democracy and Community democracy. The obstacles to be overcome are however formidable: the fact that it is difficult for parliamentarians to be equally active in national political life and Community political life; the fact that political careers have at present as their normal setting domestic institutions and rivalries.

All in all, the role of the Assembly is something less than that of a parliament and Community decisions acquire democratic legitimacy almost exclusively through national channels.

As has already been said, this result does not conflict with what was laid down in the Treaties and in particular in the EEC Treaty. But as is shown by the mandate of the Working Party, the real question is whether the European Parliament should not be strengthened in the years ahead in the interest of both the construction and the government of Europe.

5. Overall view of the general trends of the system

In the last fifteen years Community practice has developed along two lines. The first concerns the *Community itself*, its fields of action, its achievements, its progress, its promises. On the whole, it is satisfactory and in the light of some forecasts which did not always come from opponents of the Treaties, it is even surprising.

The second line of development concerns the Community *institutions*, and it calls for more reservations. The nature of these institutions has been somewhat *distorted*. Not only has the intergovernmental character of the Council been accentuated, but this feature has been passed on to bodies at a lower level in the Community and has spread to the machinery which tends to be built up around it. The Commission has not been directly affected by this process, but there is a danger that restrictions on its role will reduce it to administrative if not technocratic functions.

More generally, there has been a certain decline in the political role of the Community institutions, including the Council. Everything would seem to indicate that the political initiatives which will be increasingly necessary in years ahead are no longer being taken by Community bodies and that when they are held up, they can only set in motion again from outside, by top level intervention, but, if Summit Conferences are not to be drepeciated, they should only be called to settle very important problems.

It is true that not all items in this account are negative and that this or that drawback mentioned may sometimes be accompanied by an advantage. This is true for example of the interpenetration between the national governmental and administrative structures on the one hand and the similar European structures on the other and of the human relations built up by the practices of negotiation and compromise. It is questionable, however, whether this sort of sociological integration, which is inevitably very slow, would be adequate to meet the multifarious tasks awaiting the Community and the States which are already Members or are about to join.

Finally, the terms of reference required that consideration should be given to the position that the European Parliament should occupy; the problem arises here not only of democracy but also of effectiveness, insofar as the parliamentary instrument can, admittedly not alone but in concert with other instruments, palliate the deficiencies of the system which has been broadly outlined above.

SECTION III

ADAPTING TO THE FUTURE

Where the EEC Treaty was concerned with the gradual establishment of the customs union during the period of transition, provisions were often made

down to the last detail for the rules to be applied, the stages to be accomplished and the procedures to be followed.

In this field the institutional system has in general functioned satisfactorily, but not as well in fields (e.g. implementation of the various common policies and harmonization of legislation) for which the Treaty set the Community in very general terms the task of taking initiatives itself on the basis of certain principles and for the purpose of attaining certain objectives.

Now that the transitional period is past, the accent is placed fully on these tasks of creation and on the exercise of the wide discretionary powers which the treaty confers on the Community to this end. The common policy in the various sectors for which explicit provision is made and the harmonization of legislation required by the Treaty on many points must be expanded, pursued and regularly adapted to the constantly changing circumstances and concepts. New Community tasks implicitly laid down in the Treaty or expressly added by the governments themselves must be accomplished. But from the point of view both of democracy and of efficacy the existing complex of instrumentalities does not seem capable of adequately fulfilling the tasks ahead. Measures must be taken to strengthen the institutional system so that it can accomplish these tasks.

1. What is necessary from the point of view of democracy

If it is to accomplish the tasks awaiting it now that the transitional period is over, the Community needs to find its own democratic legitimation beyond that which can be transmitted to it by the governments responsible. The need for this legitimation increases with the scope of the tasks.

Firstly, the largely discretionary powers explicitly or implicitly contained in the Treaties can be extended only with the support of political and social forces. These forces can normally make themselves heard in the European Parliament. The whole range of nationalities, social interests and political convictions existing in the Community is represented there. It is in this setting, at once Community and parliamentary, that the necessary support should be sought and can be found.

Secondly it must be realized that, as the Community extends its powers, the national parliaments at the same time lose legal and *de facto* powers.

In carrying out the tasks which it is set, the Community exercises powers which hitherto usually belonged in a national context to the parliament or to the parliament and government acting together. Community laws and levies replace national laws and taxes. In the final analysis, Community directives make the national parliaments nothing more than chambers for recording decisions.

In the Community this power to make laws, raise taxes and issue directives, which has become of central importance once the transitional period is ended, is in the hands of the Council, assisted by the Commission. Through their representatives in the Council, the national governments enjoy considerable possibilities of intervening in the process of drawing up decisions. The collective nature of this process and the irrevocable character of the resultant decisions do, however, impede the effective control which the various national parliaments could exercise over the part played by each of the governments in this process. Any attempts to establish an effective control of this kind would involve a danger of the national parliaments binding the governments by instructions given in advance; this would make the search for agreement within the Council even more difficult and more laborious than it is now.

The national parliaments are consequently deprived of an increasing part of their powers whose exercise by the collectivity of the governments represented in the Council now in fact escapes in the main from their control. The logic of a democratic system would require that this loss of parliamentary power at national level should be compensated at the European level.

Finally, it should be stressed that as a result of the extension of powers, the "European interest" covers increasingly large sectors of the economic and social life of the member countries. To reach decisions, reconciliation of interests is required and in future this will be as much between sectoral as between national interests, e.g. to find an acceptable and justified balance between industry and agriculture, between progress and the environment, between monetary stability and better living standards. Experience shows that if such reconciliation of interests is to succeed it requires an effort to concert views which is complex and free of inequalities. The European Parliament is the institution *par excellence* in which views could be concerted. If, as is the case in the present system, this duty fell almost entirely to the Council, there would be a danger of seeing conflicts between sectoral interests transformed into conflicts between national interests. The consequences of this could be difficulties in carrying out the reconciliation of interests and results might be produced which would meet with strong resistance from many quarters because of their unbalanced and unstable character. In the long run this situation can be avoided only by calling on the European Parliament, modified if need be, in its operation and composition. By ensuring that there is a wide consensus in the complex system of tensions, democracy is thus reunited with effectiveness.

2. What is necessary from the point of view of efficacy

A. As regards the objectives

An effort to find new approaches is required for progress to be achieved in Community action. To this end each institution must make its own specific

contribution. The effort of creative imagination must come if not exclusively, at least substantially, from the Commission. As an institution independent of the governments and politically responsible to the European Parliament, the Commission is in a position which allows it to consider the European interest in the long term, so that it can obtain an overall view of the policy to be followed and can play a role as initiator, planner and mediator for the common good. A combination of two of its features—its political experience and its technical capacity—enable it to grasp the links between Community activities and technical requirements.

These Community activities must have the support of public opinion, which must be both expressed and prompted by a representative body. The European Parliament can be the sounding board and stimulator of this public opinion.

Without prejudice to its capacity as an innovator, the Council ensures that the centres of national political authority will accept Community actions and that these actions conform with the realities of the varied political, social and administrative life of the peoples joined together in the Community.

A rational balance between these elements is indispensable for drawing up the Community actions and for their success. The fault with the present system, in which the importance of the Council far exceeds that of the other two institutions, is not the position occupied by the Council, but the weakening or fading away of its partners:

The defence of national short-term interests prevails over long-term forecasts in which they would, in most cases, coincide with the Community interests. Sometimes nothing is decided, as if conservatism were triumphing over imagination. The cohesion which must exist between the Community's various activities is frequently forgotten because there is no overall view of a policy to be followed. Public opinion is not committed. At least it is indifferent or only appears in protest. Europe has its "silent majority"; like the others, it is largely ineffective.

The dominant position occupied by the Council also leaves its stamp on the institutional development of the Community. Where this development proceeds from a single pole, the importance of this pole tends to be accentuated and there is an increase in the imbalance resulting from it.

B. As regards the means

For economic and monetary union to be established, with all that this implies, there must be machinery for taking decisions which is better fitted for finding the elements of Community solutions, determining compensatory measures and acting with the speed required in monetary matters. This

decision-making machinery must fit into the Community institutional system in such a way that better links with other Community decisions are guaranteed.

Community funds will be necessary as the means for supporting new Community actions. The use of these funds will become the expression of a policy. Such a policy can be justified and have a chance of succeeding only if it has been worked out on the basis of an agreement and therefore of a dynamic dialogue between all the institutions.

The extension of the Community's powers involves large-scale projects such as, for example, regional policy. For these projects, standards must be fixed within which the Community can act. The Parliament must have its say when it comes to fixing these normative frameworks.

The impending increase in the number of members of the Council will probably exacerbate certain problems. It has been seen that the automatic and at times nonchalant search for unanimity leads the Council into jams and deadlock. It is not the Council's uncontested right to make decisions which is in question here. It is its capacity to take decisions and its responsibility for these decisions. The real problem is not caused by the Council refusing or amending Commission proposals, but by the fact that these proposals become hopelessly stuck in minor procedures or are subject to silent inertia which dilute responsibilities and discourage initiatives. With this situation prevailing, the arrival of new countries in the Council would increase the number of disappointments if the problem were not tackled frankly and freely. It will be seen that solutions are hard to find and that there is no panacea; but at least something will have to be done.

The increase in the powers of the Parliament

SECTION I

THE NEED TO REINFORCE THE DEMOCRATIC ELEMENT IN THE COMMUNITY

In the preceding chapters, some of the reasons why the powers of the European parliamentary institution must be strengthened have been mentioned at various points.

As already stated, the processes of democratic legitimation are far from absent from the structures and mechanisms set up by the treaties. But in the main, these processes are only indirectly connected with the Community since they are derived from the national parliaments and take place via the national governments. It is only to a minor extent, in limited fields and with limited powers, that the Assembly intervenes as a true parliament.

The new assignments, arising from the economic and monetary union to be realized in the near future, call for an extension of the Parliament's powers. This is because the development of the Community's fields of operation and powers involves transfer to the Community bodies of powers which, on the national plane, belong wholly or partly to the parliaments. The growth of the Community's powers must not result in a reduction of parliamentary powers. Even if the straight forward transposition of the system of the distribution of powers found in national systems (which in any case varies from country to country) simply transposed into the Community system, is not at present fully possible or desirable, the losses of power by national parliaments must be compensated.

It may indeed be asked if this necessity, plain enough from the democratic point of view, is equally plain from the point of view of efficacy. It would be idle to deny that the entry into Community life of a Parliament with greater powers might, in a way, complicate the institutional mechanism and at the worst cause further bottlenecks.

These fears can be overcome. The suggestions below take the fullest account of the dangers just pointed out. But above all, it should be emphasized that strengthening the role of the Parliament will fill up not only a sort of democratic vacuum but also certain gaps in the efficient working of the Community.

In this respect it should be observed that the Parliament is the only Community institution where the parliamentary oppositions of the Member States are represented. High on the list of essential structures, both from the practical and the legal point of view, is an opposition which is not only per-

mitted but is considered to be a key element in the constitutional system. It is one of the firmest tenets of modern political theory.

Certain discussions on basic problems have no real significance unless they engage both majority and opposition. This is particularly the case with discussions concerning the structures and meaning of modern societies, for example the relationship between quantity and quality, the balance between industrial growth and the quality of life, environmental problems, consumer protection, the control of monopolistic undertakings, regional policy and federal or decentralized democracy.

It is often in the parliaments, where the worries of day-to-day policy and administration are less inhibiting than they are in the governments, that imagination, creator of social innovations, not to say inventions, can give of its best.

There is therefore no general and inevitable conflict between the demand of democracy and the need for efficiency. Both must be satisfied. This is what we shall try to do in the following pages.

SECTION II

THE INCREASE OF LEGISLATIVE POWERS

1. Principles

Reasons will be given below (Chapter V) why it is neither vital nor desirable to make the increase of the European Parliament's powers dependent on its election by direct universal suffrage.

Moreover, the Parliament's powers have undergone a first increase without its waiting for a change in its method of recruitment since the Treaty of Luxembourg of 22 April 1970 gave it greater budgetary powers. These powers are, however, limited by the fact that the most important items of expenditure are governed rigidly by decisions on which the Parliament can at best, do no more than give its advice.

In theory it might be thought that the extension of the Parliament's powers follows from the idea that it should play a leading role in all that can be described as community legislation.

Such a theory would not tally with the general philosophy of the Treaties.

The Treaties do not reproduce at Community level the distinction generally made by national constitutions between the legislature and the executive. According to the original constitution of the Community, the Council is its legislature. We could not substitute the Parliament for the Council in this

role without attacking the very roots of the Treaties. So any increase of the Parliament's powers would have to be achieved not through replacing one body by another but through a system enabling the Parliament to participate in law-making decisions. It can be seen that this participation by the Parliament can develop from a simple consultative role into a real power of codecision based on the Parliament's ability to accept or reject Council decisions.

Furthermore, it should be borne in mind that there is no general clause in the Treaties which defines the power of each institution. The Council's and the Commission's powers are explicitly allocated for specified fields and there is a list of the cases in which the Parliament must be consulted. Consequently, the solutions put forward must, in accordance with the Treaties, define case by case the increased powers considered desirable.

In addition, this examination will have to conform to certain general criteria. Despite the usefulness of the idea that the Parliament's powers should be increased systematically by reference to cases where the Parliament has a consultative role under present law, the Working Party did not believe that this idea could be adopted, at least as a principle. Clearly it would have been simpler to decide that, in such cases, the Parliament ought to be given a more active part capable of leading to a power of codecision, whereas in those fields where the Parliament at present plays no role, not even a consultative one, this exclusion should continue.

An approach such as this would have seriously misinterpreted the actual situation. For one thing, there are cases where consultation of the Parliament is provided for by the Treaties, although these are not cases involving fundamental problems, bearing in mind that the questions concerned are often largely answered beforehand by the terms of the Treaties. On the basis of these hypotheses, there is no need to give the Parliament more than a consultative role, while strengthening and improving the consultative procedures.

On the other hand, there are cases where no provision has been made even for consultation of the Parliament, but which concern matters whose importance will grow as the Community develops, especially because of the economic and monetary union (see, for example, art. 103 § 2 of the EEC Treaty). Accordingly, consideration should be given to whether the Parliament's intervention should not be recommended in these cases, either by way of consultation or by way of codecision.

A further consideration should be borne in mind. The Community lays down plans and programmes guiding its future activities, in the more or less long term. The documents concerned do not, strictly speaking, involve legislative decisions creating binding obligations, but they are nevertheless of considerable political importance. Here, too, the European Parliament ought to be heard, at least in a consultative capacity.

Finally, the Parliament's preliminary intervention obviously cannot extend to all special or urgent decisions which have to be taken from day to day or in a hurry, under a common short-term economic policy or a monetary policy. Moreover, national constitutional laws do not, in general, provide for parliamentary participation in working out such decisions. Parliament plays its part by ex post facto control.

These are the criteria taken for delimiting the fields in which extension of the powers of the Parliament is envisaged as set out below.

2. Fields and stages of extension of the powers of the Parliament

From the very beginning, the Community, in order to define the ways and means of its development, has often resorted to the system of programmes whose parts were to be implemented in various stages. The resolution⁸ of 22 March 1971 concerning the economic and monetary union recently made use of this method. The Working Party considered it would be advisable to have recourse to it in order to implement the proposals put⁹ forward here.

In this context, the Working Party recommends that the law-making powers of the Parliament should be increased *in two stages*. Apart from the problem of political timing which would be raised by the need for the consent of the Member States to a broad and very rapid expansion of the Parliament's powers, a transitional period should be foreseen in the course of which the Community institutions would adapt steadily and by trial and error, each in its own field and in its relations to the others, to the new system which is recommended.

In the first stage, Parliament would be given a power of codecision (according to the procedures set out under § 4 below) in the following matters, which, for simplicity's sake, are hereinafter called *list A*:

- revision of the Treaties;
- implementation of Article 235 of the EEC Treaty and analogous provisions in the ECSC and Euratom Treaties;
- admission of new members;
- ratification of international agreements concluded by the Community.

Besides this and still in the first stage the European Parliament would be given a greater power of consultation consisting in the right to ask the Council to reconsider a subject and hence a suspensive veto in the following fields (called *list B*):

EEC TREATY

- Article 43 (common agricultural policy);
- Article 54 § 3, g (guarantees required of firms);

- Article 56 (special treatment for foreign nationals);
- Article 57 (diplomas and self-employed occupations);
- Article 75 (common transport policy);
- Article 84 (sea and air transport);
- Article 87 (competition);
- Article 99 (harmonization of tax systems);
- Article 100 (harmonization of laws);
- Article 103 § 2 (conjunctural policy);
- Article 113 (common commercial policy);
- Article 126 (European Social Fund);
- Article 128 (vocational training).

EAEC TREATY

- Article 31 (basic standards for protection of health);
- Article 76 (adapting chapter VI on supplies);
- Article 85 (adapting the methods of safety control laid down in chapter VII);
- Article 90 (adapting chapter VIII on the Community's property rights over special fissionable materials).

MERGER TREATY

- Article 24 (service regulations of officials).

In the second stage, the Parliament would be given a power of codecision according to the procedures set out under § 4 below, in all matters in list B; naturally, it would continue to exercise its power of codecision in all matters in list A.

It is necessary briefly to explain, in the light of the principles described above, how the matters in list A and list B were selected.

List A, as already stated, contains the matters which are to be subject to the Parliament's power of codecision from the first stage onwards.

It covers questions which materially involve either the Community's constitutive power or its relations with other persons in international law.

The involvement in the constitutive power appears clearly in relation to Articles 236 EEC, 204 EAEC, 96 ECSC, concerning amendments to the Treaties. In § 4, below, the proposal is made that the Parliament should be given the same power of codecision as regards Articles 201 EEC and 173 EAEC, concerning the Community's own resources. On the other hand, it does not seem that the simplified procedures which, in certain cases, enable very specific

points in the Treaties to be adapted or amended to a limited extent (e.g. Art. 81 ECSC) can be regarded as involving constitutive power. It is in fact rather more a legislative power, as may be seen from certain items in list B, dealt with above.

It is true that amendment of the Treaties, in accordance with Article 236 of the EEC Treaty and analogous articles presupposes democratic endorsement since ratification in accordance with the constitutional rules of each Member State implies approval by the national parliaments. However, it is highly desirable that the Community's own constituent process should make provision for like approval by the European Parliament, which is the democratic institution of the Community as such. In this way, the amendment procedure would assume its full meaning: approval of the amendment by the Assembly would set the seal of the Community's Parliament on the texts adopted by the Council in pursuance of the proposal made below (§ 4), before the national parliaments are called upon to speak and this would undoubtedly make it easier for them to give their assent.

The procedure under Articles 235 of the EEC Treaty, 203 of the EAEC Treaty, and 95 § 1 of the ECSC Treaty, which must be dealt with further in a later chapter, is "para-constituent", if one can use such a term. As we know, it applies to those cases in which Community authorities take "appropriate steps" to implement a measure necessary for the functioning of the common market without the Treaty having expressly provided the powers for doing so. Article 235 will certainly become more and more important as the economic and monetary union progresses. In any case, this article contains provisions which affect Community tasks and instruments and have a definite influence on the rights of Member States: this justifies the inclusion of Article 235 in list A. The Parliament will thus be able to contribute to the dynamic implementation of this text.

Intervention by the Parliament, via the process of ratification, in agreements concluded by the Community with persons in international law is in accordance with the constitutional laws of Member States which require international agreements concluded by governmental authorities to be approved by the elected Assemblies in one way or another. (Also in accordance with constitutional practice in most Member States, an exemption must clearly be made in the case of technical and administrative agreements which do not presuppose such intervention). It will be seen that the international agreements which would thus be submitted to the European Parliament for ratification would include the association agreements referred to in Articles 238 of the EEC Treaty and 206 of the EAEC Treaty.

Finally, the entry of new members into the Community affects both the constituent power and international agreements. This justifies the Parliament's intervention in the procedure referred to under Articles 237 of the EEC Treaty,

205 of the EAEC Treaty and 98 of the ECSC Treaty, not only as a consultative body but also to give its approval to the Council's unanimous decision to admit new members.

It would appear that the Parliament needs to have the power of co-decision in the four matters just described from the first stage onwards. The Working Party did not deem it essential that Articles 138 of the EEC Treaty, 108 of the EAEC Treaty and 21 of the ECSC Treaty should be included in list A, since the present text already associates the Parliament closely with the task of achieving election by direct universal suffrage and in practice the Council would find it very difficult to adopt provisions which met with determined opposition from the European Parliament.

List B above concerns matters regarding which, during an initial stage, a strengthened consultative role would be conferred upon the Parliament in the shape of a suspensive veto and which, during a second stage, would be subject to the exercise of a power of co-decision on the part of the Parliament.

According to the Treaties, most of these matters already have to be discussed with the Parliament; but others are exempt from any such compulsory consultation procedure. (Arts. 84, 103 § 2, 113 and 128 of the EEC Treaty).

In fact—apart from Article 24 of the Merger Treaty (status of Community officials), which, for obvious special reasons, is included in list B—the matters in list B come under one of the two groups described below.

Firstly, there are measures for *harmonization of legislation* which have important effects on national laws and which therefore call for the intervention of a parliamentary body at Community level: take, for example, harmonization measures concerning, notably, the practice of the liberal professions. This group covers those matters referred to in Articles 54 § 3 g, 56, 57, 99 and 100 of the EEC Treaty.

Secondly, there are the questions of principle affecting *common policies*, which may also involve harmonization measures. Since they are fundamental measures determining one or other common policy, their importance in the life of the Community and the obligations they impose upon Member States justify the strengthening of the Parliament's consultative role during the first stage and its power of co-decision during the second. This is so with matters referred to in Articles 43, 75, 84, 87, 103 § 2, 113, 126 and 128 of the EEC Treaty.

In both groups, preliminary intervention by the Parliament does not concern implementation measures, which, depending on their nature, will fall to either the Council or the Commission and could be amenable only to control a posteriori.

It will be seen that circumstances may bring about inclusion in the list in question of matters which, until now, have not appeared to require such inclusion. For example, Articles 49 and 51 of the EEC Treaty concerning the status of workers have not been included in the above proposals so as not to burden them with matters in which the tasks of the Community seem to have been defined quite precisely by the EEC Treaty. One can, however, imagine political situations arising in which the implementation of Articles 49 and 51 call for their inclusion in list B. Similarly, implementation of a common regional policy would result in Article 94 of the EEC Treaty being included in that list.

3. Fixing the timetable

The first stage mentioned above will, of necessity, begin when the amendments to the Treaties, which should result in an extension of the Parliament's powers, come into force. In Chapter VIII we shall see that, as a general rule, these amendments are legally necessary if some of the proposed objectives are to be achieved, although, on certain points, concerted practice between the Council and the Parliament may become an accepted part of relations between them in anticipation of such formal amendments to the Treaties.

As regards the second stage, the Working Party asked itself whether it should be realized in a single step according to a prearranged timetable.

A majority of the Working Party adopted the view that it should. It considers that the second stage should begin with full legal effect at a date prescribed in the treaty of revision. It also believes that this method of fixing a timetable had already proved its worth and that, with due regard to the attractions of gradualness, it prevents any dilatory attitude.

It is true that it is difficult for the Working Party to propose a date for the completion of the second stage, since this will largely depend on the progress made in developing the Community, particularly in respect of the economic and monetary union. Bearing this in mind, it might be considered that the beginning of the second stage could not be delayed beyond 1978.

One member of the Working Party was of the opinion that a much simpler system which could be more easily implemented would be simply to lay down for the second stage a procedure for agreement between the Council and the Parliament which, without any predetermined timetable, would progressively subject matters in list B to the Parliament's power of co-decision.

Conversely, two members of the Working Party consider that in view of the urgent need to increase the Parliament's normative powers and the time-limits required by the procedure for revising the Treaties, a power of co-decision in matters of common policy should be conferred upon the Parliament from the outset.

4. Procedures for the participation of the Parliament

For the sake of clarity, mention must be made of the different possible ways in which the Parliament might participate in the first or second stage mentioned above:

A. Co-decision, consultation and suspensive veto during the first stage

1. During the initial stage the power of co-decision can be exercised in four distinct cases (list A). The procedures envisaged for each of them must be explained:

a) Revision of the Treaty

Article 236 of the EEC Treaty (204 of the EAEC Treaty and 96 of the ECSC Treaty) makes provision for several procedural phases for revising the Treaty: a proposal made by a government or by the Commission; a Council opinion in favour of calling a conference of the representatives of the Member States (after consultation with the Parliament and where appropriate, the Commission); convening of the conference by the President of the Council; determination by the conference of the amendments to be made; ratification of these amendments by the Member States in accordance with their respective constitutional requirements.

Article 201 of the EEC Treaty (173 EAEC) concerns a change of a quasi-constitutional character in the Community rules on the precise point of replacing the financial contributions of the Member States by the Community's own resources. The procedure is appreciably simpler than that under Article 236 of the EEC Treaty since amendment merely presupposes, on a proposal from the Commission and after consultation of the Parliament, a unanimous Council decision whose provisions are submitted to the Member States for adoption in accordance with their respective constitutional requirements.

The mode of revising the Treaties could be based upon the procedure referred to in Article 201, which has the advantage of being simpler since it does not include the holding of a conference of representatives of the Member States, which, moreover, as experience shows, has a formal character. Furthermore, the power of co-decision of the Parliament would naturally fit into this procedure.

Thus, the revision of the Treaties (Arts. 236 of the EEC Treaty, 204 of the EAEC Treaty and 96 of the ECSC Treaty), as well as the very important decision referred to in Articles 201 of the EEC Treaty and 173 of the EAEC Treaty, would be carried out according to the following uniform procedure:

- Proposal from the governments or the Commission (Arts. 236 of the EEC Treaty, 204 of the EAEC Treaty and 96 of the ECSC Treaty) or from the Commission alone (Arts. 201 of the EEC Treaty and 173 of the EAEC Treaty);
- Consultation of the Parliament;
- Unanimous Council decision on revision or decision (Arts. 201 of the EEC Treaty and 173 of the EAEC Treaty);
- Approval of the Council decision by the Parliament;
- Ratification of the revision or adoption of the decision (Arts. 201 of the EEC Treaty and 173 of the EAEC Treaty) by the Member States in accordance with their respective constitutional requirements.

b) *Implementation of Article 235 of the EEC Treaty (203 of the EAEC Treaty and 95, paragraph 1 of the ECSC Treaty)*

Implementation of Article 235 of the EEC Treaty assumes that the Council, on a proposal from the Commission and after consulting the Parliament, takes the appropriate decisions to give the Community the powers necessary for the functioning of the common market, despite the fact that these powers have not been expressly provided for in the Treaty. From the first stage, the Council decision could take effect only after approval by the Parliament. Here the functioning of the co-decision procedure would need to be governed by the same rules as those that will be detailed below in respect of the power of co-decision in general (under B below).

c) *Admission of new members*

Beginning with the initial stage, the power of co-decision conferred in this matter upon the Parliament would result in the Council decision to admit a new State requesting membership of the Community (Arts 237 of the EEC Treaty, 205 of the EAEC Treaty and 98 of the ECSC Treaty) taking effect only after approval by the Parliament. In addition, it would be advisable to make provision for the Parliament, like the Commission, to be consulted even before the Council takes its decisions. This would be logical and, furthermore, would facilitate implementation of the procedure.

d) *International agreements concluded by the Community*

The procedures provided for in the Treaties vary according to the case at hand as regards both the participation of the various institutions and the rules on majority or unanimous voting in the Council (Arts. 113 and 238 of the EEC Treaty and 101 of the EAEC Treaty).

Two common rules should be adopted:

- The Parliament must always be consulted before the initiation of any international negotiations;
- Any international agreement concluded cannot come into force without being approved by the Parliament.

2. *Consultation of the Parliament* during the initial stage takes place in one of three possible ways: First, in list A, independently of the power of co-decision, then for matters in list B, where it is accompanied by a suspensive veto and finally, for matters not included in either list but for which consultation is already provided for in the Treaties.

Procedural questions concerning the suspensive veto will be dealt with below (3.). For the moment, we will look only at what concerns the consultation itself.

The procedure followed at the moment is not without its drawbacks. For example, in law at least, Commission proposals are submitted to the Parliament only upon a Council decision; the Parliament is not always kept well informed of the amendments, the Commission may be led to make to its proposals following dealings with the working parties, the Committee of Permanent Representatives or the Council and it is not always given the opportunity to put forward its own views on amendments which are nevertheless essential to the initial proposals.

Doubtless, it is of no use to consider amendments to the Treaties in order to bring about the desirable improvements on this point.

In fact in the past, satisfactory practices have been introduced by agreement between the institutions. Similar procedures might enable further progress to be made in improving consultation of the Parliament.

First of all, one could go further than the practice whereby the Parliament is "informed" of proposals submitted to the Council by the Commission. The Council would merely have to duplicate this unofficial practice by an official and automatic one of reference to the Parliament which would already integrate it into the institutional procedure.

Secondly, if once an opinion has been delivered by the Parliament, the Commission proposal is considerably changed as a result of contacts with the Council, the Committee of Permanent Representatives or the working parties, the Parliament should be informed of this and be able to render a new opinion.

Thirdly, if the Council deviates appreciably from the opinion received from the Parliament, it would be desirable that it should justify this decision in detail. Although it has always maintained that it need not reply to questions

on this point, or has had recourse to purely laconic and formal replies, the Council has, in certain cases, explained its attitude.

Finally, the situation in which decisions are prejudged by groups of Council experts before the Parliament has delivered its opinion should be avoided as far as possible.

3. *The suspensive veto* that could be exercised by the Parliament in matters in list B during the initial stage would result from the right to ask the Council for a second deliberation.

Without prejudice to the preliminary consultation mentioned above (2.), the Council should refer to the Parliament any decision taken on matters in list B. Implementation of the decision would be delayed until deliberation by the Parliament, which should take place within one month, at the end of which, in the absence of such deliberation, the Council decision would come into force. If, within this period of one month, the Parliament, proceeding in accordance with Article 144 of the EEC Treaty, asks the Council for a second deliberation, the Council must comply with this request and take a new decision having a definitive and enforceable character. So as not to complicate the procedure unduly, the Parliament would always be able to announce that it was dispensing with the period of one month referred to above and that it agreed to immediate implementation of the Council decision.

It will be noticed that this procedure would be superimposed on that under Article 149 of the EEC Treaty without, however, taking anything away from it. This would not adversely affect the role conferred by this text upon the Commission, whose position should never, as a general rule, be weakened by new powers granted to the Parliament.

B. Co-decision during the second stage

During the second stage, the power to use a suspensive veto that was granted to the Parliament during the first stage is transformed into a genuine power of co-decision.

There is no reason why this power of co-decision exercised at the final stage of the procedure should not allow the consultation of the Parliament at the beginning of the procedure to continue in the terms referred to above. Preliminary consultation of the Parliament on Commission proposals would make it easier for the power of co-decision to be exercised in a harmonious manner. Knowing that approval by the Parliament determines the decision-making process, the Commission and the Council would find it in their interests to be informed in good time of the Parliament's point of view. Furthermore, the Parliament may propose, in advance, amendments to the draft text.

The power of co-decision would mean that a Council decision could not come into force without being approved by the Parliament. There is reason for hoping that, in most cases, the concerted tripartite action resulting, as has just been explained, from consultation of the Parliament, will lead to a positive vote. If, however, the Parliament refuses to give its approval, the Council, in order to reach a decision, would have to reconsider the matter and resume negotiations with the Parliament.

It has occasionally been proposed that a mediating committee be entrusted with the task of settling difficulties which divide the Council and the Parliament. However, it must be admitted that such mediation is a natural task for the Commission. On the basis of Article 149 of the EEC Treaty, the Commission will have to inform the Council of any modified proposal likely, this time, to be approved by the Parliament.

Should one go even further and accept that, in the case of persistent divergences, the definitive decision could, after a certain period, be taken in disregard of the opposition of the Council or of the Parliament, so that Commission proposals that had been approved by one of the other two institutions could be successfully implemented? This idea must be ruled out as being contrary to the concept of co-decision which is to be put into general practice during the second period. One cannot seriously propose the short-circuiting of the Council, even in exceptional circumstances, as this would throw overboard one of the basic elements of the Treaties, or of the Parliament, since it would mean taking away with one hand the power of co-decision just given with the other.

Two members of the Working Party, however, would like to see the Parliament taking its vote before the Council in order to overcome the deadlock. If, within a year, the Council did not take any decision, this would be tantamount to approval. In this case, it could be imagined that the proposal should be given a second reading in Parliament before adoption. The two members who are of this opinion believe that this would make it very unlikely that the Council would systematically give negative replies, given the difficulty of reaching a unanimous "no" and that, instead, it would be more likely that there would be instituted a system of reference back and forth (*navette*) between the Council and the Parliament.

5. The legislative initiative of the Parliament

The Parliament is already able to propose initiatives affecting legislation by means of resolutions requesting the other institutions of the Community, especially the Commission, to take action.

It does not seem to be advisable to transform this *de facto* facility into a formal power of legislative initiative. It is in the Commission that the Treaties vest the role of initiator and promoter of Community norms. So as not to endanger this prerogative, conferred on the Commission for the benefit of the Community interest, it would be much better to retain the flexible practice which in fact allows the Parliament to propose initiatives in the legislative field: moreover the efficacy of this practice can only be strengthened when the Assembly accedes to full parliamentary status.

6. Scope of activity of the legislative function

In principle, the Parliament is to participate in the normative procedure in the above-mentioned fields when the decisions concerned are similar to those regarded by national laws as normally being of a legislative nature. They are therefore important decisions, especially in that they modify the legal order of the Community or of the Member States.

If the Parliament wished to have a say in the mass of measures of application, its work would be overloaded by tasks of secondary importance, which would adversely affect the degree of attention which it should give to fundamental or important decisions. The legislative system in force in the Community already includes a system of "framework laws" (*lois-cadres*) laying down rules of principle, the detailed implementation of which is left to the Council or to the Commission. Extension of the Parliament's powers should not adversely affect this sensible practice.

In truth, there is no general formula that can be used to find the exact border between the two types of norms just mentioned and of which only one requires the participation of the Parliament, subject to *ex post facto* control. The distinction will become clearer with practice. Decisions submitted to the Parliament for approval should include express authorization for the Council or the Commission to adopt the implementing measures.

As for the conditions under which the Parliament will be able to exercise an *ex post facto* control on the way in which the Commission or the Council carries out this task, they are linked with the general problem of parliamentary control, which will be discussed later.

7. Early implementation of proposed measures

As we have remarked, even before the proposed reforms are legally ratified by amendment of the Treaties a significant number of them could in fact be implemented by an agreement between the Parliament and the other two institutions and come into force within the shortest possible period (cf. chapter VIII).

SECTION III

PARTICIPATION OF THE PARLIAMENT IN THE FORMULATION OF ECONOMIC POLICY, PLANS AND PROGRAMMES

Quite often the Community institutions, using recommendations and declarations, have made use of the system of programmes for preparing and shaping future Community policies in different sectors and thus prejudging future Community legislation. On three occasions, for example, in 1967, 1969 and 1971,¹ the Council has formulated medium-term economic policy programmes which lay down certain guidelines for the economic policy to be pursued by the Member States. These measures are not binding but their implications can, in fact, be far-reaching.

Once economic and monetary union is achieved, this process of laying down guidelines will assume increasing importance (cf. resolution of 22 March 1971). It goes without saying that, from the first stage, the Parliament should be consulted when these plans or programmes are being formulated.

In principle, the non-compulsory character of these plans and programmes is not necessarily a reason for the Parliament's powers of intervention going as far as co-decision in a matter in which the character of decision is precisely lacking.

In certain cases, however, the programmes may not be purely indicative ones. The Council decision of 22 March 1971² concerning the strengthening of co-ordination of the Member States' short-term economic policies provides that the Council may, in one of its three annual deliberations on short-term economic policy, lay down guidelines for the national budgets before these have been finally approved.

These guidelines have at least a *de facto* determining influence on the legislation and the financial decisions of the Community and the Member States.

If for the moment the practice of programmes and plans enables us to be satisfied with the purely consultative role of the Parliament, the possibility must not be excluded of this practice evolving in the direction of a genuine normative power in respect of these programmes and plans. In this eventuality, the Parliament's power of co-decision recognized during the second stage would have to be extended accordingly.

¹ *Journal officiel* 79, 25 April 1967, p. 1513. *Ibid.* L 129, 30 May 1969, p. 1. *Ibid.* L 49, 1 March 1971, p. 1.

² *Journal officiel* L 73, 27 March 1971, p. 12.

SECTION IV

BUDGETING AND FINANCIAL POWERS OF THE PARLIAMENT

1. The Community budget and its impact

The whole course of economic and social policy followed in the Community countries, whether under common policies, in co-ordination or independently, is carried out through both the budgets of the Member States and the budget of the Community.

Although Community expenditure looks at first sight to be impressive (the 1972 estimates work out at roughly 4,000 million u.a.), it represents in fact quite a small item in public expenditure as a whole namely 1% of all the national incomes taken together, whereas in the budgets of the Member States, the corresponding percentage is twenty or thirty times higher.

The great bulk of it is accounted for by expenditure in connection with the common agricultural policy, with EAGGF alone accounting for 90%. Very much smaller amounts go in social expenditure (1% for the Social Fund, though its share may well be increased later) and in expenditure on Euratom capital and research projects (1.5%).

Though the impact of Community operations on the national budgets is not always easy to detect, let alone quantify, it undoubtedly exists. It is small in scale as yet, but will necessarily increase with the progress of economic and monetary union and the framing of Community policies on industry, research, energy, the environment and regional development. Even where these policies are aided by Community appropriations, more particularly through the various Funds it is intended to set up, they will have the effect of inducing additional expenditure in the national budget of Member countries. Thus, the Community's budget will only partly reflect the financial implications of its policies on the economic and social side.

Accordingly, it would be both democratic and useful to develop a practice recently approved by the Council for the drawing-up of annual, and in particular of pluriannual, Community estimates.¹

The scope of these should be extended to provide data in regard to the budgeting impact of Community policies in the national as well as in the Community context. The preparation of the estimates should be the occasion for concerted action between Council, Commission and European Parliament, which could thus form an overall picture of the economic and social policy pursued and/or promoted by the Community. This procedure is politically and economically a more important affair than drawing up a budget in

¹ Council Decision of 21 April 1970, *Journal officiel* L 94, 28 April 1970, p. 23.

isolation. It will incidentally fit into place amongst the assortment of procedures which will grow up for governing and managing the economic and monetary union.

This is an aspect fundamental to the whole parliamentary function, which includes participation by the Assembly in the determination of the medium- and long-term guidelines for all Community policy, whose financial implications are reflected in the Community and national budgets.¹

2. The limits of budgeting power

Power to establish a budget is not co-extensive with power to take the economic and social policy decisions which govern the budget. Thus the expenditure of the Guarantee Section of EAGGF, which accounts for far and away the largest slice of Community expenditure as a whole, flows automatically from the Council's prior decisions on agricultural prices. Even where not automatic to quite the same extent, expenditure from the Community budget is primarily dictated by earlier Council decisions fixing maximum or minimum levels or authorizing the Commission to appropriate specific amounts for specific purposes.

Correspondingly, the revenue of the Community is likewise automatic and indeed obligatory. It consists for the most part of the agricultural levies, plus, from 1975 on, all duties charged at the frontiers of the customs union. The third source of Community revenue after 1975, namely the maximum "one point" of the harmonized V.A.T., will be in some measure automatic as to its total, since to balance the budget this total must meet that portion of expenditure which is not covered by the agricultural levies and the customs duties. Should the maximum proportion of the V.A.T. yield set aside for the Community, prove insufficient for this purpose, either that proportion would have to be increased or new taxes would have to be imposed, which under Article 2 (2) of the decision of 21 April 1970 in conjunction with Article 201 EEC or Article 173 Euratom, would necessitate a special Council decision and endorsement by the Member States in accordance with their respective constitutional requirements. As noted earlier in connection with Article 201 EEC and 173 Euratom, it is necessary that, from the first stage referred to in Section II, Council decisions taken under the provisions just mentioned should come into force only after receiving the approval of the European Parliament.

All in all, then, the budgetary power and the power of financial decision-making in the broad sense do not coincide. On the face of it no doubt this is also the case at national level, where generally speaking there is much rigidity in budgeting inasmuch as the bulk of budget expenditure is governed by

¹ Cf. Section III above.

situations and decisions predating the presentation and passage of the budget, so that, whether in law or in fact, the role of the Parliament, as the ultimate legal controller of the budget, is much reduced. But even though at national level the Parliament's budgeting powers are thus curbed, at least it is the maker or part-maker of the original decisions underlying the constraints upon it. Under the Community system on the other hand the automatisms and rigidities of the budgeting process are, as the law now stands, imposed by decisions on which the Parliament has been merely consulted, if that. Only by giving the Parliament a greater say in legislation can this anomaly be corrected.

3. The budgetary power of the European Parliament

Since there is the gap between the budgetary power properly so-called and the power of taking decisions with financial implications, it is understandable that the Treaty of 22 April 1970, although investing the Parliament with the power of adopting the budget from 1975 onwards, does not give it the last word on "expenditure necessarily resulting from the Treaty or from acts adopted in accordance therewith". Only in respect of expenditure not of this kind can the Parliament's wishes override the Council's.

The phrase just quoted is far from clear. The Council, acting on a classification contained in an unpublished document, construes it as meaning that the Parliament has the last word only on expenditure the basis of which is to be found exclusively in the budget itself—i.e. only the heads of administrative expenditure and a few items of operating expenditure.¹

If this construction is the right one, it limits the right of the Parliament to have the last word on no more than 3-4% of total Community expenditure.²

However, it is possible to construe the phrase in question in a sense more favourable to the Parliament's budgeting powers, namely that "expenditure necessarily resulting from the Treaty or from acts adopted in accordance therewith" means only expenditure of which the amount is already *fixed* when the budget is adopted or results *automatically* from an existing arrangement (e.g. the Guarantee Section of EAGGF).

¹ The declaration annexed to the Treaty of 22 April 1970 (see "Les ressources propres aux Communautés européennes et les pouvoirs budgétaires du Parlement européen", published by the European Parliament, 1970, p. 204) notes that the Council "has based itself on the classification of budget expenditure as exemplified in the list established by the Chair on 3 February 1970, while accepting that this classification may change in accordance with the requirements of the operation of the Communities".

² Over 80% of administrative expenditure is fixed and rigid, being of a "necessarily resulting" class (staff salaries, rental and maintenance of premises, telephone charges and so on) (cf. Spenale Report, European Parliament doc. 42/1970-71, secs. 36 and 42, reproduced in the publication referred to in the above footnote, pp. 171 and 172).

On this reading, the Parliament would be entitled—subject to the quantitative limits set on increases in Community expenditure by Articles 203 (8) EEC, 177 Euratom and 78 ECSC—to vote with final power of decision, appropriations in respect of expenditure not provided for by prior Council decision and also increases or reductions in appropriations already budgeted for, so long as it observed minima or maxima fixed by prior Council decisions.

It is true that such appropriations made available by the Parliament on its own initiative would have to be expended for purposes falling within the competence of the Community and more precisely within the powers and responsibilities of a Community institution. Generally speaking, the Council, unless it objected for policy reasons, could find legal warrant in the Treaty—notably in Article 235 EEC—for using the funds in question in the manner desired by the Parliament. The Commission—in a way, the natural institution to manage and utilize appropriations—could be given the necessary authorization by the Council to do so.

Two members of the Working Party consider that an increase in the independent financial resources will be inevitable for the implementation of new Community policies to ensure a more effective and complete solution for problems of Community dimensions than any which can be provided by national action. They propose that the choice of sectors for new Community interventions be decided by a qualified majority of the Parliament in a debate having as its object the determination of pluriannual programmes defining the use of the whole or of a substantial part of the new resources thus placed at the disposal of the Community.

4. The real problem

The Parliament strongly defends the idea that Article 203(6) confers on it from 1975 the right “at the end of the proceedings and in case of serious objection, to reject the whole draft budget in order to secure fresh budgetary proposals”.¹ This interpretation is shared by the Commission and in the form of motions, by two national parliaments, but despite the stress laid on it by the Parliament, it is not shared by the Council.

The Working Party does not have to reach a decision on this controversy. It must, however, express its doubts on the possibility, by a refusal of the budget *en bloc*, of advancing the cause of parliamentary participation in Community decisions, particularly in legislative matters. By its very nature a prolonged institutional crisis resulting, should the occasion arise, from such a refusal

¹ Resolutions of 11 March 1970, 5, and 13 May 1970, 10—cf. Spenale report, European Parliament, Doc. 42/1970-71, reproduced in the publication mentioned in the footnote to pp. 160, 168 and 189.

would endanger the still precarious progress of Community activities and its outcome would perhaps not be attended by the success desired by the Parliament.

The proper way to present the problem of the participation of the Parliament in Community policy is to consider that, for the reasons given above, purely budgetary powers are a weak means of influence. The direct attribution of a power of co-decision in legislative matters, outlined above, is much more decisive and it is this reform which, by contrast, will give real significance to the budgetary power of the Parliament.

Since the Parliament will exercise a power of co-decision in the acts which are at the basis of Community expenditure and will be associated with the establishment of pluriannual estimates, it will share with the Council the financial responsibility resulting therefrom. As soon as these powers are in the hands of the Parliament, the hiatus between the budgetary power and the other powers—particularly the legislative powers—will disappear. It will then be necessary to eliminate the distinction between the two categories of expenditure mentioned above and to give the Parliament a power of co-decision on the budget as a whole equal to that which it will then be exercising in legislative matters.

5. Control of the budget

The Treaty of 22 April 1970 partially adapted control by the Parliament of the execution of the budget to the new powers it will exercise from 1975 regarding its establishment. The new Article 206(4) provides that the Council and the Assembly must jointly give discharge for execution to the Commission.

It seems quite logical that the Parliament should also receive, by assimilation, a power of co-decision in two cases closely connected with the execution of the budget: the authorization of expenses exceeding the provisional one-twelfth (Art. 204 EEC) and the elaboration of the financial texts mentioned in Article 209 (a, b, c).

SECTION V

RELATIONS BETWEEN COMMUNITY LAW AND NATIONAL LAW

Whereas, under EEC Article 189, a regulation is binding in all respects and directly applicable in all Member States, a directive, which is addressed to the States according to the same provisions, is binding only with regard to the result to be achieved and leaves the decision on ways and means to national authorities.

In certain matters, principally concerning the harmonization of legislation, the directive alone is open to the Community. This is not without disadvantages in matters in which, for technical reasons, harmonization means that Community institutions must go into considerable detail, and where a regulation would consequently seem more appropriate. It is true that some directives, in order to cope with this difficulty, have taken the form of very detailed texts, which solves part of the problem, but surprises the national legislator, who wonders what is left of the power over ways and means which the directive should, in theory, leave to him.

Consideration could be given, if not to the elimination of any distinction between regulations and directives, then at least to a considerable broadening of the possibility of using regulations. The granting to the Parliament of powers of co-decision such as those which have been proposed would justify this approach by nullifying the argument that the regulation mutilates national legislative power. In fact, in a system where the European Parliament is associated with the elaboration of the most important regulations, taking powers from the national parliaments is much less shocking than if it were done solely to increase the powers of the Council. Valid as they are, the technical considerations just put forward concerning the frequent disadvantages of the distinction between regulations and directives do not appear to justify for the moment the abolition of this distinction or an extension of the field of application of regulations, which could be felt, rightly or wrongly, as an assault on the legislative powers of the national parliaments. On this point, time will do its work: the practice of co-decision will remove the prejudices against Community legislative power and its most advanced form, the regulation. The development of Community powers under the auspices of EEC Article 235 will have the effect of progressively extending the field of application of regulations.

SECTION VI

THE PARLIAMENT'S POWERS OF CONTROL

The extension of the powers of the Parliament does not only concern the exercise of the normative function, but also that of the control which, under democratic systems, is one of the fundamental tasks of the Parliament.

1. Utilization of parliamentary procedures

The Parliament has endeavoured to strengthen its powers of control vis-à-vis the Commission and to develop its relations with the Council. To this end, the most varied procedures have been employed, notably parliamentary questions

(very often of great interest) and calling for written or oral replies (EEC Art. 140, Arts. 45 to 47 of the standing orders of the Parliament). It has already been said that the Council has agreed in some cases to make known the reasons why a decision taken by it diverges appreciably from the opinion rendered by the Parliament. It has even agreed to present a report to the latter from time to time through the medium of its President. These practices should be pursued and developed.

The Parliament's committees already have real importance which is destined to increase in the future. By multiplying relationships with the other institutions, they can exercise a closer control. The specialization and technical competence of their members enable them to play an important part in the elaboration of programmes and plans and to supervise their execution. Finally, they are in a position to institute very desirable cooperation with the national parliaments (Cf. Chapter VI).

All these procedures, which are a part of parliamentary techniques, will develop and become consolidated as the Parliament acquires new powers, particularly powers of co-decision. The history of parliaments shows that as soon as a parliament begins to play a real part in the legislative process, it assumes *ipso facto* an authority and an influence which guarantee it the power to watch over the government's actions and to demand the supply of all necessary information.

There does not, therefore, seem to be any point in proposing a revision of the Treaties to endow the European Parliament with a power of control since, for the reasons already mentioned, the sanction of this control, organized vis-à-vis the Commission by EEC Article 144, cannot extend as far as the Council.

In fact, the Parliament, armed with new powers, notably in the legislative field, will be able to keep itself informed, to judge, and even to warn.

2. Relations of the Parliament with the Council

The absence of any system of Council responsibility to the Parliament is a basic datum of the Treaties and is implicit in the very composition of the Council, which is made up of national Ministers. On the other hand, the system does not exclude the development and consolidation of a practice of information and control already initiated (§ 1 above), the need for which must again be stressed.

Similarly, as already mentioned, it would be desirable that the Council give a clear explanation of the reasons for not following the opinion of Parliament in any given decision. It would be imprudent to go further by arranging, for example, that there should be general and systematic publication of the Council's deliberations, since such a measure would probably impede the formation of a consensus in that body.

SECTION VII

THE INVESTITURE OF THE PRESIDENT OF THE COMMISSION

Curiously enough, the Treaties which give the Assembly the power to overthrow the Commission do not provide for its intervention in the nomination of its members which is decided only by agreement of the Member States (Art. 11 of the merger Treaty).

The nomination of members of the Commission by the Parliament cannot be envisaged. The institutional relationships between the Commission and the Council and the Commission's position with regard to the national governments necessitate, for the very maintenance of its authority, that its members be chosen by the governments.

It could, however, be conceived that the Parliament should receive a power of co-decision in this matter too. This would be normal and logical, would have the advantage of stressing the political importance of the Commission, and would perhaps orientate the choices of governments towards outstanding political personalities.

In order to achieve this result, it is not necessary or even useful to submit for the approbation of the Parliament the entire list of Commission members drawn up by the governments. In view of the difficult balances which govern the composition of the Commission, the Parliament would find it difficult put to exercise the power theoretically attributed to it.

On the other hand, the intervention of the Parliament would doubtless have more impact if it took the form of approval of the governments' choice of the President of the Commission. That would give greater political importance both to the office and to the person chosen.

In addition, the President invested should be consulted by the governments on the appointment of the other members and, strengthened by his dual investiture—governmental and parliamentary—would be able to see that a genuine team was formed.

The system of the parliamentary investiture of the President of the Commission would thus have consequences going far beyond the simple legal result of the system, particularly by giving the choice of President a political character, by providing a solid basis for his authority and by giving him a say in the formation of the Commission. This is clearly an instance where the criteria of democracy and effectiveness coincide completely.

The results expected would no doubt be even better if the President's mandate were extended from two to four years.

The election of the European Parliament

SECTION I

THE REJECTION OF ANY PRECONDITION FOR THE INCREASE OF POWERS

Article 138(3) of the EEC Treaty provides that:

“The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.

The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.”

Although the European Parliament implemented the first part of the above provisions twelve years ago by working out and adopting a draft making election by direct universal suffrage possible, the Council has refrained from taking up a position and has thus prevented further progress.

There is a widely held view that the powers of the European Parliament cannot be increased until the provisions of Article 138 have been carried out, since application of the Treaty should logically precede its revision. Moreover, from a political point of view the exercise of new and increased powers would require that the members of the Parliament be chosen directly by the people. Election of the Parliament by direct universal suffrage would therefore constitute a precondition for any increase of its powers.

The Working Party has plainly and emphatically opposed this assumed precondition, for various reasons.

First of all, the system of the precondition, because of a logical trap, leads to a vicious circle. For if one cannot imagine a Parliament with real powers which does not draw its mandate from direct universal suffrage, it is even more difficult to imagine the election through direct universal suffrage of a Parliament without extended powers. In this way, two equally desirable objectives are making each other's implementation impossible. The only way to break the vicious circle is to refuse to let one of the two objectives depend on the achievement of the other one first. Neither has priority over the other, nor is their simultaneous achievement necessary. If any logical links exist between them, these are expressed in the fact that any progress made towards achievement of one will be a step towards achievement of the other. Moreover, experience has shown that, even without its recruitment procedure having been changed, the European Parliament has managed to acquire new and legally important budgetary powers.

If, furthermore, the powers of the Parliament were increased in the way proposed in the previous Chapter, these powers would in themselves endow the Assembly with sufficient prestige to attract a good many influential parliamentarians from the Community's Member States who would be prepared to work for the introduction of direct election. The new powers would, of their very nature, constitute means of influencing events in such a way as to promote the application of Article 138 of the EEC Treaty.

Finally, although it is desirable that the provisions of this article be implemented as soon as possible, it should be noted that the present mode of recruiting of the Parliament involves a certain degree of democratic legitimacy justifying the exercise of true parliamentary powers.

For these reasons, the assumed precondition of Article 138 must be rejected.

One should also dismiss a second precondition arising from the prospect of a possible reform of the distribution of seats in the European Parliament. The present distribution system, resulting from Article 138(2) of the EEC Treaty and from the Accession Treaty, produces, on otherwise reasonable grounds, an unequal representation relative to populations and if universal suffrage were introduced, to the various European constituencies.

This inequality in representation, which is only of minor importance as long as the Parliament plays a mainly consultative role, might present a problem in the eyes of some people from the moment the Parliament received real powers of decision-making, even if these were only limited powers. It could in any case constitute a debating point against the introduction of these powers.

At all events, the redistribution of seats in the Parliament could obviously not lead to strictly proportional representation because of the need to represent not only individuals but also the entities forming the Community. The Working Party considers that such a possible redistribution should not, any more than election by direct suffrage, constitute a precondition for the increase of the Parliament's powers, at least within the limited context defined by the present report. Certain members of the Working Party, however, believe that, to counter the objection mentioned above, the Parliament should exercise the powers of co-decision to be given it during the second stage specified in the previous chapter under a system by which a qualified majority would be required in certain circumstances, in order thus to prevent a discrepancy between the votes of representatives and the number of those represented.

A third precondition, finally, should likewise be rejected, namely that of the creation of a "real" European Government which would be regarded as a *sine qua non* for the existence of a "real" Parliament and consequently for the increase of the Parliament's powers. The fact is that, as the concept of a "real" European Government is anything but clearly defined, there would be a

risk here of getting caught again in one of those vicious circles with which the subject under discussion is unfortunately fraught.

In short, the introduction of new powers for the Parliament, as justified above, cannot depend on the introduction of election by direct universal suffrage. If, as a result of circumstances which cannot be predicted, the increase of parliamentary powers were to precede direct election, this first success would only make the achievement of the other objective more desirable and no doubt, more likely.

SECTION II

ELECTION BY DIRECT UNIVERSAL SUFFRAGE

1. The importance of election by direct universal suffrage

The introduction of direct elections would be important first of all because it would draw attention afresh to the partly, or even wholly, forgotten Article 138(3) of the EEC Treaty, which, in fact, is one of the articles on which most future plans had been based.

Furthermore, direct elections would considerably contribute to the Community's democratization and consequently, to its authentication, its legitimization. It should promote a closer union between the European peoples.

The electoral scheme to be offered to the peoples of Europe would no doubt also constitute a unifying factor because it would encourage existing parties to take a stand on European rather than on national political questions. The new election formula could also stimulate the formation of wider units grouping together the various related political parties represented in the Member States. Naturally, certain problems cannot be ignored: the choice of the best possible circumstances for the response to and the success of the elections; the need to establish new links between the European Parliament and the national parliaments when, as a result of the reformed system, it is no longer possible to rely on the community of personnel between these institutions. But these problems can be overcome and as this report will show, their presence has not prevented the Working Party from recommending that election by direct universal suffrage should be subject to a timetable.

2. The timetable

It has already been said that the Parliament has drawn up a draft to implement Article 138 of the EEC Treaty but that as the Council has not yet taken a decision on the matter, no further action has been taken. Although from the

legal point of view, the draft has not become null and void, in political terms it cannot be regarded as up to date, especially since it was worked out in the absence of the States now about to join the Community. Before the matter can be considered again, we should wait until the representatives of the new States can take their seats in the Parliament and assume their full deliberative tasks. This takes us up to 1 January 1973.

From that moment, however, a solution to the problem must be sought without loss of time, under a procedure excluding chances of new or indefinite postponements. For this reason, it is highly desirable that the institutions involved should, by common agreement, fix a series of deadlines by which the different phases of procedure leading to election by direct universal suffrage and the actual parliamentary elections themselves, should be completed.

Some members of the Working Party believed that the deadlines should be clearly specified in the present report. In their opinion, the proposals provided for in Article 138 of the EEC Treaty, concerning the introduction of parliamentary elections by direct universal suffrage, should be worked out within two years following the Parliament's enlargement; three more years should be set aside for their application, including the Council's decision and its ratification by the Member States.

Other members of the Working Party, however, believe that the length of the period within which this complex procedure should be completed closely depends on political circumstances which the Working Party cannot foresee with any degree of accuracy. Nevertheless, they consider that the Community institutions concerned should put forward a programme themselves, together with a timetable, so as to avoid indefinite postponements.

The Working Party as a whole has come out strongly in favour of the timetable method, under which all the institutions involved will, at the right moment, be drawn into and play their part in the complex procedure provided for in the Treaties.

In order to avoid any misunderstanding, it should once more be pointed out that in the opinion of the Working Party, there is no chronological interdependence between direct elections and the increase of the powers of the European Parliament; there is neither any order of priority nor necessary simultaneity between the achievement of these two objectives. Any obstacles encountered on the road towards the realization of one of them should not stand in the way of that of the other.

The difficulties involved in attempting to determine and enforce the timetable may vary according to the interpretation given to the phrase "uniform procedure" used in Article 138 of the EEC Treaty to define the electoral rules to be worked out by the Parliament for elections by direct universal suffrage. If this phrase is taken to mean a "single electoral system" (even with the

possibility of minor optional variations within the system), it will be rather difficult to draw up the proposals in question because of the differences in electoral systems in the Member States and applicant states. However, the Working Party believes that Article 138 may be reasonably interpreted as meaning that the members of the European Parliament could be elected by direct universal suffrage under the electoral system applied in each individual country. At any rate, this solution, in accordance with the provisions of the Dehousse report, could be regarded as an acceptable transitional one until more favourable conditions arise for working out a single electoral law taking account of the experience gained in the interval.

Two members of the Working Party, however, have emphasized the need for introduction of a single electoral system in the fairly near future so as to facilitate the formation of political groups at European level. In this context, they regret that the Working Party has failed to examine the possibilities of a European electoral law. They further believe that, whatever polling method will ultimately be adopted, it ought to involve more than one electoral district in each Member State. In the various countries, polling should be organized on a regional basis in order to make it more difficult to identify the political with the national affiliations of the voters.

Nevertheless, most members of the Working Party believe that the question whether a single electoral law is called for is not of major importance. It depends first of all on the views on the matter entertained by the European Parliament itself. Besides, the difficulty of working out a uniform electoral system acceptable to all Member States, both old and new, of the Community might once again slow down and postpone for a long time, implementation of the provisions of Article 138.

3. Prospects of achieving the objectives on a national basis

Seeing that no further steps were taken on the basis of the Dehousse report, parliamentarians and parliamentary groups in various Member States and in Italy even members of the public, have put forward proposals for legislation under which, in the Member States in question, members of the European Parliament would be elected by direct universal suffrage without infringement of the condition in Article 138(1) of the EEC Treaty requiring them to be members of their national parliament and designated by it.

Admittedly, there are objections to such national proposals. In so far as they tend to "nationalize" European elections, they cannot have the same stimulating effect for European integration as simultaneous elections in all the Member States. Direct election of members of the European Parliament effected in isolation in one of the Member States would not be conducive to

the creation of European parties and would not mobilize public opinion at a European level. Besides, if this system were applied, the members of the European Parliament would differ not only in nationality, as now, but also in electoral origin (direct or indirect suffrage). And finally, in some of the Member States at least, the small number of seats available would make it difficult to achieve a fair representation of political forces. As regards this last point, we may add that the scheme provided for in Article 138 of the EEC Treaty should involve an increase in the total membership of the European Parliament in order to guarantee adequate representation.

Nevertheless, the national initiatives referred to above should not be ignored, at least in the medium term. It should be noted that in political circles in the United Kingdom there have been discussions recently on the idea of directly electing, at the same time as the general elections, thirty members of the European Parliament who would also be regional representatives in the House of Commons; in addition, the House of Lords would send six of its members to the European Parliament. This system, according to its advocates, would not be fraught with the serious obstacles that would hinder British support of a uniform European electoral system.

The objections raised above to proposals to organize European elections on an isolated national basis would probably lose much of their weight if such proposals were put forward under particularly favourable political circumstances and consequently stimulated similar initiatives elsewhere.

CHAPTER VI

Relations between the European Parliament and the national parliaments

SECTION I

NEED FOR THESE RELATIONS

Though differing in detail, the democratic systems of the Member States of the Community are essentially the same. During the whole period of construction of a democratic Community, the peoples of the Member States will continue to regard the national constitutional systems as the level where the basic democratic process takes place.

Direct elections to the European Parliament will no doubt promote the formation of a European party system, but this will take time; as long as no genuine European parties have been established, the election process in the Community will still be largely based on the national party systems and on programmes and candidates connected mainly with national politics.

Compared with the powers of national parliaments, those of the European Parliament appear to be small. For an indefinite period to come, the European Parliament will have no more than a right of co-decision alongside the Council and will only have responsibilities in fields which, though no doubt very important, are limited compared with the powers of the national parliaments. The European budget will be far smaller and have a much narrower scope than the budgets adopted by the national parliaments.

As in the past, it will be the national parliaments which will provide those elected with the platform for taking effective action and for building up a reputation in their parties and in the opinion of the electorate. For a long time to come, the careers of politicians will be built up in a national context. The national parliament will continue to be the springboard to a ministerial portfolio or a front-rank political position.

For all these reasons, the national politicians will not regard the European Parliament as a forum that is as interesting as the one they have in the national parliaments.

It is therefore vital to ensure that possible rivalry between the national parliaments and the European Parliament does not weaken the latter. The national parliaments have means of bringing direct influence to bear on their governments whose representatives meet in the Council. In this way they are able to support or oppose the lines taken by the European Parliament. This is why the relations between the European Parliament and the national parliaments must be close. From the point of view of European integration,

one may even wish to see true interpenetration on the lines of the Dehousse report; this would establish a link between the national democratic process and the Community democratic process. It will thus be possible for a two-way movement to emerge which would be of the utmost benefit to the parties in either process: the national parliaments will support the European Parliament and the European Parliament will be able to make its policies felt and perhaps exert a coordinating influence on national parliamentary life.

The interpenetration thus required concerns both men and activities, as outlined below.

As stated in the preceding chapter, election of the European Parliament by direct universal suffrage will no doubt be conducive to a certain differentiation between politicians active at European level and politicians active at national level. This is a desirable development, but as said before, certain mechanisms, such as the ones to be described here, would help to avoid a rupture between the European parliamentary institution and the national parliamentary institutions.

SECTION II

INSTITUTIONAL RELATIONS BETWEEN THE EUROPEAN PARLIAMENT AND THE NATIONAL PARLIAMENTS

1. The dual mandate

In practice, the principal link between the national parliaments and the European Parliament consists today in the existence of the members dual mandate from both assemblies, which creates a sort of personal union.

The main drawback of the system lies in the increase in the European Parliament's activities, in itself a happy circumstance. In 1971, a European deputy had to attend, on average, plenary meetings to a total of 45 days and 25 committee meetings, some of which lasted more than one day; this takes no account of the separate meetings of the political groups of the European Parliament.

Such a crowded programme deters the national political groupings from sending to the European Parliament too large a number of top rank national parliamentarians who would be particularly representative of the government parties or the opposition but whose frequent and prolonged absence would hinder the work of the national parties and parliaments.

The composition of the European Parliament does not necessarily suffer from this circumstance. For instance, the parliamentary parties send to it well-qualified young politicians who thus gain valuable experience. The danger lies

elsewhere. Owing to the very fact that they attend to their European mandate, the members involved do not exercise sufficient influence in the national parliament from which they are often missing. Exercise of the two mandates simultaneously therefore has its drawbacks.

To reduce these drawbacks, it has sometimes been suggested that a system of deputy members should be set up, to enable the prominent politicians who are regular members to participate only in the most important debates and to entrust the task of dealing with the European Parliament's day-to-day work to their deputies.

Against this proposal it has been urged that the institution of deputy membership is contrary to the very idea of a representative system and foreign to parliamentary tradition. These considerations will carry all the more weight as the European Parliament gains in power and prestige.

The European Parliament, which, in drawing up the proposals referred to in Article 138 of the EEC Treaty, will have the primary responsibility for solving this question, will be confronted with these aspects whenever the deputy member issue is debated.

Another suggestion is that the drawbacks of the dual mandate could be reduced by cutting down the time which the members of the European Parliament must spend on their work. The volume of work in the European Parliament will, in fact, remain smaller than that in the national parliaments for quite some time yet. In the opinion of the Working Party, the European Parliament could profit from this situation by harmonizing its activities with those of the national parliaments. The national parliaments would have to make a similar effort, supported, it is hoped, by the parties. It has also been pointed out above that in the matters of list A or list B outlined in chapter IV, the European Parliament could agree to be relieved of the problems of implementation, leaving these to the Council or Commission.

The link established between the national parliaments and the European Parliament by the dual mandate must be maintained. Nevertheless there is still the problem of attracting to the European Parliament the greatest possible number of outstanding politicians. The strengthening of powers recommended in chapter IV may in itself produce this result. An increase in the number of members of the European Parliament would work in the same direction by reducing the drawbacks of absences.

As has been seen already, direct election by universal suffrage will no doubt change many of the aspects of this problem. But despite the differentiation between national political careers and European political careers that may result, it will still be desirable that a common core of parliamentarians should ensure communication between the national parliaments and the European Parliament.

2. Links between the national parliaments and the European Parliament

Consideration could be given to establishing links between the European Parliament and the national parliaments by providing that the chairmen or certain members of the national parliamentary committees dealing with problems relating to the Community should automatically be members of the European Parliament. In this way they would be able to acquaint themselves, in the committees and plenary meetings of the European Parliament, with the problems relating to their work at national level and, conversely, they could bring the views of their committees and national parliaments to the knowledge of the European Parliament.

But this idea would be difficult to institutionalize. Like the solution based on deputy membership, it is rather foreign to parliamentary traditions and parliamentary spirit. Other solutions must therefore be envisaged.

We must see exactly where the main difficulty lies.

It is legitimate and democratic that national parliaments should try to bring their influence to bear within the Community. In the absence of effective links with the European Parliament, the temptation is great for them to exercise this influence through the body which is within their reach, namely, their government and the representatives this government sends to the Council. In some countries, notably Germany and the Netherlands, the national parliament has at its disposal institutional means enabling it to inform itself about the activities of its government at Community level, and, consequently, control these activities.

The principle of the national parliaments controlling the activities of their governments at Community level is democratic. Carried to extremes, it could lead to a situation where the parliaments, by stating their views, leave the governments so little room for manoeuvre that the representatives of these governments are unable to negotiate or decide on their own within the Council.

If the national parliaments were given reliable means of communicating with the European institutions through the European Parliament, this would prevent any weakening of national democratic control while avoiding the dangers of exaggeration.

To this end, there should be joint meetings of the specialized committees of the national parliaments and the European Parliament to study important problems. As said before, these meetings would give parliamentarians a feeling of confidence towards the Community and would render unduly meddlesome control of Parliament over the national ministers superfluous. In addition, these joint meetings would bring parliamentarians without a European mandate into contact with the Community and would lead to a better knowledge of the problems of Europe, indirectly strengthening the influence of the European

Parliament in the national parliaments. These meetings would doubtless also help to multiply the fruitful contacts between the various parliaments' specialists on technical questions. Provided this procedure is only used for truly important questions, there is reason to hope that it will not unduly overload the agendas and timetables of national and European parliamentarians.

SECTION III

SPECIAL TREATMENT TO BE GIVEN TO EUROPEAN PROBLEMS WITHIN NATIONAL PARLIAMENTS

In the national parliaments there are as yet hardly any specialized bodies or procedures for dealing with European problems. Consideration could be given to setting up, within the national parliaments, committees for European affairs which would have the task of coordinating the national parliamentary work relating to Europe. Naturally these committees would have to include many members of the European Parliament. One of the advantages of this procedure would be that it would help to ensure that national legislation is not drawn up simply side by side with European legislative work and without any connection with that work.

SECTION IV

IMPROVEMENT OF TECHNICAL CONDITIONS FOR THE FUNCT- IONING OF THE EUROPEAN PARLIAMENT

The practical conditions under which the members' European mandate is exercised are of genuine importance for the smooth functioning of the European Parliament. Problems such as the information of parliamentarians, the technical or administrative assistance which they may receive and the conditions of work in general must be taken into consideration. No one is more aware of this need than the European Parliament itself.

Special mention should perhaps be made of a point which at first sight may appear to be a minor one but is of greater importance than one would think. This is the problem of transport. It should be normal for a representative from any Member State or future Member State of the Community to be able on one and the same day to attend a meeting for instance in the European Parliament in the morning and one in his national parliament in the afternoon. If existing commercial transport facilities are not sufficient, the European Parliament should envisage organizing a transport system of its own.

SECTION V

INCIDENCE AT PARLIAMENTARY LEVEL OF THE STEPS TAKEN TO ACHIEVE ECONOMIC AND MONETARY UNION

The situation that will be created by the establishment of economic and monetary union provides a fresh and striking illustration of the need for close and new relations between the national parliaments and the European Parliament.

Extension of the Community's activities to one or other new subject produces an effect that has already been referred to: it involves the transfer of powers from the national parliaments not to the European Parliament but to the Council. The increase in the powers of the European Parliament recommended in chapter IV will no doubt reduce the distortion mentioned but will not eliminate it completely.

One might be tempted to believe that the above transfer of powers is a less serious matter in the case of a large number of the activities that will form part of economic and monetary union than in the case of other activities which are easier to define in legal terms and which, in the national parliaments, are largely legislative in nature. For instance, important instruments of short-term economic policy and monetary policy, such as interest rates or exchange rates do not, in general, come under the direct responsibility of the national parliaments, so that transfer to the Community of the right to take decisions on them would not imply a weakening of democratic control over them.

This would be an erroneous view based on a misunderstanding of political realities. For, while the national parliaments are fairly detached from technical problems of a monetary and even an economic nature, the way they judge the results of the economic policy pursued by their governments is a major element in their confidence or lack of it in them.

If the establishment of economic and monetary union produces a common short-term economic policy and monetary policy, the guidelines and, sometimes, the joint decisions connected with these policies will have an influence on national life; otherwise they will have no significance at all. There is every reason to believe that the national parliaments will not be satisfied by explanations given by their governments, even if they are well-founded, that such and such a result, considered to be an unfortunate one in the country, stems from a decision taken at the level of the European institutions, particularly by their technical bodies. This would create a false situation which would reduce the national governments to a choice between failing the Community in its drive for economic and monetary union or risking their existence before the national parliaments, which, as has been said, have little inclination to rest content with excuses, even justified excuses.

The solution would be to make the members of the national parliaments themselves feel committed to the common short-term economic and monetary policy. But this will be possible only if the interpenetration of national parliaments with the European Parliament, referred to above, becomes a reality and if there are precise arrangements for informing national parliamentarians about the decision-making process in the Community and involving them in it one way or another.

The general methods outlined earlier in this chapter are of course applicable to this field. They must be strengthened through the establishment of a forum in which the national and the European parliamentarians can meet and in which the short-term economic policy pursued in the Community and its impact on national policies would be analysed critically and, if feasible, in public, with the people responsible for these policies at the various levels.

The procedure described could also be extended to cover the medium- and long-term problems.

This will bring about the establishment, along practical rather than juridical lines, of a system of information, dialogue and control particularly necessary in a field where parliamentarians, paradoxically, though sometimes put off by the technical aspects of the problems, are not any less demanding as regards the results obtained. It would be a great threat to Europe if the very important progress that will be made in the shape of economic and monetary union were a source of misunderstanding among all the various parties contributing their shares: national parliaments, national governments, the Council, the Commission, the European Parliament, the Committee of Central Banks, technical and financial experts, etc.

SECTION VI

TOWARDS A COLLECTIVE SYSTEM OF PARLIAMENTARY COORDINATION

There is a real need to ensure that the European Parliament and the national parliaments do not work as completely separate and autonomous decision-making centres. The juridical and sociological processes referred to in this chapter must lead to the construction, in the more or less long term, of some sort of communications network that engenders consensus.

Several national parliaments have made it clear that they wish to see the role of the European Parliament strengthened. They now have the opportunity to put their wish into practice, using procedures which do not require any amendment of the Treaties.

Here, everything depends on their political will and their innovating ability. This chapter provides a number of pointers which have been devised in this sense.

There are other suggestions pointing in the same direction. Examples include links between the Presidents of the European Parliament and the national parliaments, particularly for harmonization of the programmes of these assemblies; information about the debates held in the respective bodies; perhaps a system providing for the drawing-up of an annual report or even a joint annual report discussing the various issues.

Overall, the whole set of initiatives to be taken along these lines, initiatives which concern the parliaments themselves, tends to create a kind of symbiosis between national and European parliamentary life. The society thus created will undoubtedly be subject to change. The extension of the powers of the European Parliament and its election by universal suffrage, will give it the role of synthesizing disparate interests and mediating between them. This is the normal path followed by the development of the parliamentary institution in the historical experience of national and federal integration, and there is no cause to depart from it in this case. In concluding this chapter, it should simply be stated that the differentiation in the legal roles of the parliaments at the different levels does not contradict the other process; rather, it is given powerful support by the sociological phenomena of interpenetration of the activities, of the political functions, of the groups of people exercising them and of the institutions.

CHAPTER VII

Adjustments to the Institutions of the Community

SECTION I

THE NECESSARY UNITY OF THE COMMUNITY SYSTEM

On the eve of closer collaboration between the Member States which is to take them beyond the customs union to the establishment of an economic and monetary union and to the development of common policies in other fields besides that of agriculture, it is necessary to draw attention to a twofold danger threatening both the effectiveness and the democratic nature of the intended development. This danger consists, on the one hand, in the tendency to put too narrow an interpretation on Community powers and on the other, in the proliferation of inter-governmental bodies and committees operating on the fringe of the Community's institutional framework.

It has been noted that in the new spheres of action, the partners in the Community are tending too often to restrict the scope of the Treaties to current activities and to carry out their policies along non-Community lines. The reasons for this tendency are complex, but one of them is, without doubt, the governments' desire to keep their hands free in the new spheres of action. The growth in the number of inter-governmental bodies and committees is also in part due to the national administrations' desire to take part in the decision-making processes and this, although not necessarily without its advantages as regards, in particular, the sociological integration of groups belonging to the administrative class, represents a real danger to the unity of Community activities.

The persistence of such tendencies, entailing the multiplication of inter-governmental practices at the outer limits of Community procedures which, however, have proved their value in the past, brings with it the risk of a reduction in the decision-making capacity of the bodies responsible for the new policies.

The cohesion of Community policy in its entirety will be threatened. Moreover, the provisions of the Treaties will have been nullified by the avoidance of control by Parliament and the courts, which is essential to any democratic legal system.

At a time when a whole variety of experience shows that the Europe of the Treaties is wide open as regards both its make-up and its spheres of activity, the Working Party believes that European integration must under no

circumstances be allowed to languish. New activities must be carried out in the framework of the Community institutional system and be based on the Treaties, making use of all the possibilities they offer including those of Article 235 of the EEC Treaty and resorting, should circumstances so require, to the revision procedure in Article 236.

It must be borne in mind that the Commission, along with the Council, is the only institution able to take in the whole range of common activities and to ensure continuously the coordination and cohesion of initiatives.

There is no doubt that, in fields going beyond the scope of the Treaties, cooperation between the States can, in certain cases, produce extra-Community bodies which will initiate what may one day be a common policy. Nevertheless, the Community institutions, including the Commission and the Parliament, should be associated with the work of these bodies whenever it affects application of the Treaties in any way.

But, apart from this case, if new committees consisting of high national officials have to be established they must be slotted into the Community structure and linked up with both the Council and the Commission in the same way as the Monetary Committee (Art. 105 of the EEC Treaty).

This is the necessary starting-point for all considerations on the adjustments to be made to the Community institutional system.

SECTION II

GENERAL PRINCIPLES GOVERNING ADJUSTMENTS TO THE INSTITUTIONS

It is clear that if the proposals made above on the extension of the Parliament's powers are to be implemented, the relationship between the institutions will undergo some changes. The Parliament, which until now has been somewhat divorced from the major Community responsibilities, will share them with the Council and the Commission.

The Working Party has found it essential to examine, in the light of imminent developments such as the economic and monetary union, the changes which would be entailed or required by the extension of the Parliament's powers. However, it has not neglected the longer-term questions. The measures proposed, proceeding from the very diversity of opinions on certain questions, must also be considered as a means for quickening the pace of European integration.

Hence the present institutional system will be taken as a starting-point and there will be an examination, linked with what has been said above on the Parliament's powers, of the adjustments which can be made to this system in the foreseeable future. Finally, an attempt will be made to ascertain the conditions making for an effective democratic system.

Since future developments are to take place within the fabric of the existing organization, they will have to satisfy two indispensable conditions.

Firstly, the association between the Council and the Commission must remain one of the cornerstones of the Community system. The Commission represents the truly common interest in the fields which are open to Community action, whereas the Council embodies the political will of and the cooperation between, the various States, united to carry out Community tasks. The European Parliament will be involved in both these functions. It will be not only the means for expressing a "general European will" but also the form for public opinion in the Member States.

Secondly, it must not be forgotten that the structure of the Community is not the same as that of the national political systems. It does not work on the traditional principle of separation of powers. The Community system is based more on distinction and collaboration between national and integrating forces. This explains the difference between its true Community function and that of providing an outlet for national political desires—between which functions, as had been said, the European Parliament acts as a bridge.

If these conditions are fulfilled, the extension of the Parliament's powers and the reactivation of institutional development must be along three lines.

First of all, let it be repeated that the new development of European policies must not only respect the unity of the Community but also strengthen it.

Secondly—and this is the logical consequences of what has just been said—the Commission must be more than ever a centre for Community ideas, initiatives, mediation and administration. In this respect, the Treaties' initial design must be preserved.

Thirdly, the Council's decision-making capacity must be strengthened so that it can meet the future demands of political control in fields which are becoming increasingly complex, varied and interdependent. If, as we have proposed, the Parliament's powers are reinforced, the relations between the Council and the Assembly will of necessity become closer and more assured. This communications system should not, however, develop into a dialogue which would exclude or weaken the role of the Commission, mouthpiece of the common interest.

SECTION III

THE COMMISSION

The Commission's role as planner, initiator and mediator, mentioned above, indicates that it is indeed a political body in the widest sense of the term. Its political character needs to be strengthened in various respects. For instance, this would be achieved if the Commission had more members who were also prominent political figures and if the dual investiture of the President of the Commission by the government and by the Parliament, as proposed in Chapter IV, were introduced.

The Commission's administrative role, which is more important than ever, should be consolidated in view of the threats arising from the dispersal of various organs of European cooperation outside the Community system. It is unnecessary to go over this matter again.

In the more sustained dialogue which will take shape between the Parliament and the Council, the Commission will have a vital role to play, particularly in facilitating cooperation between the two institutions and in promoting establishment of the consensus necessary for joint decision-making.

We should not conceal from ourselves that the enlargement of the Commission, resulting from the entry of the new members of the Community, may create certain difficulties affecting the coherence of the Commission's work. This problem is partly amenable to administrative solutions upon which the Working Party is not competent to pronounce. It can merely point out that a larger Commission will need to establish a system capable of supervising all the institution's various operations and of avoiding the dispersal and separate growth of Community administration in sectors which are autonomous or insufficiently interconnected.

The Working Party feels it should stress once again the need to strengthen the position of the President of the Commission, whose powers are too limited because of the duration of his mandate and because he is not in the full sense the leader of the team. In this connection we draw attention to our proposals for a four-year mandate and a system of parliamentary investiture of the President of the Commission.

Finally, if the economic and monetary union comes into being, quick procedures for urgent decisions will probably have to be instituted. These procedures should be the responsibility of the Commission, assisted, where necessary, by technical bodies possibly modelled on the Agricultural Management Committees.

SECTION IV

THE COUNCIL

1. Decision-making powers and blocking

The proposals made above in no way impair the position of the Council whose legislative and executive role continues to be of primary importance. The real problem for the Council is how to restore to it an increased capacity for decision-making and to remove as many as possible of the blockages which tend to result from its current deficiency in this respect. These blockages must not be allowed to multiply to the point where the Parliament becomes associated with a sort of power of "non-decision".

The situation was analysed above and the point was stressed that it was not a matter of undermining the Council's prerogatives but rather of placing the Council in a position to exercise them—notably by reactivating the majority principle of voting in the sense described in Chapter III above. As for the problem of the blocking of decision-making procedures by inertia, it must be conceded that it is difficult to find solutions without interfering with Council prerogatives. In fact, any system which penalized a prolonged inaction by the Council by means of some rule which allowed the Council, in such circumstances, to be bypassed in the decision-making process would be tantamount to changing one of the basic elements of the Treaties.¹

In view of this, other procedures of a less compulsive and more flexible character were sought. The most appropriate in the view of the Working Party seemed to be the following.

When a Commission proposal on which the Parliament has formulated an opinion is referred to it, the Council at the request of the Commission would indicate the time required to prepare its position. Should the time-limit be exceeded substantially, the Commission, if it considered the matter urgent, could bring the situation before the Parliament and on the basis of the latter's opinion, submit a request to the Council for a decision within the time-limit proposed by the Parliament.

Should the Council fail to decide by the set date, the Commission would be entitled to consider its proposal finally rejected and to inform the Parliament accordingly.

It is important for the effective functioning of the Community's institutions that the Parliament, Commission and Council should between them establish

¹ However, see the opinion of two members of the Working Party on this subject in chapter IV above, section II § 4 *in fine*.

agreed programmes of work, covering fairly long periods, with clear time-tables and regular joint reviews. In particular, it would be desirable to establish close liaison between the President of the Council and the President of the Commission in order to organize the work of both these institutions in an orderly fashion. Although it is unlikely that these practices would overcome the blockages which are due to political causes, they might at least help to disentangle certain cases where the obstruction is to some extent of a technical character.

2. The problem of European Ministers

On several occasions and recently again, proposals have been made to strengthen the Council's position by appointing European Ministers who, on the one hand, would represent their country in the Community and on the other, take part in domestic cabinet discussions where they could put across European points of view.

This proposal must be seen from two different angles, each of which has its own significance.

It is possible to visualize true European Ministers playing a major part in their domestic governments and in the Council of the Community. To this end, they should be permanent occupants of their Government's seats in the Council and collaborate with specialist Ministers in attendance for specific matters without prejudice to their position as Council members. This presupposes that they hold one of the top positions in their home governments and perform the role of general coordinator for the other ministerial departments where these are concerned with European affairs.

Seen in this light the proposal is of real interest. It would need to be spelt out and this presents difficulties in view of the different ways in which government and relations between the head of State, the head of government and officials in charge of ministerial departments are organized in the various countries of the present or enlarged Community.

However, it is also possible to envisage European Ministers of another sort. They would rather be Junior Ministers, who within the Community would represent at political as well as diplomatic level their government's enduring interest in European affairs. Their involvement in government discussions in their own countries would have the advantages of close relationship between the Community institutions and the domestic governments. A possible criticism of this idea is the danger that it might create a body whose work would duplicate that of the Committee of Permanent Representatives. This criticism is perhaps not conclusive because it could be argued that it might be a good thing for the function of the States' permanent representatives with

the Community institutions to be raised to a political level, thus facilitating dialogue with the Commission and the Parliament.

In any case, it would be necessary to decide between these two ideas and ensure that their combination did not simply lead to complications in the workings of national governments and Community institutions.

SECTION V

SUMMIT MEETINGS

The Hague Conference of December 1969 was a summit meeting which brought together the Heads of State or Government of the Member States and proved to be a means for launching new initiatives and taking decisions on the more or less long-term programmes for Community activities.

It has been proposed that such conferences be institutionalized by holding them at regular intervals and by giving them the set task of plotting the main guidelines for the Community.

This proposal certainly has advantages. Even though this has not always been the case in the past, political will expressed at the highest level should give a decisive impetus to the mission of the Community institutions, particularly of the Council. Regular meetings would bring European problems to the attention of governments, domestic parliaments and public opinion relatively frequently and renew their interest in them.

However, the summit system, which may be excellent in principle, comes up against a major criticism when it is seen as an institution meeting on a fixed date. In fact, given the exceptional character which a meeting of Heads of State or Government must retain in Community negotiations, it should rather be the political events necessitating their intervention which decide the timing of meetings. Summits held too frequently and at times when there is no real political issue which really makes them necessary, could well lessen the merits of the institution. In addition, there is a serious danger that Community procedures, which already move too slowly, would decelerate even more because the authorities responsible for making decisions would further delay taking up positions pending the next summit meeting.

SECTION VI

LEGAL SUPERVISION

The Court of Justice has been the crucial instrument in the development of Community law and has strengthened the institutional structure of the

Community. To what extent might this institution be affected by the proposals made in the preceding chapters?

One first point is obvious. The Court supervises the legality of the activities of the Council and the Commission from the angle of observance of the rules of competence, form and substance. This supervision must neither be weakened nor impaired by granting the Parliament greater powers, particularly the power of co-decision in legislation proposed in Chapter IV. Involvement of the Parliament in the exercise of Community powers should not result in the removal of Community activities from the objective check on their legality laid down in the Treaties.

Is it necessary to go any further? In one aspect of its control of legality the Court has power to settle disputes between the Council and the Commission when these are brought to it by one or the other of these institutions. It may be asked whether it should not be possible for it to be seized similarly in disputes in which the Parliament might be involved.

This is a delicate question since it points to the possibility of expanding the constitutional role of the Court. It calls to mind the well-known arguments of constitutional law concerning the intervention of the judge in the relationships of the public authorities inter se, notably in cases where the Parliament is involved.

The present report is not the place to elucidate this awkward problem. Its solution would presuppose a knowledge of the specific terms in which the implementation of the propositions made above would be carried out.

CHAPTER VIII

Implementation of the proposed reforms

The reforms and proposals described in the preceding chapters are not only diverse as to their aims and scope but can also be implemented in a large variety of ways.

Certain suggestions would merely entail the elaboration of existing practices based on the Treaties, or merely the retention or even re-establishment of rules written into these (notably the re-assertion of the Commission's role, the revival of the principle of majority voting on Council decisions). Even some of the new practices envisaged in certain parts of the report do not require to be given legal form.

Others however, involve more far-reaching innovations in the institutional life of the Community. It is quite obvious that they can assume their true political and legal importance only if they are formally written into the Treaties. Revision of these can alone guarantee legal security by preventing possible retrogressive action and by allowing the juridical guarantees prescribed by the Treaties to fulfil their task of safeguarding observation of the rules.

The process of formally modifying the Treaties is, however of necessity, a drawn-out one. The question must therefore be put whether, pending such a revision, some of the proposals put forward could not be implemented or at the very least, begin to be implemented within the framework of the existing Treaties by establishing practices agreed upon by the institutions concerned.

The answer to this question is, above all, a legal one. However, considerations of a more political nature may affect the conclusion reached.

SECTION I

THE LEGAL VIEWPOINT

The Working Party did not consider that its mandate implied a detailed legal study of the procedures whereby the proposals it has put forward in the preceding chapters might be realized.

However, the Working Party found it impossible not to mention the legal problems involved in the implementation of its suggestions, as this will enable the time required for such implementation to be determined and if desired, the different ways in which it must be achieved, to be explored.

The problem of the need for formal revision of the Treaties, or possible provision which would render this course unnecessary differs according to the nature of the proposed reforms.

The texts of the present Treaties seem to leave open a wide choice of ways in which the proposals concerning the composition of Community institutions can be put into practice.

Thus the guidelines concerning election by direct universal suffrage (cf. Chapter V) do not require any amendment to the Treaties. This is obvious as regards a broad interpretation of Article 138(3) EEC to permit election to the European Parliament by direct universal suffrage in accordance with national laws. The situation would be different only if the election were to be accompanied by an increase in the number of members of the European Parliament as fixed in Article 138(2) of the Treaty.

Furthermore, the suggestions made concerning the nomination of the President and members of the Commission affect the exercise of the powers of the Member States and it appears that there is nothing in the Treaties to prevent the latter nominating the President of the Commission in agreement with the European Parliament.

On the other hand, as the texts stand at present, the Working Party's proposal that the President be nominated for a term of office of four years could not be implemented, formally at least, without revision of the Treaties.

The problem of strengthening the European Parliament's participation in the taking of normative decisions or of improving relations between the institutions of the Community is more complex. The possibility for these institutions to develop their practices in this direction is limited only by the basic principle laid down in Article 4 of the EEC Treaty which states that "each institution shall act within the limits of the powers conferred upon it by this Treaty".

At the same time Article 155 of the EEC Treaty allows the Council to confer upon the Commission the broadest powers for the implementation of the rules it lays down.

None the less, the principle of a fixed distribution of functions governs the Community institutional system. And so the institutions cannot be free to abandon powers attributed to them. On the contrary, they have to assume all the political and legal responsibilities conferred upon them by the Treaties. This prohibits any one institution from imposing limitations on its own powers in favour of another institution, as this would result in the responsibility for measures to be promulgated being shifted to the latter.

This does not mean that the institutions cannot improve their methods of collaboration with one another. Explicit provision for this is made for relations between the Council and the Commission in Article 15 of the Merger Treaty.

No similar text exists for the Parliament, but its character as a parliamentary organ provides sufficient justification for practical efforts to strengthen and improve the means of control at its disposal. The text of Article 149 of the EEC Treaty already reflects the concern to facilitate consideration of opinions of the European Parliament. From this angle it can readily be imagined that the Council would agree to do all in its power to avoid setting aside the European Parliament's opinions, for example, in those fields which appear to be the most important for the development of the Community.

Nevertheless, it must be pointed out that there is a certain limit beyond which a practice may lead to a veritable shift of responsibility forbidden under Article 4 of the EEC Treaty. It is one thing for the Council to adopt the opinions given by the European Parliament: it would be quite another for it to consider itself legally bound to follow them in all circumstances. This would, in fact, mean that the Council would be refusing to exercise the powers conferred upon it as such by the Treaties.

And so it can be concluded that, as far as the European Parliament's participation in the exercise of normative powers in the Community is concerned, important progress can be made in strengthening the role of this institution without immediate resort to revision of the Treaties. This is true in any case for the proposed innovations that would allow the European Parliament to exercise, for a short period of time, a sort of suspensive veto on Council decisions. These innovations would respect the consultative nature of the European Parliament's role and would merely extend the power to give opinions already conferred upon it by the Treaties. It is only at the stage when the European Parliament comes to be involved in the exercise of a true power of co-decision that there will be a shift of responsibility necessitating revision of the Treaties. These considerations indicate that there already is a quite substantial field in which the institutions can achieve results.

This is also true for the budgetary sphere, in view of the extent to which the texts already adopted allow scope for interpretations more or less favourable to the European Parliament's powers. Here again, however, any extension of the Parliament's powers of decision and control would have to be firmly anchored in a revision of the Treaties.

SECTION II

THE POLITICAL VIEWPOINT

The legal viewpoint has enabled us to define those procedures whereby this or that proposal put forward in this report can be implemented. The choice between these methods, however, can be made only on the basis of a political viewpoint. Let us try to bring together the essential facts.

The increase in the number of the Community's tasks will mean that national parliaments will have to relinquish further powers. They will be the more willing to accept such relinquishments—which will determine the future of the construction of Europe—if, in the areas concerned, the European Parliament's control and participation takes over from them. Even more: a Europe that developed without at the same time developing its own representative institutions would become disloyal to the common democratic ideal of its member countries and would therefore be rejecting its origins.

Contrary to what might be thought, the forthcoming entry of new members into the Community does not mean a stagnation of its activities but an accelerated rate of evolution. In spite of certain forecasts, it appears that the new partners of the Six, far from considering the structures into which they are about to enter as sacrosanct and the present stage of integration as being the limit for a long time to come, are anxious to add their weight to that of the countries that originally signed the Treaties of Paris and Rome in order to promote the growth of a democratic Europe.

From a legal point of view, we have seen that certain proposals in this report do not justify revision of the Treaties, since in their case this would only involve unnecessary complications. On the other hand, some proposals of necessity imply such revision. There are, however, quite numerous cases where, without any legal irregularity, practice may run ahead of the legal rule. It is this last category which raises a problem.

In fact, in terms of economy of means, we may prefer the road of empiricism and practice and patiently await revision of the Treaties. But then there is the danger that practice may undo one day what practice did the day before: the establishment of a custom is always a hazardous venture. On the other hand, if priority were to be accorded to revision of the Treaties so that any changes that occur will be guaranteed in written law, would we not be running the risk of wasting time?

The Working Party believes that the first course is the right one. It offers more rapidly effective ways of achieving results: all that it requires is a political will and this has already been shown to exist by the enlargement of the Community and the increasing number of fields in which it is active. The Community must therefore pursue this course as far and as fast as possible.

However, two ideas must be borne clearly in mind.

The first is that partial achievement of certain of the objectives pursued by means of a scarcely formulated practice must be neither a reason nor a pretext for delaying necessary legal innovations indefinitely.

The second is that there must be a certain degree of coherence between the changes sought and it is on this that the present report attempts to throw light. If these changes were brought about in a way that relied too much on day-to-day,

almost accidental empiricism, the result would, undoubtedly, be contradictory and unbalanced. Worse still, under the guise of a pragmatic approach, there would be the risk that a vast system of horse-trading would develop. In this, the restoration and reform of the Community system, which the future development of Europe requires, would be watered down into a number of minor and disconnected changes, these would not mark the beginnings of an evolutionary process but would be a façade concealing inaction.

In any case, there will be no excuse for not turning immediately to the task of solving these problems which were the subject of the Working Party's terms of reference. Even a limited revision of the Treaties involves a long haul: but the establishment, development and consolidation of political practices also take time. In a rapidly changing world, the time at our disposal is limited. Europe is a matter of historical urgency.

No doubt many of the desired objectives seem far away. This is another reason for getting down to work on them forthwith. The higher the summit, the sooner the climbing party must set out.

Brussels, 25 March 1972.

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