

# European Communities

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## Report

drawn up on behalf of the Committee on Institutional Affairs

on the preliminary draft Treaty establishing the European Union

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Coordinating rapporteur: Mr A. SPINELLI

Rapporteurs: Mr K. DE GUCHT  
Mr J. MOREAU  
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PART B: EXPLANATORY STATEMENT



EXPLANATORY STATEMENT

1. Even before it acquired directly elected status, the European Parliament had on more than one occasion expressed dissatisfaction with the Community's institutional system; it had criticized the inadequate nature of the powers conferred on the Communities by the Treaties; it had denounced the ploy, to which the Council and Member States were increasingly resorting, of removing common problems to the sphere of inter-governmental agreements; it had deplored the increasing paralysis occasioned by this ploy.
2. During the 1979 election campaign, a number of political groups publicly reaffirmed their commitment to embark on a radical reform of the Communities, and one of the most important features to have distinguished this first directly elected Parliament has been its ongoing effort to honour this commitment.
3. Various motions for resolutions, each embodying a different approach to this matter, were tabled in 1980, and culminated in the proposal of the Crocodile Club, made up of Members from several countries and of varying shades of opinion. This proposal called on Parliament to take the initiative by devising reform proposals and sending them directly for ratification by the competent constitutional authorities in each Member State.
4. Parliament responded to this appeal on 9 July 1981<sup>1</sup>, and a Committee on Institutional Affairs, chaired by Mr Mauro Ferri, commenced its work in January 1982.
5. The committee organized hearings with the Presidents of the Commission, the Council, the Economic and Social Committee, ETUC and UNICE and with economists and political scientists. Two seminars were held at the European University Institute in Florence at which the committee's rapporteurs and chairman discussed the different aspects of their enterprise with eminent professors of law, economics and political science from various European universities and with senior Commission officials.
6. The Committee on Institutional Affairs, conscious of the complexity of the mandate conferred on it by Parliament, realized from the outset that the genuine involvement of Parliament as a whole at each stage of the project was essential to achieving a positive result.

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<sup>1</sup>OJ No. C 234, 14.9.1981, p. 48

7. The committee accordingly instructed its coordinating rapporteur, Mr Altiero Spinelli, to submit, for debate and approval by Parliament, the guidelines which it proposed to follow for its future work.

8. Having obtained approval for these guidelines in July 1982<sup>1</sup>, the Committee on Institutional Affairs then appointed six rapporteurs to assist the coordinating rapporteur, each of whom was responsible for drawing up an individual section of the reform draft. These rapporteurs were:

Mr Jacques Moreau, for the section on economic competences;

Mr Gero Pfennig, for the section on competences in the field of policy for society;

Mr Derek Prag, for the section on competences in the field of international relations;

Mr Hans-Joachim Seeler - who replaced Mr Michel Junot following the latter's resignation from Parliament - for the section on the finances of the Union;

Mr Karel De Gucht for the section on law;

Mr Ortensio Zecchino for the section on the institutions.

The coordinating rapporteur, Altiero Spinelli, was instructed to coordinate the work of the individual rapporteurs.

9. Following a year of exhaustive discussions, the committee agreed on a second motion for a resolution, which set out in detail the substance of the reform to be implemented, and submitted it in September 1983 for debate, amendment and approval by Parliament<sup>2</sup>.

10. Redefining the competences and powers of the institutions in the light of experience to date and the new tasks to be accomplished, and linking the Communities, Political Cooperation and the EMS into a cohesive system, proved to be a problem of such complexity as to make it virtually impossible to conceive reform as a series of amendments to the existing Treaties and agreements. All that would have emerged would have been a barely comprehensible and extremely unwieldy document.

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<sup>1</sup> OJ No. C 238, 13.9.1982, p. 25

<sup>2</sup> OJ No. C 277, 17.10.1983, p. 95

11. Moreover, the only possible procedure for amending the Treaties would have been that provided for in Articles 236 of the EEC Treaty, 96 of the ECSC Treaty and 204 of the EAEC Treaty. Parliament would not have had the right to propose amendments, and the responsibility for devising amendments of any kind would have rested with a diplomatic conference of government representatives. Yet this was the very procedure which thwarted almost all of the numerous attempts at institutional reform undertaken since 1952.

Shortly after it was set up, the Committee on Institutional Affairs furnished eloquent proof of the futility of that procedure by publishing a compilation of the institutional documents issued by the Community between 1950 and 1982.

12. In its resolution of 14 September 1983, the European Parliament therefore decided to give the reform project the specific form of a draft Treaty establishing 'ex novo' the European Union, which the Treaties themselves had advocated and all the national governments solemnly endorsed as the goal which the Communities had to pursue. This Treaty would not amend the existing Treaties and agreements but create a new political structure able to assume the legal, political and economic heritage of the Communities and their related structures, but developing it in the future in accordance with the methods most appropriate to the Union.

The established procedure for amending the Community Treaties was thus excluded since it was incompatible with the objective to be achieved.

13. Any Treaty setting out to establish the European Union is by definition of a dual nature. In terms of content, it is a constitution in the true sense of the word because it defines the vested powers and constituent institutions of the new political structure which is the European Union. In terms of form, it is an international treaty since only the countries invited to become members of the Union have the right to accept the substance of the draft, ratify it in accordance with their own constitutional rules and thereby bring it into force.

14. The European Parliament is therefore not empowered, either legally or politically, to institute the Union by promulgating its constitution. It can only propose a draft treaty establishing the Union for ratification by the Member States.

15. On the other hand, the European Parliament has the legal possibility and the political obligation to assume responsibility for preparing and approving a specific draft Treaty establishing the European Union and proposing it to the Member States for ratification, as can be deduced from the following facts:

- (a) while all the relevant national constitutions, written and unwritten, lay down the procedure to be followed for the ratification of treaties, none stipulates that treaties must be drafted in negotiations between diplomatic representatives of national governments;
- (b) in modern democracies, laws of a constitutional nature, which have a profound effect on the lives of individuals, are generally drawn up by political institutions of a parliamentary type, in which all the major political forces are represented, so as to guarantee a democratic basis for this legislative process;
- (c) the European Parliament is the only political institution of a parliamentary type to be endowed with the highest political legitimacy recognized by our democracies, that deriving from the free election of its Members. It is therefore the one political body which is qualified, as well as bound by duty, to prepare such a draft.

16. It is no coincidence that the question of creating the European Union was taken up at the same time by both the European Parliament, following the initiative by the Crocodile Club, and the Council, following the initiative by Foreign Ministers Genscher and Colombo. Indeed, both Parliament and Council were aware of the need to take this step. The Council pursued its objectives through inter-governmental negotiations. Although this procedure allows matters of European interest to be put forward for discussion, they are not as a rule discussed in depth or even expressed in the correct terms, since only what is or may become a matter of national interest is likely to be given priority by the various national delegations, and in practice negotiations tend to centre on finding the lowest common denominator - if any - between the different national pretensions.

The European Parliament approached the matter as a debate between Members, rather than nations, aimed at reconciling the views of political forces and groupings of mixed nationality. This procedure enables European considerations

to remain from beginning to end at the centre of the debates, deliberations, compromises and the final vote. National interests are inevitably borne in mind by each Member, and it is never possible not to take some account of them in the final decision, but to be raised and defended, they must be demonstrated in some way to be national aspects of European preoccupations.

The Council declaration of 19 June 1983, which gave the final form to the Genscher-Colombo plan, and the draft Treaty - the European Parliament has already endorsed the substance and is now about to vote on the definitive text - both constitute the response offered by the institutions to the challenge of European integration in the 1980s. They demonstrate in exemplary fashion, more clearly than any argument, the futility of inter-governmental negotiations and the fruitfulness of parliamentary debate on European integration.

17. In implementation of the resolution adopted in September 1983, the Committee on Institutional Affairs incorporated the substance of this resolution into a proper draft Treaty. To ensure that the draft was correctly formulated and given a coherent legal structure, a Committee of 4 eminent legal experts was appointed, namely:

Professor Francesco Capotorti, of the University of Rome,  
former Advocate-General of the Court of Justice of the  
European Communities;

Professor Meinhard Hilf, of the University of Bielefeld;

Professor Francis Jacobs, of King's College London;

and Professor Jean-Paul Jacqué, rector of the University of  
Strasbourg.

The Dutch text was revised by Mr Hans Nord, the Danish text by  
Dr. Peter Vesterdorf and the Greek text by Professor Dimitris Evrigenis.

18. At its meeting of 14 December 1983 in Strasbourg, the Committee on Institutional Affairs adopted the text and instructed its coordinating rapporteur to submit it to Parliament as a preliminary draft, requesting that it be endorsed, converted into a draft Treaty and ultimately forwarded to the individual Member States for ratification.

19. The draft treaty establishing the European Union lays down a system of institutions and competences which, although it retains Community terminology, in the interests of continuity, and takes over the Community patrimony in its entirety, also introduces important innovations, based on the following principles:

- (a) commitment to respect and promote the human values inherent in a democratic order of society;
- (b) respect for the fundamental rights of individuals by the Union in the exercise of its competences and by the Member States, which, in the event of persistent violation of these rights or of democratic principles, may incur penalties extending to exclusion from the activities of the Union;
- (c) the principle of subsidiarity, under which the Union may on the one hand take action only in those cases where its intervention is likely to be more beneficial than that of the Member States acting in isolation, and is on the other hand endowed with clear instruments and procedures for initiating and furthering the appropriate action in such cases;
- (d) explicit recognition that the law of the Union takes precedence over that of the Member States;
- (e) genuine involvement of the citizens of the Union and of the Member States in decision-making processes;
- (f) implementation of joint decisions at the closest possible level to the individual citizens (Member State, regions, local authorities), but in compliance with a general power of implementation and monitoring vested in the competent institutions of the Union.

20. The institutions of the Union are not conceived as an end in themselves, but as an instrument enabling the Union to exercise the powers essential to satisfying the common needs of European citizens and modern-day European society.

21. These needs are clearly stated in the objectives of the Union, both internal objectives, where the traditional economic and social aims of the Communities are to be coupled with endeavours to attain full employment, the elimination of regional imbalances, environmental protection and the requirement to give the Union an economic structure capable of adapting itself to



changes in the economic situation, and external objectives, where numerous aspects of international relations, including political and security aspects, are to be coupled with the economic and development policy objectives of the Communities reiterated in the text.

22. Two methods of achieving these aims will be open to the Union:

- the method of common action, in other words action by the Union through the legal and practical instruments provided by the Treaty and which are addressed directly to individual citizens;
- the method of cooperation, in which the Member States, through the European Council, pursue an active policy of coordination and jointly assume commitments incumbent on the individual Member States or, possibly, the Community institutions.

23. To enable the Union to apply the principle of subsidiarity in an effective fashion, a distinction has been made in the sphere of common action between exclusive competence, covering the sectors where the Union will fully exercise its powers as soon as it comes into being, and concurrent competence, the practical exercise of which will be modulated, in accordance with specific procedures, on the basis of the actual advantage to be derived.

In addition, provision has been made for the possibility of transferring certain matters from the sphere of cooperation to that of common action, on a permanent or temporary basis, under procedures simpler than an actual revision of the Treaty.

24. The institutional system has been structured to take account of the practical applications of the methods and competences outlined above.

25. The Parliament and Council of the Union form the two strands of the authority exercising legislative and budgetary power and political control in the Union.

Whereas the Parliament of the Union will still be elected in accordance with the rules in force when the Union is established, and will continue to be until such time as the legislative authority has passed a different electoral law, the structure of the Council is laid down in the Treaty itself, since the defects in the existing structure of the Council of the European Communities are only too manifest. While the individual governments will continue to appoint

national representatives on the Council, it is stipulated that each group of representatives must be headed by a Minister who is permanently and specifically responsible for European affairs.

The power of legislative initiative normally falls to the Commission, but, subject to certain reservations designed to prevent a senseless proliferation of draft laws, initiatives may also be taken by one of the two arms of the legislative authority.

The joint exercise by Parliament and Council of decision-making power is governed by a fixed system of successive readings by the two arms and by the rule under which an arm that does not take a decision within the appointed time forfeits its right to express an opinion.

In addition to standard laws (which will replace the present Community regulations and directives), provision has also been made for organic laws, which demand a broad consensus in Parliament and the Council, because their purpose is to define fundamental aspects of the Union's activities.

The requirement of unanimity in the Council has been virtually abolished.

26. The powers of the Commission of the Union have been considerably strengthened by comparison with those of the present Commission of the Communities.

Firstly, the new Commission will assume full responsibility not only for the management but also for the planning of common actions, together with the related legislative and financial initiatives.

Secondly, the appointment procedure has been radically changed. The national governments, in the shape of the European Council, will still appoint the President of the Commission, but the importance of the latter within the Commission has been increased by virtue of the fact that he - and not the governments - will be responsible for setting up the Commission. But most importantly of all, the Commission may take office only if it receives the endorsement of Parliament.

27. The Court of Justice, in whose appointment Parliament will now have a say, is to be given greater and wider powers in ensuring a uniform interpretation of the law (quashing of judgments passed by national courts in breach of Community law) and safeguarding fundamental rights.

28. The European Council (entirely separate from the Council of the Union), consisting of the Heads of State or Government of the Member States and the President of the Commission, is primarily responsible for taking action in the sphere of cooperation and deciding, in accordance with the principle of subsidiarity, which matters might be transferred from the sphere of cooperation to that of common action. It also has the right to nominate the President of the Commission who must, however, obtain the endorsement of Parliament.

The European Council has the right to address messages to the other institutions of the Union, but it loses both the power to issue instructions to other bodies and its role as the final decision maker in cases where the other Councils are unable to reach a decision. Practice has borne out what theory asserted, namely that a body constituted on this basis cannot perform such a function.

Because of the very nature of the European Council and of cooperation, which is its prime responsibility, the Treaty gives no indication as to the methods of reaching a consensus within this body. The European Council will itself decide in this its own rules of procedure.

29. With regard to competences, the Treaty deals first of all with economic competences. Their most important distinguishing feature is that they will be aimed primarily at attaining, furthering and correcting the provisions of the Community Treaties and the European Monetary System, with the one difference that the decision-making procedures proper to the Union will be employed, ensuring that all the competences provided are exercised in a systematic fashion.

Further provision is, however, made for the Union to take action in the area of industrial policy, where the Community's shortcomings have previously been deplored, especially at a time when the need for restructuring has become clearly apparent, and in the fields of telecommunications, energy and research.

In addition, the Union has been given the task of and the appropriate institutional machinery for achieving monetary union.

30. 'Policy for society', embodying a new approach, groups together certain policies which relate to collective life, and more specifically the quality of life, but are also closely connected with the Union's economic competences.

In this sector, too, the line chosen is that of taking over the Community patrimony in its entirety, building on it and widening the Union's competences.

Community social policy has in fact been retained in full, and to some extent broadened, for instance in the area of equality between men and women. Conversely, environmental policy, to which the Community has already devoted some attention, is now enshrined in the Treaty, while the inclusion of cultural, education, research and information policies is an innovation.

The Community patrimony, taken over and extended, is the starting point for regional policy, which is included in the Union Treaty, thus marking an important step forward from the EEC Treaty.

31. The problem of the Union's international relations merits separate consideration. These are to be founded on the search for peace, security and cooperation, and on the strengthening of international organization. It would not have been appropriate for the Treaty to have confined itself in this sector to listing the competences of the Union: it was equally essential to decide how these competences were to be exercised, in order to take due account of the delicate nature of the attendant problems without losing sight of the need to gradually forge an effective common foreign policy, commensurate with Europe's obligations in the world.

The foreign policy aspects of the Union's exclusive and concurrent competences are placed within the sphere of common action, with a more active role in this instance for the Council of the Union in which the national governments are represented.

This Title of the Treaty affirms the commitment of the Union to pursue and extend the Community development aid policy.

The method of cooperation, under the responsibility of the European Council but with provision for the involvement of the other institutions, will be employed in those other areas of foreign policy which are of common interest.

The political and economic aspects of security fall within the sphere of cooperation, but the European Council may extend this sphere to cover other aspects of security, namely those concerning armaments, arms sales to third countries, defence and disarmament.

Where the principle of subsidiarity so requires, the European Council may decide that certain matters falling within the sphere of cooperation will, subject to certain reservations, be dealt with by the method of common action, either temporarily and so to speak on an experimental basis for an indeterminate

period.

Without prejudice to the requirement of a unanimous consensus, which will be the normal method for reaching decisions in the European Council, but also without recourse to the formal procedure for a revision of the Treaty, the Union has been established as a political structure designed to embrace into its common actions all aspects of foreign policy and security when these come to assume a character of common interest to all the peoples of the Union.

32. The problem of the Union's finances also needs to be touched on. The major innovations in this sector centre on the possibility that the Union has for modifying its own resources or creating new ones, and on the creation of a system of financial equalization.

Particular attention is devoted to the budget; planning has been placed on a multi-annual basis and the distinction between compulsory and non-compulsory expenditure has been abolished. With regard to the procedure for adopting the budget, while the power of decision is vested jointly in the Parliament and Council of the Union, the last word, barring global rejection by the Council, rests with Parliament.

33. Included among the final provisions of the Treaty is the particularly important provision that all the Community Member States are invited to join the Union which will be deemed established between the States who have ratified the Treaty when the majority of Community Member States, representing at least two-thirds of the population, have ratified it. The Treaty stipulates that in such a case, the date of its entry into force, that is the date on which the individual institutions are to commence their activities, will be fixed by the governments of the States who have ratified it. This provision will thus enable these States to move to practical action so as to encourage a decision on the part of other States who might still be hesitant.

It is obvious that if certain States were to decide not to join the Union, it would be necessary to open negotiations between the Union and the non-Member States to resolve the difficulties arising from such a situation.

34. The draft Treaty is submitted for the approval of Parliament together with a resolution - of which it forms an integral part - laying down in detail the action which Parliament intends to take as a follow-up to its vote.

The President of the European Parliament, assisted by the Committee on Institutional Affairs, is called upon to forward the draft Treaty to the individual governments with the request for them to institute the procedures for ratification. At the same time, the parliaments of the individual countries will be asked by this delegation to help bring the procedures to a successful conclusion.

Since the European elections are due to be held a few months after the draft is delivered to the governments, the resolution also addresses itself to the future elected Parliament, requesting it to make all the necessary representations to the authorities in the individual Member States, and in particular to the national Parliaments, to ensure that the Treaty is ratified.

35. The European Parliament will in this way have justified the elections of June 1979, in the face of European citizens and history. These elections would have been a ridiculous parody of democracy if they had had no other purpose but to constitute an assembly charged with delivering opinions to a Council which with every day that passes is becoming less and less able to act.

However, the European Parliament has shown that it has grasped the problem of European integration - necessary but still paralysed. Feeling itself to be the legitimate representative of all the citizens of the Community, it has clearly pointed the way ahead, out of the blind alley into which Europe has manoeuvred itself.

36. Throughout these years of preparation, there was a continuous current of opinion which argued speciously for pragmatism, for emphasis to be placed on the common policies which Europe needs, rather than on the institutions. All attention was focused on those who devised these policies and those who had to decide on their implementation.

It became increasingly apparent from year to year that awareness of the need for new policies was spreading, but the transition from awareness to policy-making had become more and more difficult because the legislative and governmental structures of Europe were far too weak and the body which had the power of decision (i.e. the Council in its numerous 'guises') was quite incapable of acting as the prime mover and inspiration of European integration.

From Council to Council, the thorniest problems were referred to the European Council, and from European Council to European Council, the inability

to decide grew until we reached the keenly-awaited European Council in Athens. There, on 6 December 1983, the European Council proved that 'the Emperor really did have no clothes'.

The only sensible form of pragmatism is therefore to recognize that the necessary European policies cannot be created with the existing institutions, and that everything must consequently stem from a reform of the institutions.

37. The draft Treaty establishing the European Union could not have been submitted by Parliament at a more dramatically crucial moment.

The spectre of the end of European integration emerged in Athens, possibly for the first time, and this alarmed everyone, starting with those responsible for the failure of the summit, because they caught a glimpse of what the alternative would be for Europe.

Europe can either take a decisive step forward by creating the machinery for the genuine and well-organized involvement of its citizens and their local, national and European institutions in the work of strong, responsible, common political institutions, with the competences and powers they need for devising and implementing the necessary common policies, or else everything that has been achieved is doomed to collapse.

The leaders of the Community Member States and most political parties, and hence parliaments, are today all very close to understanding this dilemma and yet distracted by a thousand other preoccupations. They therefore proclaim the need to make progress but count on their advisers to prepare suitable plans of action for them.

However, the advisers, such is their nature, persist in thinking that maybe another European Council will be able to do what the European Council in Athens did not manage to do and are preparing further inter-governmental negotiations as a method of tackling problems which remain unresolved precisely because no attempt is made to deal with them outside inter-governmental negotiations.

38. This draft, its endorsement by the European Parliament, its submission to the national governments and parliaments, the forthcoming European election campaign, the vigilance of the second elected European Parliament are and will be stages in a process which aims to break through this reprehensible indifference

of our statesmen and impress on the political authorities in our countries that there is only one way of moving from mere awareness of the need for a European Union to actually achieving that Union: to accept and ratify the Treaty establishing the Union, prepared by the European Parliament which represents all the citizens of each of their Member States, democratically and in their entirety.