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EUROPEAN PARLIAMENT

Working Documents

1978 - 1979

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30 May 1978

DOCUMENT 148/78

Report

drawn up on behalf of the Political Affairs Committee

on inter-institutional relations

Rapporteur: Lord REAY

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By letter of 25 May 1973 the Bureau of the European Parliament authorized the Political Affairs Committee to draw up an own initiative report on the powers of the European Parliament.

At its meeting of 18 May 1973 the Political Affairs Committee appointed Sir Peter KIRK rapporteur. It considered his draft report at meetings in 1975 and 1976.

On 22 June 1976 the committee decided to consider this matter in the form of two motions for resolution, one on the internal procedures of the European Parliament and the other on inter-institutional relations.

At its meeting of 23 September 1977 the committee appointed Lord REAY rapporteur in place of Sir Peter Kirk.

The committee considered the present motion for a resolution on inter-institutional relations at its meetings of 21 and 22 November 1977, 2 and 3 February 1978, 20 and 21 April 1978 and 18 and 19 May 1978 and at the last meeting adopted it with three votes against and one abstention.

Present: Mr Bertrand, chairman; Mr Johnston, vice-chairman; Lord Reay, rapporteur; Mr Berkhouwer, Mr de la Malène, Mr Faure, Mr Mitchell, Mr Prescott, Mr Ryan, Mr Seefeld, Mr Sieglerschmidt, Mr Vergeer and Mr Zagari.

The explanatory statement will be presented orally in plenary sitting.

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A

The Political Affairs Committee hereby submits to the European Parliament the following motion for a resolution:

MOTION FOR A RESOLUTION

on inter-institutional relations

The European Parliament,

- considering the undertaking given by the Heads of Government at Paris in December 1974 that : 'The competence of the European Assembly will be extended, in particular by granting it certain powers in the Communities' legislative process' ,
- considering the need to attain an effective balance between the institutions of the Communities ,
- welcoming the progress already made, over recent years, in the development of closer links between the Council and Parliament, and the Commission and Parliament ,
- having regard to the report of the Political Affairs Committee (Doc. 148/78) ,

A. RELATIONS WITH COMMUNITY INSTITUTIONS

Relations with the European Council

1. Requests the President of the European Council to make a statement to Parliament concerning its work and conclusions once during each Presidency, and to reply to questions put to him by Members of Parliament ;
2. Considers that the annual debate on the General Report of the Commission may be accompanied by an annual debate on the state of the Union and the functioning of the institutions, in which the President of the European Council would participate and in which the other members of the European Council and the Foreign Ministers of the Member States would be invited to take part ;

#### Relations with the Council

3. Requests the Council to inform Parliament of its reasons each time it takes a decision which deviates from Parliament's Opinion concerning Community instruments having financial implications<sup>1</sup> and 'all matters of special importance'<sup>2</sup>
4. Requests the Council to agree :
  - (a) that the use of the conciliation procedure, as laid down by the declaration of 4 March 1975, should be extended to proposals of the Commission which Parliament considers to be of particular importance and concerning which, when expressing its opinion, it has asked that this procedure be applicable ;
  - (b) that it should meet together with a delegation of Parliament, at Parliament's request, whenever Parliament considers that Council has not taken sufficiently rapid decisions on proposals submitted to the Council which Parliament considers to be of exceptional importance ;
  - (c) that its President-in-Office and the Presidents of the specialized Councils should continue to develop the existing practice of appearing before the relevant committees of Parliament to explain and define Council's views and to engage in a dialogue concerning them ;
5. Requests the Council to consult Parliament concerning all Acts not defined in Article 189 of the EEC Treaty or elsewhere in the Treaties ;

#### Relations with the Commission

6. Requests the national governments to agree that Parliament should be granted the power to confirm the nomination of the President and Members of the Commission ;
7. Considers that Parliament, following appropriate consultations with the Commission, may request the Commission to undertake any studies which Parliament considers desirable for the attainment of the common objectives ;

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<sup>1</sup> See letter addressed to Mr Scelba, then President of Parliament, by Mr Harmel, then President-in-Office of the Council, of 20.3.1970.

<sup>2</sup> See letter addressed to Mr Scelba, then President of Parliament, by Mr Scheel, then President-in-Office of the Council, of 22.7.1970.

8. Considers that the Commission should, regularly, submit a written report to Parliament setting out full details of the action it has taken in implementing resolutions and reports of Parliament ;
9. Suggests that the Commission should attach to the preliminary draft budget a memorandum, setting out the details of European Investment Bank loans ;

B. IMPLEMENTING PROVISIONS

10. Charges the Political Affairs Committee to pursue its studies concerning inter-institutional relations, more especially on the need for the European Parliament to be consulted by the Council on applications for accession by new Member States, improvements that might be made to the Luns/Westerterp procedure, and the organization of hearings by Parliament's committees, and to report back to the European Parliament ;
11. Instructs its President to forward this resolution together with the report of its committee to the Council and Commission of the European Communities and to the Parliaments and Governments of the Member States.

EXPLANATORY MEMORANDUM

1. Comments accompanying the motion for a resolution on inter-institutional relations will be presented to Parliament orally by your rapporteur.
2. Your rapporteur wishes to draw attention to Annex I, which consists of the draft report by the late Sir Peter Kirk on Powers of the European Parliament. Sir Peter's report had been the subject of several discussions in the Political Affairs Committee, and the committee was about to hold votes on two draft resolutions submitted by Sir Peter at the time of his death.
3. Differences of substance and emphasis between the present motion for a resolution and the proposals made in Sir Peter Kirk's report are due to institutional developments which have intervened and to modifications introduced by the Political Affairs Committee.
4. Your rapporteur wishes to pay tribute to the work carried out by the late Sir Peter Kirk concerning the development of Parliament's role in inter-institutional relations.



Report

by the late Sir Peter Kirk

on

Powers of the Parliament

I N T R O D U C T I O N

1. In June 1963 Mr Hans Furler presented a report to Parliament, on behalf of the Political Committee, on the "Competences and Powers of the European Parliament" (Doc.31/63). In the present report on "Powers of the Parliament" your Rapporteur does not try to emulate the remarkable analysis made by Mr Furler of the basis of the powers and competences of Parliament, which still remains valid, despite subsequent developments.
2. The present text is the second stage of an operation in which your Rapporteur has already, in October 1973, set out his detailed considerations concerning the strengthening of the budgetary powers of Parliament in the form of an Opinion, presented on behalf of the Political Affairs Committee, on the Report presented by Mr Spénale, Chairman and Rapporteur of the Committee on Budgets, on the strengthening of Parliament's budgetary powers (PE 33.890). Some of the proposals made by Mr Spénale and your Rapporteur at that time have already come into operation, notably the "concertation" procedure.
3. In the present document (which fits into a pattern of parallel reports which are in progress in the Political Affairs Committee or which have already been adopted by the Committee or by it and Parliament - notably those of Mr Bertrand on European Union, Mr Lenihan on Political Union, Mr Jahn on Relations with National Parliaments, Mr Patijn on Direct Elections and Lord Gladwyn on the Effects of a European Foreign Policy on Defence Questions) your Rapporteur adopts a pragmatic rather than an academic approach to the question of how Parliament's powers might be strengthened. In the first place he does not base his proposals on the position which Parliament "ought" or "should" occupy within the institutional framework of the European Communities and their decision-making process. He takes as his point of departure the position of Parliament as it seems to him to exist today and tries to concentrate on presenting a limited number of specific proposals aimed at increasing the powers of Parliament in the near future. In doing so he does not reject or question those long-term increases in Parliament's powers which are envisaged by some parliamentarians and academic commentators. He merely wishes to submit to Parliament a number of suggestions which, if implemented, might, in the present state of the Communities, have some chance of winning acceptance. In the budgetary field the proposals that are made could, if Parliament were to agree to them, be implemented (so long as the Commission proved cooperative) and lead to a substantial increase in Parliament's powers and influence without the Council having to take any decision.

4. It is sometimes argued that no significant increase in Parliament's powers can be achieved without the precondition of direct elections. Your Rapporteur rejects this view and in doing so he wishes to quote one of the conclusions of the "Vedel Report" which stated: "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 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 the achievement of one will be a step towards the achievement of the other." The adoption of the Patijn proposals by Parliament, in January 1975, and the hope expressed in the Paris Summit communiqué of December 1974 that direct elections could take place as early as 1978 underline the need for Parliament to move forward rapidly in increasing, or obtaining increases in, its powers.

#### Contents of Report

5. In Chapter II your Rapporteur examines the types of decision theoretically provided for in the Treaties of Paris and Rome and compares them with the system of decision-making which has grown up in the Communities in reality. Your Rapporteur draws attention to some of the problems posed by these new "extra-Treaty" or "parallel" decision-making procedures and raises some questions concerning them. Chapter III examines the relationship of Parliament to the Commission and the Council. Chapter IV is concerned with Budgetary Control. Chapter V makes proposals concerning Parliament's relations with the Court of Justice, the Court of Auditors and Regional Policy bodies. Chapter VI on External Relations makes proposals by which the significance of Parliament's role in the negotiation of association and commercial agreements could be increased. Chapter VII examines the possibility of increasing the scope for Parliament's control concerning the development of foreign policy and defence cooperation by the Nine and concerning economic and monetary union. Chapter VIII summarises the proposals made in this Report.

DECISION-MAKING AND PARLIAMENT

6. The types of decision which can be taken by Community institutions are defined in Articles 189-192 of the EEC Treaty. Your Rapporteur does not consider it necessary to explain, here, the nature of decisions, regulations, directives and opinions. This is well known, as is the role played by Parliament in the decision-making process of the European Communities.

7. In this chapter your Rapporteur shows how, over the years: (a) new types of decision, not provided for in the Treaties, have been developed by the Member Governments alongside Treaty-based forms, and; (b) new bodies have been created by governments which operate on an "informal" or "parallel" basis taking decisions which effectively commit the Nine outside the institutions of the Communities and outside the provisions of the Treaties. In most cases neither these decisions nor these bodies are responsible to, or subject to control by Parliament. In all this amounts to an "extra-Treaty" form of intergovernmental cooperation.

Changes in roles of Council and Commission

8. At the same time that these practices have been developed the role of the Commission has diminished (1) and the Council has become the dominant institution in the Communities.

9. Over and above the transformation of the institutional balance brought about by the changes of emphasis in the EEC and Euratom Treaties - confirmed in the Merger Treaty - the decline of the Commission (despite its continuing strong technical influence) has continued. This decline was largely brought about by the "Luxembourg Compromise" of January 1966 in which the French Government ended Professor Hallstein's attempts to defend the supra-national aspects of the Treaties, especially majority voting. Since then the Commission's power of initiative has been blunted by the insistence of governments that almost all decisions should

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(1) Especially vis-à-vis its predecessor, the High Authority of ECSC. Whereas in ECSC the High Authority, within the competences transferred to it by states under the Paris Treaty, formulated policy, decided to implement it, and then executed it, with the "Special Council of Ministers" intervening only in rare cases by giving opinions, or sometimes assent, in the European Communities now, following the Merger Treaty, the Commission retains only the powers of initiative and of execution whereas the vital power of decision lies with the Council. Although in the new system Parliament has a closer and more immediate right of control over the Commission than the Common Assembly had over the High Authority, it can control only the body which proposes the policy and carries it out but not the Council which decides it.

be taken by unanimity, although on a number of occasions the rigour of the unanimity rule has been ameliorated by the abstention of one or more member governments in a vote - a practice which should be encouraged until the Council returns to majority voting.

10. When the Political Affairs Committee discussed the first draft of the present report in June 1974, the nature and implications of the "Luxembourg Agreement" was one of the points which most concerned members. At this point it should be noted that the attitude of the member governments concerning the "Luxembourg Agreement" seems, since then, to have started to change for the better. In October 1974 President Giscard d'Estaing stated that the French Government would invite its partners to adopt more flexible and swifter decision-making procedures in the Council in areas where national interests were not in question. At the Paris Summit of December 1974 the Heads of Government stated "that it is necessary to renounce the practice which consists of making agreement on all questions conditional on the unanimous consent of the member states, whatever their respective positions may be regarding the conclusions reached in Luxembourg on 28 January 1966." This declaration of principle is most welcome but your Rapporteur wonders whether it will be possible for governments to reach agreement on a political formula which can achieve this aim. Parliament should press governments to do this and should also press them to define the "vital national interests" of the "Luxembourg Agreement" in such a way that this phrase cannot be conjured out of the hat on every occasion when a single member government wishes to impede a reasonable decision.

11. In view of the attitude displayed by the Heads of State or Government at Paris last December, your Rapporteur does not consider it necessary to enter into great detail concerning the precise legal nature of the "Luxembourg Agreement". It is worth noting that a judgement of the Court of Justice of May 1974 (1) stated "No provision of the Treaty (of accession), or of related instruments, could be viewed as validating measures, whatever their form, which ran counter to the Treaties establishing the European Communities". By implication the "Luxembourg Compromise" would be regarded as invalid by the Court (2). There is also the vexed point of whether under Article 2 of the Treaty of Accession the three new Member States are bound by the "Luxembourg Agreement". Is, in effect, the "Luxembourg Agreement" an "act adopted by the institutions of the Communities" within the meaning of this Article?

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(1) In *Hauptzollamt Bielefeld v. Offene Handelsgesellschaft Firma EC Koenig*.

(2) Although your Rapporteur does not accept the following argument, it could be considered, however, that even if the interpretation given to the decision-making procedure of the Communities by the six then member governments is regarded as incompatible with the Treaties and with the procedure laid down in Article 236 of the EEC Treaty concerning the amendment of that Treaty, the parties to an international treaty, if they are so agreed, can change it.

12. Whatever the nature of the "Luxembourg Agreement," it is the effects which are more important. It seems to your Rapporteur that rather than trying to unravel the precise legal nature of the "Luxembourg Agreement" - which President Giscard d'Estaing himself has described as "perfectly incomprehensible" - it is more useful to see how, in the near future, the present system of decision-making can be improved. This is essentially a political rather than a legal problem. The recent Paris Summit has given the green light in this respect. Parliament and the Commission must try to ensure that the governments reject, in the near future, the present practice, by which any non-unanimous decision-making procedure is excluded from the outset.

13. Meanwhile, Parliament has almost ignored the implications for its own role of the change in the institutional balance brought about by the "Luxembourg Compromise". By concentrating on trying to "control" the Commission in a period when the Member States have shown that they are primarily interested in using the European Communities to achieve intergovernmental cooperation rather than to move in a federal direction, Parliament has misdirected its energy. In this climate the Council has increasingly confirmed its dominant status and Parliament has not only been unable to "control" it, since until now it has lacked the institutional means to do so, but has seemed to be unaware that its "control" over the Commission has become increasingly remote from the political realities of the Community.

#### "Extra-Treaty" forms of decision

14. It may be useful for your Rapporteur to list the principal ways in which the Member Governments have developed "extra-Treaty" forms of decision-making (1). First, there are "summit" meetings. Members of the Political Affairs Committee have requested your Rapporteur to enlarge the remarks he made concerning "summits" in the first draft of this report."

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(1) "Extra-Treaty" in this report means both: (a) subject matter or areas not provided for in the Treaties; (b) forms of decision-making and procedures not provided for in the Treaties. Further, your Rapporteur wishes, in this context, to recall the Report submitted to Parliament in March 1969 on Collective Acts of Member States of the Community and Acts of the Council not foreseen under the Treaties by Mr Burger for the Legal Committee (Doc.215).

15. Whereas it seems appropriate for Heads of State or Government to meet on rare and very special occasions to give some major new political impulsion to the work of the Nine, the past practice of holding summit meetings - whose results have, in several cases, been very disappointing - can only, if they continue to remain outside the institutional framework of the Communities, weaken the Community institutions which should themselves provide adequate procedures for initiating and carrying through Community policies or developing policies in new sectors with the help of Articles 235 or 236 of the EEC Treaty. Whereas previous summits tended to avoid trespassing on the powers and responsibilities of the Community institutions themselves, recent summits have tended to replace the Council by a form of "Super Council", working out complicated Community package deals and, at the most recent Paris summit of December 1974, actually taking a detailed specific decision - to activate and apportion the Regional Fund - which would normally be the task of the Council proper. In the course of their meetings summits now deal both with Treaty and non-Treaty questions. It is very difficult to establish a precise dividing line and so to judge when the Heads of Government (1) are acting within a Community context and when they are acting as national governments. The relationship between summits and Council becomes even more obscure in view of the Treaty's failure to define precisely the nature of the Council or even its precise composition.

16. Summits have been the subject of harsh judgements. In particular it has been argued that they build up expectations which seem likely to prove only too illusory. It has also been pointed out that Parliament has no role at all to play in "summitry" and that the Commission's power of initiative has been weakened even further in view of the aims set by Governments at summit conferences.

17. But summits have become an accepted means of doing business between the governments of the Nine and whether they are appreciated or disliked within the institutions of the Community it is most probable that they will continue to be held, as is made clear by the communiqué of the Paris "summit" of December 1974. In these circumstances it is not realistic to confine comments to criticism of "summitry". Indeed summits must now be accepted as a fact of Community life. Your Rapporteur considers, therefore, that it might be useful for the Political Affairs Committee to examine how summit conferences might be brought more clearly within

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(1) At the Paris meeting of December 1974 the communiqué was published not in the name of "Heads of State or of Government" but in the name of "Heads of Government".

the Community framework and how some degree of political accountability might be developed as far as summits are concerned. If the Heads of Government act within the Community framework during the three annual meetings they envisage under the recent Paris communiqué it follows that the President-in-Office of the Council (in this context the Head of Government himself) must be prepared to reply to questions tabled concerning their deliberations and work in plenary sessions of Parliament.

18. The Heads of Government have themselves indicated, in the communiqué of the December 1974 Paris Summit, that they see some institutionalisation of their role as necessary. Paragraph 3 of the communiqué stated: "The Heads of Government have therefore decided to meet, accompanied by the Ministers of Foreign Affairs, three times a year and, whenever necessary, in the Council of the Communities and in the context of political cooperation. The administrative Secretariat will be provided for in an appropriate manner with due regard for existing practices and procedures." One of the most difficult problems arising would seem to be how to organise the business of meetings of Heads of Governments in such a way as to allow them the necessary flexibility to discuss and decide on extra-Treaty questions whilst examining and deciding on Community business within the framework of the Council. A solution could be the division of the agenda into two parts, the first, serviced by the Council Secretariat, dealing with Community business, and the second, serviced by whatever form of secretariat might be most appropriate, dealing with other questions of concern to the Nine Governments. If summits were to function in such a way they would be able to deal appropriately with existing Community competences and also with new competences not covered by the Treaties. The Secretariat concerned with the second (non-Community) part of the agenda could in practice take the form of some kind of "political secretariat" working closely with the Council secretariat and, in practice, be an extension of it for extra-Treaty subject matter and for ensuring "follow-up" to summit proposals on extra-Treaty matters.

19. Your Rapporteur would be most interested to have the reactions of members of the Political Affairs Committee to these suggestions, which are primarily designed, at the present stage, to provoke comment and discussion in the Committee. Your Rapporteur does consider, however, that if the work of the summit conferences were organised within the framework of the Council, as suggested above, this could be a practical move in the direction of full "European Union" at the level of governments. Since paragraph 3 of the recent Paris communiqué already foresees the role of Foreign Ministers as being one of preparing summit meetings by acting "as initiators and coordinators" it might be useful to think in



terms of meetings of specialised ministers - such as Ministers of Agriculture or Finance - being meetings of "Special Councils of the Community" which would act, increasingly, within a new conception of the Council, receiving instructions from summit meetings and having responsibility to them, the summits themselves being a form of "Supreme" Council. (1) As far as Community business was concerned the summit system would thus be brought within the framework of the Council. The question of the political accountability of summits would still remain to be solved, (2) but it should be easier for Parliament to establish some kind of direct relationship with the new form of the Council. Finally, your Rapporteur considers that the Heads of Government should formally invest the Commission with the responsibility of drawing up all specific proposals required to implement decisions reached at summits, and Parliament should be consulted concerning these proposals. One way of doing this might be for the Political Affairs Committee to hold an institutionalised pre-summit colloquy with the foreign ministers some three or four weeks before each summit at which members could make their suggestions concerning matters to be discussed at the summit.

20. Then there is the practice of "gentlemen's agreements", of which the most notorious example is the "Luxembourg Agreement" of January 1966, by which Member Governments quite shamelessly buried the obligation imposed by Article 148 of the EEC Treaty to take decisions by majority. There is no Treaty basis for "gentlemen's agreements" which, when they affect the working of the Treaties, could even be considered to constitute an implicit breach of Article 236 of the EEC Treaty which lays down procedures for treaty revision, though they might be considered useful to the extent that they can provide a flexible basis for institutional development in cases where it is not possible to revise the Treaties under Article 236.

21. More recently both the Council itself and the representatives of member states have developed the practice of adopting "resolutions". Outstanding examples are the resolution of 17 January 1973 on industrial policy and the resolution of 22 March 1971 on economic and monetary union. In some cases Council resolutions constitute Community action programmes laying down the broad lines of Community policy in a given field on which future Community action can be based as well as fixing the time limits for

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- (1) Though there is a danger of the decisions of the specialised Ministers piling up and log-jamming summits which might come to be regarded as a kind of Court of Appeal.
  - (2) Here your Rapporteur would welcome the views of French members of the Committee as to whether the President of the French Republic is directly accountable to the French Parliament for his activities at summit meetings.

such action. In other cases Council resolutions lay down internal programmes or give instructions to Council committees. However, these resolutions can make requests to other Community institutions. In this respect they implement Article 152 of the EEC Treaty which states: "The Council may request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals." Resolutions of representatives of the member states constitute international agreements, as the Commission stated, in answer to Written Question 336/68 (Journal Officiel 1968, c38/5). Although linked with Community law resolutions of this second kind may perhaps be considered to lie outside the jurisdiction of the Court of Justice, as simple international agreements, but this point is not certain. Some observers consider that they are, however, binding on member states since paragraph 3 of Article 3 of the Treaty of Accession states that new member states will "observe the principles and guidelines deriving from these declarations, resolutions or other decisions and will take such measures as may be necessary to ensure their implementation". Somewhat ambiguously this paragraph states that as far as resolutions are concerned the new member states "are in the same situation as original member states."

22. In practice resolutions of both kinds seem to be some kind of intergovernmental "gentlemen's agreement". Since they have no basis in the Treaties and are not defined there, there is no obligation on the part of the Council to consult Parliament on the content of such resolutions. In some cases the Council has based resolutions on suggestions which it has invited the Commission to make, but where this is not so - and this has sometimes proved the case - resolutions threaten the function of the Commission since they could be considered as an attempt by the Council to usurp the Commission's role of initiative. Your Rapporteur wishes to draw attention to two points made by Mr Durieux, Chairman of the Liberal and Allies Group, in his statement of 25 April 1974 in Strasbourg. Mr Durieux proposed that the Commission and the Council should define the nature, use and legal obligation of "resolutions". He also cast doubt on the validity of the effect of "resolutions" since they did not have, in his view, a legal status under the Treaties, and it was thus difficult to see how these instruments could be binding on their recipients - this view has been upheld by the Court of Justice itself in *Commission v. Luxembourg and Belgium* (Cases 90 and 91 of 1963, see Recueil 1964, pages 1231 and 1232).

23. Your Rapporteur considers that Parliament should set out its own views concerning resolutions. In particular it might be useful to suggest that resolutions must not be used to replace "decisions", as defined in Article 189 of the EEC Treaty, in which the Council decides on proposals made by the Commission following consultation of Parliament. As long as the fundamental protection of the Commission's right of initiative is ensured, resolutions are useful in enabling the Council, in a flexible way, to establish particular policy aims in new fields as preparatory acts - it being for the Community institutions to carry out the implementing legislative process. Resolutions can, in effect, constitute a framework for future legislation and remain, thereafter, the basic reference documents for the areas concerned. In view of their significance, therefore, your Rapporteur considers that by means of a gentlemen's agreement with the Council, Parliament should be consulted concerning all Council resolutions, by Council, except those which are clearly within the ambit of Article 152 of the EEC Treaty, in draft before they are adopted. One especially important reason for Parliament giving its opinion is the danger that resolutions may limit the future freedom of action of the Commission and the Council. As far as resolutions of representatives of member states are concerned, it might be useful to press the Commission to seize the Court of Justice concerning the nature and binding effect of such instruments.

24. Then there is the political cooperation system, under which the Foreign Ministers of the Nine meet and concert joint policies concerning selected foreign policy issues which bind the national governments. This practice is an effective one and is significant since it represents the first steps towards a common foreign policy. However, the decisions are taken on the basis of proposals not of the Commission or of any other Community institution but of those representatives of national foreign ministries who participate in the work of the Political Committee (1). Admittedly the Commission is represented at discussions of the Political Committee at which Community interests are involved, but only on an informal basis, and Parliament is not formally consulted - though its Political Affairs Committee does at least hold colloquies with the Foreign Ministers following their quarterly meetings. Your Rapporteur comments on the political cooperation process in some detail in Chapter VII of the Report.

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(1) Officially the Political Committee of the Member States of the European Communities

### Bodies not foreseen in the Treaties

25. Besides the new "extra-Treaty" forms of decision-making the Member Governments have weighted the institutional balance further in their own favour by creating new bodies which are not provided for in the Treaties of Paris and Rome. Thus the Committee of Permanent Representatives, whose establishment was confirmed by the Merger Treaty, not only prepares decisions taken by the Council but in practice takes decisions of its own in the form of the special procedure (usually referred to as "A-points") which permits the Permanent Representatives, if they come to an agreement with the Commission, to propose that the Council should take a decision without discussion on certain matters. Your Rapporteur draws attention, in this connection, to paragraph 7 of the communiqué of the Paris Summit of December 1974 which stated: "Greater latitude will be given to the Permanent Representatives so that only the most important political problems need be discussed in the Council. To this end, each Member State will take measures it considers necessary to strengthen the role of the Permanent Representatives and involve them in preparing the national positions on European affairs." Parliament and the Commission should insist on a strict interpretation of Article 4 of the Merger Treaty (which states that: "A Committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council for carrying out the tasks assigned to it by the Council.") so that the Council should have to give specific authority to the Permanent Representatives to discuss and decide on Community matters in each case. The Foreign Ministers of the Nine, in their quarterly meetings, which have been referred to above also meet outside the Community framework but take decisions engaging the member countries of the Community and in this they are helped by the Political Committee composed of the Political Directors of national foreign ministries, which is not a Community institution but a "parallel" one.

### Controlling "Extra-Treaty" decisions and bodies

26. As in the case of summits, referred to in paragraph 17, your Rapporteur considers it pointless to try to challenge the growth and work of these new "extra-Treaty" types of decision-making and institution. They have been brought into being because they correspond to certain needs which have been recognized by the Member Governments, and they have come to stay. But it is necessary to ensure that these institutional developments are brought, as far as possible, into the framework of the Community itself. Specific proposals as to how this might be done are made in the relevant sections of this report and these are summarised in Chapter VIII.

## Article 235

27. In contrast to extra-Treaty procedures, your Rapporteur wishes to draw attention, here, to the possibilities that exist for breaking deadlocks in defining policies in new fields, within the scope of the Treaties of Rome and Paris, by the use of Article 235 of the EEC Treaty. Despite the agreement of the Heads of State or Government expressed in the declaration adopted at the Paris Summit of October 1972 that use should be made of Article 235 in order to fill policy gaps in sectors where "framework policies" do not already exist, little has been done in this sense. Your Rapporteur considers that the Commission has a responsibility to make proposals in this sense wherever it is clear that the "Treaty has not provided the necessary powers...to attain...one of the objectives of the Community". The use of Article 235 would have the advantage of making use of a Treaty procedure, even if it is a neglected one.

28. Nonetheless discretion must be exercised with respect to Article 235. It is interesting to note the view expressed by Mr Armengaud, as Rapporteur of the Legal Committee, concerning the possible use of Article 235 concerning environment policy. Mr Armengaud stated (1) that the "Legal Committee considers that Article 235 should in the first place be considered as an article whose principal aim is to fill possible gaps in the competences conferred on the institutions by the Treaty. For such a huge matter as that of the protection of the environment, an arrangement of this kind does not, in the long term, provide an adequate legal basis. For this reason the Legal Committee considers that the application of Article 235 - which certainly constitutes, given the urgency of the problem, a valid solution at the present moment - should, in principle, be provisional in nature". Your Rapporteur considers that the conclusions of the Legal Committee, as expressed in Mr Armengaud's report, provide sound guidance on this question.

### New System of Decision-Making

29. Your Rapporteur wishes to turn, now, to the phrase which concluded paragraph 12 of the communiqué published by the Heads of State at the Paris Summit of December 1974: "The competence of the European Assembly will be extended in particular by granting it certain powers in the Communities' legislative process." How can this promise best be transformed into political reality? Do the Nine Governments mean that they are prepared to accept Parliament's opinions on Commission proposals as binding? Do they mean to give Parliament the power to introduce legislative proposals, despite the Commission's right of initiative? Is the intention, rather, to extend, as your Rapporteur has already proposed, the use of the

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(1) In Document 15/72 (PE 29.179)

consultation or concertation procedure from the important but comparatively limited budgetary sector to the whole range of Community legislative proposals? Your Rapporteur would welcome the advice of members of the Political Committee on the most appropriate attitude for Parliament to adopt, but his own tentative view is that although it should be for the Commission to make formal proposals aimed at defining and implementing the proposals made by the Nine Governments, Parliament should already take up the challenge. If members of the Political Committee agree with this suggestion it may be useful for the Committee to invite the President of the Commission to take part in an exchange of views with members, after the Committee has itself elaborated suitable proposals, so as to assist the Commission in preparing appropriate proposals.

30. One new idea which may be considered at such a meeting could be that of Parliament exercising a power of initiative analogous to "Private Members Bills" (1) which would not replace but complement the Commission's right of initiative and whose financial implications must be clearly defined. Under this proposal it might be possible for a Committee of Parliament to draft proposed legislation which would then, following approval by the Bureau, be voted on in plenary session and, if agreed, transmitted to the Commission which would be obliged to submit it (possibly with modifications) to the Council. Thereafter it would follow the normal course of Community legislation with provision for accelerated procedure in Parliament if unchanged or only insignificantly changed by the Commission. Any proposed legislation of this kind involving financial expenditure would have to wait until the adoption of the subsequent annual budget (which, it should be remembered, Parliament can now amend) before implementation. On this suggestion, again, your Rapporteur would welcome the comments of members of the Committee.

31. Your Rapporteur considers, however, that Parliament's role in the decision-making process of the Communities might best be increased, in the near future, by an extension of the use of the concertation procedure, one major argument for such an approach being that the member governments have already agreed to the use of this procedure concerning Acts with financial implications and that two concertation meetings between Parliament and the Council have already been held concerning budgetary powers. It seems, in effect, as if a greater use of the concertation procedure is what the Heads

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(1) Legislation introduced by individual Members of Parliament. In the European Parliament this could perhaps be achieved by means of legislation introduced by a number of members in the form of a Motion for a Resolution.

of Government meant by the "certain powers" of paragraph 12 of the December 1974 Paris communiqué. In effect he wishes to suggest that the system he proposed in his Opinion of October 1973 (1) be introduced not merely in the case of proposals for Acts with financial implications but for all legislative proposals. Under this system, when the Commission has established its legislative proposal it would seize Parliament of this text. Parliament would then hold a debate on the Commission's proposal. This would have the advantage of allowing Parliament to formulate and express its views concerning proposals by the Commission before the Council was seized and before the Governments started to entrench their positions. The Commission would then send its proposal together with the amendments adopted by Parliament - set out as parallel texts - to the Council. The Council would then reach its decision concerning both the Commission's proposal and the amendments proposed by Parliament. It would take this decision not in secret but in public. When the Council differs AT ALL from the opinion expressed by Parliament a second reading should be held by Parliament. If, within a specified time limit, the Council should not change its decision so as to agree with Parliament or vice versa, an automatic concertation procedure should be adopted.

32. This procedure would be obligatory. If changes made by the Council were minimal or semantic, the second reading by Parliament could be a mere formality. If, however, Parliament considered the changes to be significant ones, it would proceed to a full debate. This would avoid the ~~problem~~ of who would define, and how, whether the Council wished to "depart markedly" from the opinion given by Parliament on the first consideration.

33. Any compromise formula agreed between the Representatives of the Council and of Parliament within the framework of a Concertation Committee (2), in whose work the Commission would also take part, would be binding on the Council and Parliament after ratification by the two institutions. The Concertation Committee would be instructed to sit until a compromise agreement was reached. If both institutions agreed with the compromise formula proposed by the Concertation Committee, this compromise solution would enter into effect immediately following the conclusion of the second of the decisions to be taken respectively by the Council and Parliament.

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- (1) For the Political Affairs Committee, on Mr Spénale's Report, on behalf of the Committee on Budgets, on the Communication from the Commission on the strengthening of the Budgetary Powers of the European Parliament (PE 33.890).
  - (2) In which the Council would be represented not only by its President but by a representative of each member state and Parliament would be represented not only by its President but representatives of the political groups and the Committees directly concerned. It is interesting to note that two concertation meetings between Parliament and the Council have already been held, during 1974, concerning the new budgetary procedure. At the second of these meetings all member states were represented, on the Council side, most of them by Ministers of Foreign Affairs.

34. But if the Council is not prepared to agree to the use of the above procedure in the case of all legislative proposals Parliament will have to adopt a different approach. Ideally, what is needed is a means of ensuring that Council must vote on all amendments made by Parliament to proposed legislation. To achieve this new wording might be inserted into the EEC Treaty as follows: "Where, in pursuance of this Treaty the Council may act on a proposal from the Commission only after consulting the Assembly, the Council shall consider the text of the proposal, as amended by the Assembly, and unanimity shall be required for an act constituting an amendment to that proposal. (1)

35. Your Rapporteur realises, however, that the possibility of amending the Treaty in this sense is remote, even though such an amendment is, in principle, necessary. Meanwhile action should be taken to ensure that Parliament be able to scrutinise amended legislation submitted by the Commission to the Council. At present the Commission is free, following reference of these proposals to Parliament by the Council, to make amendments in accordance not only with proposals of Parliament but also in the light of its consultation with the Council. Such amendments, involving changes to the original proposal, are not always scrutinised by Parliament. Your Rapporteur considers that whenever the Commission puts forward revised proposals Parliament should have an opportunity of considering and giving an opinion on them. Amendments made by the Commission might require further parliamentary scrutiny. Parliament should decide which Committees should consider such amended proposals. These Committees could report to Parliament whether they require further parliamentary scrutiny or other follow-up.

#### Relations with National Parliaments

36. No examination of the role of Parliament in decision-making would be complete without reference to the role of national parliaments. Some play a major role in influencing Community decision-making, others are less concerned. Your Rapporteur does not wish to comment on this question in substance but merely wishes to point out that Mr Jahn has been requested to prepare a report on relations between the European Parliament and national parliaments for the Political Affairs Committee. In June 1974 members of the Committee stressed the importance they attached to this subject. It is to be hoped, therefore, that Mr Jahn's report will be available shortly.

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(1) In view of an amendment of Article 149 of the EEC Treaty.



CONTROL OVER THE COMMISSION AND  
RELATIONS WITH THE COUNCIL

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A. Control over the Commission

37. The most effective way in which Parliament can develop its powers of control over the Commission is probably through increasing its role in the establishment of the Communities' budget. Before moving on to that point in Chapter IV your Rapporteur wishes to examine the general relationship between Parliament and the Commission.

Motion of Censure

38. Parliament's main instrument of control over the Commission is its power to dismiss the Commission as a whole by a motion of censure if this is carried by a 2/3 majority of the votes cast, representing a majority of the members of the Assembly, under Article 144 of the EEC Treaty (which was carried over from the Paris Treaty). The problem is that this is not a refined instrument. Its use would create such a major crisis that members of Parliament have refrained from carrying it through, though its use has been threatened on a limited number of occasions. The use of a motion of censure could rebound against Parliament since there is nothing to stop national Governments replacing a dismissed Commission by a new one with exactly the same membership. But if the possibility of censure did not lurk in the background it is difficult to believe that the Commission would pay as much attention to Parliament's questions as it does or listen so attentively to Parliament's views. Further, if Parliament were to develop some voice in the appointment of the Commission its influence over the Commission would clearly be greater.

39. Your Rapporteur would wish to see the introduction of a new and more refined weapon to complement the dismissal of the whole Commission. This would be the power for Parliament to bring about the dismissal of individual Commissioners. Thus although the Commission is a collegiate body with a collegiate responsibility the collegiate character of the Commission should not prevent individual Commissioners from being accountable for activities in their specific sector since they are not civil servants but political figures. This would be a more flexible and appropriate instrument of control over the Commission since it would

enable Parliament to demonstrate its discontent at failure to make sufficient progress in one or other sector through the dismissal of the responsible Commissioner if it were to feel that the fault lay with the Commission rather than with the Council. The dismissal of an individual Commissioner could be brought about by Parliament adopting a Resolution requesting the President of the Commission to "call for" the dismissal of one or more individual Commissioners.

40. The dismissal of individual Commissioners could be brought about in two other ways. Parliament could introduce a motion for a resolution, under its normal procedures, calling for the resignation of one or more Commissioners, making it clear to the Commission that if the Commissioner or Commissioners concerned did not resign it would proceed to vote a motion of censure on the Commission as a whole. Alternatively, Parliament could vote the reduction of the Commission's budget by the amount of one unit of account of the salary of one Commissioner or, if need be, the reduction of that amount from the salaries of a number of Commissioners.

#### Appointment of the Commission

41. From the dismissal of the Commission it is logical to move on to the appointment of its members. The "Vedel Report" drew attention to the situation in which: "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" under Article 11 of the Merger Treaty.

42. It is sometimes suggested that Parliament itself should nominate members of the Commission. Your Rapporteur agrees, however, with the Vedel Report in considering that: "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." The Vedel Report suggests that Parliament might, nonetheless, receive a power of co-decision in this matter, notably through approving the Governments' choice of the President of the Commission. Your Rapporteur agrees with this aim but if it is not possible to gain the assent of the Council for this idea it would be useful to press for the implementation of the proposal made by Sir Derek Walker-Smith and Mr Lautenschlager in their report for the study group on the European Parliament's working methods and procedures (PE 34.742) that Member Governments of the Nine should be bound to choose members of the Commission from a list of

candidates drawn up by Parliament - this list (1) containing the names of two or three times more candidates than there are members of the Commission.

43. Further, your Rapporteur considers that Parliament should request newly appointed members of the Commission to appear before the appropriate Committees of Parliament to express their views and ideas concerning the sector of their responsibility in a public hearing. This would go some way towards the role of the US Senate in the appointment of members of the US Administration.

#### Hearings

44. In his Memorandum on the Procedures and Practices of the European Parliament submitted to the Enlarged Bureau in January 1973 your Rapporteur proposed that "Parliament's Committees should be considered free to invite any institutions or individuals to give written or oral evidence and should be encouraged to hold "hearings" whenever these assist in their enquiries... only by hearing evidence, and preferably in public, will the Committees fulfil adequately the functions for which they should exist...at the start of each annual Session, each Committee of the Parliament should be asked to choose at least one field of enquiry, not relevant to any specific legislation to which it intends to pursue during the following year. Later in the year Committees would report their findings to the Parliament and debates would be organised in plenary session on the basis of these reports."

45. The Working Party which has studied Parliament's working methods and procedures under the Chairmanship of Mr Schuijt has, meanwhile, come out strongly in favour of the organisation of such hearings as a regular part of the work of Committees. It should be noted that under its existing Rules of Procedure there is nothing to stop Parliament's committees from holding hearings or doing so in public.

46. Your Rapporteur considers that hearings should regularly involve Commissioners and senior members of their staff. The regular participation of the Commission in hearings would be useful, in institutional terms, in helping to formalise the Commission's responsibility to keep Parliament fully informed.

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(1) Which should, in your Rapporteur's view, contain the names of some of the most appropriately qualified members of the European Parliament. This could provide incentives and a European political career structure for directly elected members, who, after a successful spell in Parliament, could look forward to the possibility of becoming a Commissioner.

47. On its side the Commission has stated that it: "welcomes in principle the proposal in the Kirk Memorandum to hold hearings, whether in public or otherwise, for the purpose of examining the policies of the Community and the manner in which these policies are carried out in practice. It believes that such hearings could be valuable in terms of informing public opinion within the Community or Parliament. While awaiting Parliament's specific views on this proposal, the Commission will be considering how it could best help in the conduct of any such hearings." (1)

48. Your Rapporteur hopes that the Bureau will encourage the Committees to develop the practice of hearings in the sense outlined above. He notes that during the past months certain "hearings" have already been organised by Parliament's Committees, though these have not met two essential criteria: (a) that evidence be recorded and published; (b) that hearings be in public. However, since the first draft of this report was discussed the Committee on Regional Policy and Transport has developed plans to hold a public hearing on inter-city transport of the future. The proceedings of this hearing will be published, and the Bureau has given the Committee the necessary authorisation to go ahead.

#### General Report

49. The General Report has lost much of the significance that it had under the European Coal and Steel Community. This is partly because under the Treaty of Paris the only occasion on which Parliament could adopt a motion of censure was concerning the High Authority's General Report, whereas now Parliament is able to adopt a motion of censure on the Commission at any time, and partly because Parliament's interest quite naturally focuses more on the action programme for the forthcoming year than the Commission now presents together with the general report than on the Commission's Report on the previous year's activities.

50. In this respect Sir Derek Walker-Smith and Mr Lautenschlager, in their report for the Study Group on the European Parliament's working methods and procedures, have commented that: "The Treaties impose upon the European Parliament the obligation to supervise carefully the past activity of the Community. This duty is not disputed. It must not be neglected. Consideration should be given to whether the procedure now in use is too summary, not so much in the length of the resolution and the length of the debate in plenary sitting as in the critical examination in the Committees themselves. Should they devote more time to it?"

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(1) Communication from the Commission on practical measures to strengthen the powers of control of the Parliament and to improve relations between the Parliament and the Commission (PE 33.489).

51. Your Rapporteur considers this point to be a relevant one but in his view if the proposals that he outlines in Chapter IV of this report concerning budgetary control and how to increase Parliament's voice concerning the policy options of the Commission are implemented Parliament will be concerned as much with shaping emerging policies as with commenting on how well the Commission has or has not performed in implementing Community policies, though this latter function might be given extra point by being combined with the debate on the discharge of the budget - in which spokesmen of the budgetary Sub-committees, whose creation is proposed by your Rapporteur in Chapter IV, could comment on the performance of the Commission over the preceding year. This would help to compensate for the out-of-date nature of the contents of the General Report.

### Questions

52. So much emphasis has been placed, in recent months, on invigorating the procedures used by Parliament in tabling questions to the Commission that nothing need be added by your Rapporteur on the present occasion concerning this major instrument of control.

### Administrative Action by the Commission

53. Your Rapporteur welcomes the Commission's decision to strengthen its cooperation with Parliament on the organisational level. First, it has appointed one of its Vice-Presidents Mr. Scarascia-Mugnozza, to assist the President of the Commission in the conduct of relations with Parliament. Second, it should be noted that in 1973 the newly appointed second Assistant Secretary-General of the Commission was given the specific responsibility of following relations, within the Secretariat, between the Commission and Parliament.

### B. Relations with the Council

54. Conventional wisdom has it that Parliament's relationship with the Commission - the "motor of the Community", "the executive of the Community", "the nucleus of a future European Government" - is by far its most important institutional link. In practice, as the second chapter of this report tries to show, the role of the Commission has diminished so much over the years and that of the Council has increased so much that Parliament should seek to establish a much closer relationship with the Council. Unfortunately, the links between Parliament and the Council are not yet adequate though the introduction of the concertation procedure concerning budgetary questions has improved these links and the opportunities open to Parliament to obtain any degree of control over the Council's activities remain

limited. The Council is not directly responsible to any other body, though its individual members are responsible to their national governments and parliaments in their capacity as ministers. In particular the Council is not responsible to Parliament.

55. To express ambitious hopes for a significant change in this situation is unrealistic in the existing political context. Your Rapporteur merely wishes to note that a very considerable improvement in the working of the institutions and the balance of the Community could be brought about if the Governments of the Nine were to agree to take majority decisions in the Council wherever vital national interests were not affected (1). It is well known that the Council is acting against Article 148 of the EEC Treaty in insisting that its decisions be taken by unanimity. It is equally well known that the reason for this is the "Luxembourg Compromise" of January 1966 which recorded the agreement of the then Member States that on matters where a decision which could be taken by majority vote on the proposal from the Commission would affect very important interests of one or more partners, the members of the Council would endeavour to reach a unanimous decision within a reasonable time. However, at Luxembourg in January 1966, the French Government insisted that "where very important interests are at stake, the discussion should (or "must" according to the translation of the original French "doit") be continued until unanimous agreement is reached." Regrettably "very important interests" have never been defined and the unanimity rule has since been applied to every type of decision. Thus, as members of the German Government have stated in public, your Rapporteur wishes to emphasise as forcibly as possible that the Council should return as soon as possible to its real task of being a "Community institution" instead of continuing to play out its post-1966 role of being a mere diplomatic conference of national states. If this were so the Commission's power of initiative would again have some meaning and Parliament's relations with the Commission would regain their significance. Meanwhile Parliament should encourage each member government to send ministers to participate in plenary debates, on behalf of the Council, so that a spectrum of governmental views can be expressed in debate - not just the monolithic viewpoint of the President of the Council, though even he, as your Rapporteur is glad to note, has, on occasion, expressed personal views on European issues as well as mouthing the official line of the Council. Another idea which could be implemented as an interim measure before a return to majority voting in the Council could be that put forward by Mr Borschette by which if some Governments did not wish to go ahead with a particular project those that did wish to do so would be able to do this under a "partial agreement" formula akin to that used in the Council of Europe.

(1) The Heads of Government themselves arrived at a very similar conclusion in paragraph 6 of the communiqué of the Paris Summit of December 1974, though expressed in roundabout language.

56. As with questions to the Commission sufficient stress has recently been placed on the role of questions to the Council - particularly by the introduction of oral questions with debate - to make it unnecessary for your Rapporteur to comment here on this link between Parliament and the Council, apart from expressing his satisfaction that at the Paris Summit of December 1974 the Heads of Government authorised the President of the Council to reply to questions put to him by members of Parliament concerning political cooperation - a concession previously urged by Lord Chelwood and your Rapporteur.

57. Two final ideas. First, your Rapporteur wonders whether it might be feasible to involve not only the Commission but also the Council in the "hearing" procedure discussed in the first part of the present chapter. A new relationship between Parliament and the Council could be developed if the President of the Council were to agree to appear before the appropriate Committee to explain and define the Council's views concerning particularly important Community policy issues or problems. Under paragraph 2 of rule 40 of the Rules of Procedure Parliament's Committees are already empowered to invite the Council (as well as the Commission) to take part in Committee meetings.

58. Second, Parliament should demand that the President of the Council should agree to receive its President whenever he is requested by Parliament to present its views on a particular question. This right of access should be formal and should be distinct from the informal meetings which take place, from time to time, between the Presidents of the Council, Commission and Parliament.

BUDGETARY CONTROL

59. Having examined ways in which Parliament might increase the effectiveness of its control over the Commission and other Community institutions, and, also, ways in which it might build on its meagre channels of communication with the Council, your Rapporteur now wishes to turn to the most important single element of control at Parliament's disposal - that of budgetary control over the Commission. It should be noted that the main powers of Parliament in the budgetary field are: (a) the adoption of the entire Community budget (from 1975); (b) the final word over non-obligatory expenditure (from 1975) and the right of discharge of the budget (since 1971).

60. In view of the Resolution adopted by Parliament on 5 October 1973 and in view of the two exhaustive reports submitted to Parliament at that time by Mr Spénale, as Chairman and Rapporteur of the Committee on Budgets, and by your present Rapporteur as Rapporteur of the Political Affairs Committee, there is no need to repeat Parliament's basic attitude concerning the introduction of the new Community budgetary system, based on own resources, as from 1 January 1975 or the full range of institutional proposals made in October 1973 concerning Parliament's relations with the Council and Commission.

61. In this chapter your Rapporteur seeks to demonstrate that Parliament can, through budgetary means, and without treaty modifications, develop substantially its influence on the options open to the Commission in formulating policy proposals in the different sectors within its competence. All that is needed to help Parliament bring about this situation, apart from its own efforts and decisions, is the practical cooperation of the Commission.

62. Your Rapporteur's proposals do not cover control over past expenditure (the task of the Court of Auditors and of the "Public Accounts" Sub-Committee of the Committee on Budgets which, it is hoped, will be established soon) but planned expenditure. They take as a starting point the present role of the Committee on Budgets. Normally, when the Commission puts forward a new policy proposal for an Act with financial implications the role of the Committee on Budgets is to give its opinion, at an early stage, to the Committee competent for the substance of the proposal concerned. In giving its opinion the Committee on Budgets will normally take two factors into consideration:



(a) Its view of the substantive merits (or otherwise) of the Commission's proposals;

(b) Its general estimation of whether or not the Commission's proposal seems sensible from a budgetary point of view - in this context the Committee will be on the watch to see whether or not the proposal requires supplementary estimates to be submitted by the Commission.

63. The task of the Committee on Budgets is, at present, basically fulfilled when it has given its opinion to the competent Committee, which is then free to complete its report and submit a Resolution to Parliament. It is, of course, open to members of the Committee on Budgets to table amendments to the Resolution submitted by the competent Committee during the plenary debate in Parliament. Your Rapporteur believes that this system could be improved.

64. Although the present system works smoothly in a purely mechanical sense it fails to give Parliament:

(a) an adequate opportunity to scrutinize in detail the expenditure involved in Commission proposals, since, as representatives of the Committee on Budgets have stated on a number of occasions, the Commission has not yet developed the practice of submitting detailed financial schedules to Parliament;

(b) a genuine voice in shaping the policy options open to the Commission, in light of its budgetary possibilities, within the different sectors of its activity.

65. Further, the opinion of the Committee on Budgets is, under the present system, given to the competent Committee too early in the latter's deliberations to affect its final recommendations to Parliament to the extent that it might do.

66. Thus instead of the Committee on Budgets trying to complete the overwhelmingly difficult task of establishing an opinion on both the substantive and budgetary aspects of every proposal of the Commission for an Act with financial implications, your Rapporteur ventures to suggest that it would be more efficient for each of Parliament's Committees which has a clear competence concerning the work of one or other of the Directorates-General of the Commission to establish a Sub-Committee responsible to it for examining, in detail, the budgetary implications of all proposals of the Commission within its field of competence.

67. The main point of this suggestion would be to enable each of Parliament's Committees to develop its own budgetary expertise within the field of its specific competence. Both in order to help sub-committees of this kind to acquire the necessary budgetary expertise and techniques and in order to link the work of these sub-committees with the overall strategy of the Committee on Budgets, it would seem desirable for a separate member of the Committee on Budgets to be appointed to take part in the work of each of these new budgetary sub-committees. The implementation of this suggestion might possibly require changes in Parliament's Rules of Procedure.

68. The function of the budgetary sub-committees would be twofold. First, they would be expected to examine all the financial details of proposals for Acts with financial implications. Second, they would be able to give advice and guidance to their parent committee on the attitude that it might wish to adopt concerning the medium-term development of the Commission's policies within its sector.

69. As far as the first of these two functions is concerned, your Rapporteur wishes to underline the need for the Commission to submit to Parliament a detailed financial schedule with each proposal for an Act with financial implications. In the Report he submitted to the Parliament on behalf of the Committee on Budgets on the Draft General Budget of the European Communities for 1974 (Doc.187/73), Mr Rafton Pounder referred to the details needed for these financial schedules if they are to be of use to Parliament. These are:

- - Indication of the links between the financial implications of the measures proposed and the annual budget(s), and therefore
  - indication of the overall cost;
  - as detailed a breakdown of expenditure as possible using the budgetary nomenclature (Title, Chapter, Article, Item);
  - in the case of expenditure not covered by the budgetary nomenclature, suggested line in the budget with an accurate heading;
- Breakdown of expenditure in time;
  - effect on the current budget;
  - effect on the draft budget in preparation;
  - effect on the multi-year estimates and therefore on future annual budgets;

- Indication of whether expenditure will be covered by receipts and therefore
  - whether it will be covered by the appropriations provided in the current budget;
  - whether it can be covered by transfers;
  - whether it will have to be covered by new budget appropriations: in a future budget, by a supplementary budget;
- Effect on the various components of own resources:
  - other than VAT;
  - VAT;
- Indication of the financial implications to allow a comparison with expenditure provided for and actually effected in past financial years or in the current financial year, so that it can be decided whether or not requests for new appropriations are justified;
- Explanation of the bases on which the estimates have been made;
- Indication of
  - a bracket showing minimum and maximum estimates of costs;
  - alternative assessments of financial implications;
  - degree of uncertainty of the estimates;
- Comparison of the financial implications of an act with those of all the acts already adopted in the current financial year;
- Explanations of the effects of acts having financial implications in terms of 'financial machinery and liquid assets'."

70. Mr Pounder also provided, on pages 14(a), (b) and (c) of his Report, a model for setting out financial schedules. Your Rapporteur considers the willingness of the Commission to cooperate with Parliament by providing financial schedules of this kind to be crucial in the development of detailed budgetary control by Parliament over proposals for Acts with financial implications. Only if this is done can proposals be costed adequately. With the establishment of the Court of Auditors and of a "Public Accounts Committee" type Sub-Committee of the Committee on Budgets to control Community expenditure once it has been made, the introduction of the proposed parliamentary checks on the planning of expenditure should

constitute an effective two-prong "before and after" control system over the Community budget.

71. But the second function is perhaps more important. When the budgetary sub-committees have gathered together all the relevant financial information concerning not only individual proposals for Acts with financial implications but the total budget for the work of their equivalent Directorates-General, the parent Committees should be able to assess all the major policy options open to the Commission in that sector of its work in the light of the funds available.

72. In their work of examining and costing proposals for Acts with financial implications and of examining alternative policy options the budgetary Sub-committees should, in your Rapporteur's view, make use, wherever appropriate, of hearings. Commissioners and members of their staffs and also independent experts should be convened for cross-examination by the Sub-committees, and these cross-examinations should be held in public. One of the conclusions of the study of the Parliament's working methods and procedures carried out by the Working Party under the Chairmanship of Mr Schjuit was that greater emphasis should be placed on the use of the hearing technique. The "open" nature of hearings is important, also, to demonstrate to the European peoples and the media that Parliament, and thus by definition the representatives of the European peoples, are playing a full and effective role in costing community policy and in determining policy options.

73. When committees are ready to assess the reports made to them by their budgetary sub-committees the Committee on Budgets should be brought back into the picture to give a second opinion on the budgetary implications of the specific proposals under consideration. At the moment the Budget Committee's comments are restricted to the proposals of the Commission and once this opinion has been given the Budget Committee's involvement comes to an end. The idea of a second opinion would permit the Committee on Budgets to examine the financial implications of the proposals of the other Committees of Parliament, and seek to place them in their proper budgetary context. This would involve a change in the regulations of Parliament and would also entail further cooperation from the European Commission which would be expected to provide the Committee on Budgets with the extra details necessary for it to comment on the financial aspects of amendments to the Commission's proposals. This would seem to be in keeping with the need for financial responsibility on Parliament's part and it would increase the impact of the work of the Committee on Budgets, since at the moment its views on the original proposals become out of date once the competent committees have interposed their views and made amendments to the proposals of the Commission.

74. At the moment Parliament receives a three-year forecast from the Commission of its Budget to enable the Parliament to examine expenditure in the

context of budgetary options and priorities in the following years. The establishment of pluri-annual Community estimates was envisaged by the Council's decision of 21 April 1970. Your Rapporteur would like to suggest that the Commission extends its present forecasts on the basis of a first year binding provision, and firm estimates for years 2 and 3 plus additional projections of the figures of year 3 for years 4 and 5 taking into account on-going expenditure already known and planned new projects with expenditure implications. The present pluri-annual estimates provided by the Commission seem inadequate. This, in any case, was the view taken by Mr Rossi in his report on the estimates for 1974-75-76 (PE 35.029/final). In the Resolution passed by Parliament it was pointed out that the figures given were based exclusively on decisions and rules already in force as well as on formal Commission proposals, rather than being on a more dynamic basis including proposals that the Commission believes it would be bringing forward in the subsequent years. The Commission has up until now relied too heavily on minimum figures in the case of the agricultural sector ; and in the case of the Regional Fund and Social Action Programme it has not submitted figures sufficiently detailed or justified. It should provide a realistic range of figures. As Mr Rossi pointed out, if the Commission believed that the decision of 21 April 1970 was too restrictive then it should seek modification to that decision. In your Rapporteur's view these figures provided by the Commission should go some way to help the proposed financial sub-committees to see the financial consequences not in the vacuum but in their overall budgetary context.

75. Furthermore the adoption of the Planning Programming Budgetary System (PPBS) by the Commission, as a basis for forward estimating and programming of possible options, would ease the Committees' tasks in assessing the medium-term budget forecast and projections. This system which has been in operation in the USA for a number of years, and in France and Britain more recently, by obliging the Commission to produce expenditure programmes for 3 years with further projections for years 4 and 5 could provide Committees with a wealth of information to guide their debates on policy options.

76. It must not be thought that the role of the Committee on Budgets would be diminished in any way by this new procedure. On the contrary, the Committee on Budgets would play a vital role in guiding Parliament as a whole, in its plenary debates, in coordinating the budgetary activities of the Committees as a whole and of bringing them down to earth if their ideas concerning expenditure were to become wild or unrealistic. The Committee on Budgets would have the crucial role of advising Parliament on the overall

financial implications of the recommendations presented to it by the individual Committees. Parliament would have to take its final decision in the light of the complete budgetary context as explained to it by the Committee on Budgets. Parliament as a whole and the Committee on Budgets will, incidentally, also play an increasingly major role now that the budget is to be defined in terms of revenue rather than expenditure as each new proposal increasing expenditure will involve either increases in Community revenue from its VAT or customs duties proposals or developing new sources of revenue. Your Rapporteur considers, however, that by spreading the task of budgetary control over a number of Committees the role of Parliament as a whole concerning both the formulation of the Community budget, particularly the costing of individual Commission proposals, and the shaping of the policy options open to the Commission would be greatly increased.

RELATIONS WITH THE COURT OF JUSTICE, THE COURT OF  
AUDITORS, THE ECONOMIC AND SOCIAL COMMITTEE AND  
REGIONAL POLICY BODIES

77. Although Parliament could develop closer relations with a number of Community institutions your Rapporteur has considered it practical, in this report, to concentrate on relations with the Court of Justice, the prospective Court of Auditors, the Economic and Social Committee and the institutions which are to be set up in connection with the Regional Fund.

Court of Justice

78. Parliament does not have, in general terms, the right to seize the Court of Justice directly. Whereas Article 169 of the EEC Treaty underlines the right of the Commission, as guardian of the Treaty, to seize the Court of Justice concerning any failure of the Member States to fulfil a Treaty obligation, Article 173 of the EEC Treaty does not give Parliament the right to bring actions before the Court, although this Article gives the Council, the Commission and Member States the right to do so.

79. Your Rapporteur proposes that a specific reference to Parliament be inserted into Article 173 of the EEC Treaty (and also into Article 146 of the Euratom Treaty) - in the second sentence of the first paragraph - so that Parliament, on the same basis as a "Member State, the Council or the Commission", would be enabled to bring an action before the Court "on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its obligation, or misuse of powers". Thus whereas the Commission would maintain its right, as guardian of the Treaty, to bring an action before the Court if a Member State has failed to fulfil a Treaty obligation, if the Commission chooses not to do so Parliament should have the right to do this if it considers that such a step is justified.

80. But Parliament has the right to seize the Court under Article 175 of the EEC Treaty since it is included amongst "the other institutions of the Community" which are able to bring an action before the Court if the Council or the Commission fail to act in infringement of the Treaty. Your Rapporteur considers that the wording of Article 175 of the EEC Treaty (and Article 148 of the Euratom Treaty) should be modified, with a specific reference to Parliament, to bring out the meaning of its first paragraph more clearly. Your Rapporteur proposes that Parliament should exercise its powers under Article 175. Article 75 of the EEC Treaty lays down that the Council (acting unanimously until the end of the second stage and by a qualified majority thereafter) establish, on a proposal from the Commission and after consulting the Economic and Social Committee and Parliament "(a) common rules applicable to international transport to or from the territory of a

Member State or passing across the territory of one or more Member States; (b) the conditions under which non-resident carriers may operate transport services within its Member States." In practice, despite the proposals submitted to it by the Commission at an early stage, the Council has only established experimental rules concerning Article 75(1)(a), not "common rules". Further, the Council has not acted concerning Article 75(1)(b). With respect to both these points the Commission, in its Communication on the Development of the Common Transport Policy (Parliament document 226/73) states, in paragraph 18: "It is important to emphasise that by virtue of Article 75 of the Treaty, common rules applying to international transport and the conditions under which non-resident transport undertakings may be allowed to engage in national transport activities within a Member State should have been drawn up during the transitional period." Under Article 175 Parliament should call upon the Council to act with respect to Article 75(1)(a) and (b). If, as laid down by Article 175 the Council has not "defined its position" on this question within two months Parliament should take a decision to "bring an action before the Court of Justice" within a further period of two months for failure of the Council to act in "infringement" of the Treaty.

81. Your Rapporteur wishes to draw attention to the opportunity which Parliament has of intervening in cases before the Court of Justice. This opportunity was the subject of a Note prepared by Mr Memmel on behalf of the Legal Committee for the Bureau dated 25 February 1972 (PE 29.460). In effect the three Protocols (1) on the Statute of the Court of Justice state that "Member States and institutions of the Community may intervene in cases before the Court." They go on to state that "submissions made in application to intervene shall be limited to supporting the submissions of one of the parties."

82. The "intervention" open to Parliament (or to other Community institutions) is defined by Article 93 of the Rules of Procedure of the Court of Justice. If Parliament wished to "intervene" in the hearing of a case before the Court it would first have to submit to the Court an application to intervene in a document setting out the reasons justifying its interest in the outcome of the case. If such an application were accepted Parliament's role in the hearing of the case before the Court would be limited to supporting the application of one of the parties. In supporting the application of a party Parliament would be able to make suggestions about the future handling of the case by the Court. It would also be able to introduce evidence in support of a party before the Court.

- (1) Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, Protocol on the Statute of the Court of Justice of the European Economic Community, Protocol on the Statute of the Court of Justice of the European Atomic Energy Community.



83. In his Note for the Bureau Mr Memmel suggested that Parliament should study the possibility of intervening in cases in which it had a direct interest. On 15 April 1972 the Bureau approved the principle of Parliament intervening in suitable cases before the Court in which it had a direct interest (see Bulletin No.8 of 28 April 1972).

84. Your Rapporteur wishes to follow up Mr Memmel's note and the decision of the Bureau by proposing that the Legal Committee should examine all cases involving the Council and the Commission coming before the Court with a view to recommending Parliament to intervene in those cases in whose results it had an interest. But since the nature and details of cases coming before the Court of Justice are not apparent from the brief notices printed in the Official Journal, your Rapporteur suggests that the Council and Commission be invited to inform Parliament fully of all developments concerning cases before the Court to which they are parties - this information should include the forwarding to Parliament of all relevant documents.

85. Finally, as concerns the Court, your Rapporteur wishes to touch on the appointment of the Judges and Advocates-General. At present, under Article 167 of the EEC Treaty, Judges and Advocates-General are "appointed by common accord of the Governments of the Member States for a term of 6 years". Your Rapporteur considers that Parliament should play an active role in the appointment of the Judges and Advocates-General. To this end he suggests that nominees of the Member States for these posts should be interviewed in the form of "hearings" by Parliament's Legal Committee which would then report its views to Parliament on the suitability of the nominees, it being for Parliament as a whole to confirm or reconfirm their appointment. Final appointment of Judges and Advocates-General by "common accord" of the Governments of the Member States would take place only after Parliament had confirmed or reconfirmed the appointments. In this context it is interesting to note that Article 94 of the Constitution of the Federal Republic of Germany provides for the election of half the Members of the Constitutional Court by the Bundestag and for the election of the other half by the Bundesrat.

### Court of Auditors

86. Your Rapporteur wishes to recall the proposal he made in his Opinion on Mr Spénale's Report of October 1973 on the strengthening of the budgetary powers of the European Parliament (PE 33.890) in which he suggested that the appointment of members of the Court of Auditors (whose creation was suggested in the 1973 proposal from the Commission concerning the budget) could take the form of their being interviewed in the form of "hearings" by the Parliament's Committee on Budgets which would then report its views to Parliament on the suitability of the nominees, it being for Parliament as a whole to confirm or reconfirm their appointment. As your Rapporteur argued in October 1973, although the Court should be "independent" it should not exist in a political vacuum but should report on its operations to at least one of the institutions of the Community. This institution should, in your Rapporteur's view, be Parliament, which should exercise supervision over the work of the Court. As Mr Pounder stressed in his amendment (adopted by Parliament during its Session of July 1973) to the Motion for a Resolution accompanying Mr Spénale's Report on the budgetary powers of the Parliament (Doc. 131/73) the auditors "should report to and be at all times available to assist and advise the Parliament in the exercise of its rights of control".

87. Further, your Rapporteur considers that Parliament should have the right to request the Court to check or examine expenditure wherever Parliament considers this to be necessary. Your Rapporteur also proposes that the Court of Auditors should submit an annual report on its activities for debate by Parliament. This report should not merely be a record of the Court's work during the previous year, but should set out a programme indicating at least some of the financial investigations it planned to carry out during the forthcoming year. In planning its work and investigation the Court should take fully into account the views expressed by Parliament, quite apart from its being seized of specific investigations by Parliament.

### Economic and Social Committee

88. The role of the Economic and Social Committee is to advise the Council in response to a request for an opinion (sometimes obligatory, sometimes optional) on the economic and social implications of Commission proposals. In order to avoid duplication between the work of the Parliament and the Economic and Social Committee and in order to provide for a more rational system of consultation by the Council of Parliament and the Economic and Social Committee than exists at present your Rapporteur suggests that Parliament and the Economic and Social Committee should keep each other

fully informed by exchanging draft opinions on those matters on which they are both giving the Council an opinion. A further rationalisation of the present consultation procedure could be achieved if Parliament's Committees were to invite the experts of the Economic and Social Committee to present their conclusions to them at public hearings organised by Parliament's Committees.

#### Committee for Regional Policy and the Fund Committee

89. The establishment of the Regional Fund was agreed by the Heads of Government at Paris in December 1974. The introduction of a fund of 1,300 million units of account for the years 1975/77 is of major significance. The institutions responsible for operating regional policy, and more specifically the Fund, will be the Commission itself aided by its Fund Committee and a committee concerned with more general aspects of regional policy, the Committee for Regional Policy. This Committee is likely to consist of 20 members, 18 being appointed by the Member States and two by the Commission. The Fund Committee is likely to be similarly constituted, being composed of representatives of Member States and presided over by a representative of the Commission.

90. Your Rapporteur does not consider that Parliament should intervene either in the appointment of members of the two Committees or in the day-to-day administration of the Fund, though Parliament will have a measure of control over the money voted for the Fund and subsequently over the expenditure of such money. Moreover the amendment made by Parliament to the draft decision on the creation of the Committee for Regional Policy, which was accepted by the Committee on 15 November 1973, requiring that "The Committee for Regional Policy shall report to the Council and to the Commission which shall inform the European Parliament on the results of its work" might usefully be strengthened or interpreted so that Parliament itself should receive an annual report on the work of the Committee for Regional Policy from the Commission. This report would preferably take the form of a separate printed document, which could be referred to Parliament's Committee on Regional Policy and Transport in view of an annual debate on regional fund expenditure. Failing this the Commission's report could take the form of a chapter of the General Report but your Rapporteur wishes to stress that the first of these alternatives is to be preferred.

91. An annual debate of this kind would give Parliament an opportunity to express its views concerning not only the way in which the Commission has operated the Fund but also the way national states have sought aid from it. Parliament would thus be able to satisfy itself that aid had both been sought and given in the light of Article 92 of the EEC Treaty and in accordance with the Preamble to the EEC Treaty which seeks "to ensure their the peoples of Europe harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions."

EXTERNAL RELATIONS (1)

92. Mr van der Goes van Naters stressed the importance of the Parliament's taking part in the conclusion of trade agreements with third countries as early as January 1965 (2). Your Rapporteur is thus by no means the first member of the Parliament to raise this point. He has, nonetheless, certain new proposals to put forward and hopes that these will be consistent with the views which Mr. Thomsen is due to express on the Community's role in the negotiation of association, and commercial and co-operation agreements in his capacity as Rapporteur of the Committee on External Economic Relations. Mr. Thomsen will also examine bilateral "co-operation agreements" by which Member States offer industrial or technical assistance in exchange for trade thus evading both Article 113 of the EEC Treaty and an Opinion of the Parliament. Your Rapporteur does not wish to duplicate Mr. Thomsen's work in this important area (3).

Association Agreements

93. Article 238 of the EEC Treaty states that association agreements "shall be concluded by the Council, acting unanimously after consulting the Assembly". In your Rapporteur's view the problems that arise for Parliament concerning the negotiation of association agreements are:

- (a) how should it be informed?
- (b) how should it be consulted?
- (c) can it in any way "ratify" such agreements?

94. Until now Parliament, in trying to increase its role in the negotiation of association agreements, has tended to concentrate on obtaining information from the Commission and Council rather than on seeing how it could more fully be consulted or how it could play some part in "ratification". This attitude has also characterised

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- (1) Your Rapporteur is indebted, for much of the factual information in this chapter, to the Memorandum prepared by the Directorate-General of Committees and Inter-Parliamentary Delegations for members of the External Economic Relations Committee on "Procedure for participation by the European Parliament in the conclusion of trade agreements between the Community and Third Countries". (PE 34.843, 15.XI.1973)
  - (2) Report prepared on behalf of the Political Affairs Committee, Document 119 of 11 January 1965.
  - (3) Instances of bilateral "co-operation agreements" include France-Iraq, France-Iran, United Kingdom-Iran agreements and a number of agreements between Member States and Eastern European countries.

Parliament's attitude concerning the negotiation of trade and co-operation agreements with third countries. Thus the report drawn up on behalf of the Political Affairs Committee by Mr. Giraud on procedures for participation by the European Parliament in the conclusion of trade agreements between the Community and third countries (document 300/72) led to Parliament's Resolution which informed the Council of Parliament's wish for its responsible committees to receive relevant information before trade agreements are signed.

95. The system by which the Parliament at present participates in the negotiation of association agreements is known as the "Luns procedure" after the former Netherlands Minister for Foreign Affairs who was President-in-Office of the Council when this procedure was introduced. Under the "Luns procedure" (1) Parliament is informed, through its responsible parliamentary committees:

- (a) by the Commission concerning the evolution of negotiations, and
- (b) by the Council, when substantive negotiations have ended but before the signing of the association treaty.

96. The information given to Parliament's committees is confidential in character. The "Luns procedure" does not replace the official consultation of the Parliament by the Council which takes place after the signature of the association treaty and before the deposit of the instruments of ratification (2).

#### Trade Agreements

97. Since members of the Parliament considered that some similar procedure should be devised so as to permit its responsible committees to be informed of the progress of trade and co-operation agreements (3), pressures in this sense led to the Council agreeing to the "Westerterp procedure" which was used for the first time when Parliament's responsible committee was informed of the content of the EEC-Egypt trade agreement at the time of its conclusion. However Mr. Giraud, in his report of

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- (1) Whose introduction was probably due to the position Parliament adopted in its Resolution of 27 June 1963 based on the Report submitted by Mr Furler on its competences and powers.
  - (2) This procedure has been criticized by Parliament on a number of occasions on the grounds that the timing of the information given to Parliament's committees is usually too late for Parliament's Opinion to be adequately considered in drawing up the Association Agreement.
  - (3) Whose negotiation, under Article 113 of the EEC Treaty do not necessarily involve consultation of the Parliament by the Council.

February 1973, stressed that the "Westerterp procedure" was inadequate since Parliament wished to be informed through its relevant Committees before trade agreements are signed. Further, there has been some feeling in Parliament that since entry into force of the common commercial policy on 1 January 1973 the "Luns procedure" should be replaced by some new system in which Parliament is more closely involved in the Council's decisions when trade negotiations are conducted with third countries.

98. In light of Parliament's views the President-in-Office of the Council proposed to Parliament on 17 October 1973 (further to the Resolution adopted by Parliament on 13 February 1973 on the basis of Mr. Giraud's report) that it should play a more active role in the sphere of trade agreements. Parliament's participation could, in the view of the President-in-Office of the Council, be envisaged in the following manner (1):

- before negotiations start on a trade agreement with a third country and in the light of information provided by the Council to the responsible parliamentary committees, a debate may, in appropriate cases, be held in the House;
- at the end of the negotiations, before the agreement is signed, the President of the Council or its representative shall inform confidentially and unofficially the responsible parliamentary committees of the substance of the agreement;
- bearing in mind the interest which the European Parliament has in trade agreements to be signed by the Community, the Council shall, after the signature of such agreements, and before their conclusion, inform Parliament of their substance.

99. Your Rapporteur notes that apart from the first of these three proposals made by the President-in-Office of the Council on 17 October 1973 all actual or proposed arrangements concerning the participation of the Parliament in both association and trade agreements are limited to informing the Parliament of progress made by the Commission in the course of negotiations or, by the Council, of the results of the negotiations when these have been substantively concluded.

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(1) See Council's note to the European Parliament on the improvement of relations between the Council and the European Parliament dated 16 October 1973 and published in the Bulletin of 19 October 1973 (no. 74/73).

## A New Procedure

100. Your Rapporteur considers that information is not enough. He believes that a more genuine form of "consultation" and some form of "ratification" are required. In consequence he proposes the procedure set out below to apply both to association and trade agreements. First, before the Council establishes the Commission's mandate to negotiate and in the light of information given by the Council to the responsible parliamentary Committees an orientation debate could be held by the Parliament (thus taking up the first suggestion of the President-in-Office of the Council of 17 October 1973 not only the context of trade agreements but also in that of association agreements). The Council should then determine the Commission's mandate in the light of the views expressed in the orientation debate held by Parliament.

101. Following this, the Commission should continue the present procedure of informing, confidentially and unofficially, the responsible parliamentary Committees of the evolution of negotiations and of the major problems to be overcome. Your Rapporteur fully realises that it is not desirable to hold a public debate during the course of negotiations conducted by the Commission since this would reveal the Community's negotiating position and bargaining counters.

102. Your Rapporteur next wishes to propose a radical transformation of the present procedure. Instead of adopting the third suggestion made by the President-in-Office of the Council on 17 October 1973 by which the Council would after the signature of trade agreements and before their conclusion inform Parliament of their substance, your Rapporteur suggests that both for association and trade agreements a significant distinction should be made between the "initialling" of agreements - which could best, perhaps, be done by the Commission, on the side of the Community, in its capacity as negotiator - and the "signature" of association and trade agreements by the Council.

103. Between the "initialling" and the "signature" of agreements a "ratification" stage should be introduced, which, on the side of the Community, should involve a full debate in Parliament of the terms negotiated by the Commission on behalf of the Community. Only when Parliament has approved the terms negotiated would the Council be able to proceed to the amendment or the "signature" of association and trade agreements. Such an innovation could increase substantially the role played by the Parliament in the negotiation of both association and trade agreements. Although Parliament would not be able to modify the course of negotiations through public debate it would be able both to inject its views concerning association and trade agreements into negotiations by means of



the initial orientation debate and, later it would then be in a position to ratify the draft treaty initialled by the Commission before this was signed by the Council and to influence any amendments to the draft agreements made by the Council. Parliament would also have the power to reject terms negotiated by the Commission under the mandate given to it by the Council by refusing to proceed to the "ratification" debate. The need for a "ratification" procedure involving Parliament is especially great in view of the fact that association, commercial and co-operation agreements are essentially Acts with financial consequences. It is necessary for Parliament to know what the financial consequences of these Acts are (especially since the introduction of the new Community budgetary system in 1975) before they are approved by the Council.

104. The new procedure suggested by your Rapporteur would have the advantage of providing some form of democratic control over the establishment of association, and trade and co-operation agreements, which have both political and economic implications of great significance, in a situation in which national parliaments have no direct control over the actions of the Council and the Commission and in which the European Parliament, until now, has played an insufficient role. This procedure might also be used (suitably adapted to the specific requirements of the individual negotiation) with respect to other international negotiations in which the Community takes part such as GATT tariff negotiations, or in which the joint interests of the Nine are involved.

SCOPE FOR PARLIAMENTARY CONTROLEuropean Union

105. At the Paris meeting of Heads of State or of Government of October 1972 it was decided that by 1980, at the latest, the Nine would create a "European Union" involving the transformation of the whole complex of relations between the Member States. Parliament, in its General Report on the Sixth Report of the Commission of the European Communities (Rapporteur Mr Seefeld) has set out its view "that a veritable European Union ... cannot be restricted solely to the economic and social fields but must include measures of political cooperation and cannot leave out of account measures of defence cooperation". Your Rapporteur considers this point of view to be highly significant with regard to the nature of the "European Union" to be achieved by 1980. A "European Union" which does not include foreign policy and defence would be a mockery.

106. As, then, the Nine develop machinery for cooperation in foreign policy and, possibly, defence (within the framework of "European Union" or preparatory to its creation) Parliament must, step by step, ensure that this machinery, and those who control it, are accountable to the European Parliament. Parliament should, in your Rapporteur's view, play a buccaneering role in latching on to all developments directly involving the Nine in foreign policy and defence so as to ensure that some degree of parliamentary control is established over these moves, and that, even if at present they take place outside the Community framework, there are some links with the Community.

107. Your Rapporteur does not consider it to be useful for him to comment further on European Union in view of Mr Bertrand's forthcoming report on that theme.

Foreign Policy

108. In foreign policy a start has already been made. At The Hague summit of December 1969 the Heads of State or Government instructed the Foreign Ministers to "study the best way of achieving progress in the matter of political unification within the context of enlargement". Your Rapporteur does not need to recapitulate here the development, from 1971, of political cooperation between the Foreign Ministers of the Nine with the aid of the Political Committee composed of the Directors of Political Affairs of their Foreign Ministries.

109. This process of political cooperation has yielded both successes and failures. But whether the political cooperation process is more or less successful concerning a single issue is less important than that it has already proved to be a useful, even essential, feature of relations between the Nine. Political cooperation between the Nine has not, however, in the past been carried out within Community institutions but on a purely intergovernmental basis - the Political Committee and the Foreign Ministers meeting as "parallel" institutions and not as Community organs. Both Mr Seefeld in his General Report, and Mr Mommersteeg in a recent report for the Political Affairs Committee on European political cooperation and unification (Doc.12/73) have already drawn attention to this problem. Parliament has already become involved in the political cooperation process since reports have been made regularly to the Political Affairs Committee of Parliament by the Foreign Ministers after their original twice yearly meetings and their present four annual meetings. The reports of the Foreign Ministers take the form of a colloquy with the Political Affairs Committee at which the Governments are represented by Foreign Affairs Ministers and/or senior officials (1). Further, your Rapporteur notes that the involvement of Parliament in political cooperation should increase following the decision taken by the Paris Summit of December 1974 by which the President of the Council will, in future, be authorised to reply to questions tabled in Parliament concerning political cooperation - as members of Parliament have urged in the past.

110. The Second Report on Political Cooperation of September 1973 proposed that the rhythm of political cooperation should be intensified and that the Foreign Ministers should meet four times a year. It has been agreed that colloquies between the Foreign Ministers and the Political Affairs Committee of Parliament should be held immediately following each of the four Ministerial meetings. The report states that the colloquies, coupled with the Report of the President of the Council to Parliament's Plenary Session have "put into effect the desire of the Foreign Ministers to make a contribution to the democratic character of the construction of a political union".

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(1) It should be noted that the Commission is asked to give the Foreign Ministers its opinion when the questions discussed are relevant to Treaty competences.

111. Parliament's involvement in the political cooperation process could be increased if Parliament were to follow up the suggestion made in the Second Report on Political Cooperation that the Political Committee "will draw to the attention of Ministers proposals adopted by the European Parliament on foreign policy questions." The Political Affairs Committee should, then, in your Rapporteur's view, submit formal suggestions for approval by Parliament as a whole as to questions which could be placed on the agenda of the Foreign Ministers of the Nine. Parliament should also insist that a printed report be submitted by the Council to Parliament each year on political cooperation, which would provide the basis for a full scale debate in which Foreign Ministers could participate.

112. At this point your Rapporteur wishes to make a more general comment. Although it is true that national parliaments will probably try to retain their own responsibility for national foreign policy to the greatest extent possible, it should be noted that national parliaments have already tacitly allowed international assemblies whose prime concerns are international affairs and security - and here your Rapporteur has the Council of Europe, WEU and North Atlantic Assemblies in mind - to take over the major practical responsibility for parliamentary discussion of at least European and Atlantic security questions. This suggests that whereas purely national foreign policy competences are likely to be retained by national parliaments so long as individual governments continue to conduct individual national foreign policies, international parliamentary bodies are already, de facto, the most competent bodies to discuss and influence the degree of foreign policy that is within the competence of international organisations. If this is true of the Consultative Assembly, the North Atlantic Assembly and the WEU Assembly with respect to the work of the Council of Europe, NATO and of WEU, these classical intergovernmental organisations, it must to an even greater extent be true of the Community parliamentary body, the European Parliament.

113. If it is important for the present "parallel" process of political cooperation to be linked as closely as possible to Parliament and for those in charge of political cooperation to be made responsible to Parliament, it will be even more essential for any Political Secretariat that may be established in the future to be responsible to Parliament for its activities.

114. There has been a revival of interest in the establishment of a Political Secretariat, possibly along the lines of the French Government's two sets of "Fouchet proposals" of 1961 and 1962 and of the Alternative Draft Treaty of the Five. If this proves to be the case Parliament should insist on being consulted concerning the establishment of a Political Secretariat and should also insist that the Council be accountable to Parliament for its work and activities with the President of the Conference of Foreign Ministers appearing not only in closed session before the Parliament's Political Affairs Committee but also keeping Parliament fully informed of political cooperation developments in Plenary Session and replying to questions in public.

115. Quite apart from establishing links with the political cooperation process Parliament has an autonomous right to debate foreign policy if it so wishes. The tradition of "initiative reports" is a firmly established one and your Rapporteur can point to the preparation of reports on the Conference on Security and Cooperation in Europe and on the Mutual and Balanced Force Reduction negotiations in the Political Affairs Committee as topical instances of such reports. On its side the Commission has stated that it "would ... welcome it if Parliament's voice could increasingly be heard on broad political issues of topical interest. In cooperation with the Bureau of Parliament, the Commission is ready to contribute its share to the holding of such political debates. These will enable Parliament to define the general political approach to be adopted." (1) Should the right of the Parliament to debate such matters be challenged it is only necessary to recall, as justification of foreign affairs discussions, paragraph 3(b) of the Bonn Declaration of 18 July 1961 in which the Heads of State or Government decided (in the specific context of developing political cooperation): "To associate public opinion more closely with the efforts already undertaken by inciting the European Parliament to extend the range of its debates to new fields with the cooperation of the Governments". This right has been recognised by the Council as is shown, for instance, by the reply made by the Representative of the Council to oral questions with debate Nos. 101/73 and 138/73 on the Conference on Security and Cooperation in Europe and relations with the USA on 16 January 1974.

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(1) Communication from the Commission on practical measures to strengthen the powers of control of the Parliament and to improve relations between the Parliament and the Commission (PE 33.489).

116. Your Rapporteur wishes to give an example of the way in which an "initiative report" on one specific subject could be of great use to the Community as a whole. The Western countries are engaged in a number of complex but separate negotiations with the states of Eastern Europe - for instance, the SALT talks, the Conference on Security and Cooperation in Europe and the Mutual and Balanced Force Reductions negotiations. At the same time the countries of Eastern Europe are showing signs of interest about engaging in closer dialogue with the Community and of possibly wishing to open trade negotiations with it. Whereas the Western negotiating positions are split up between a number of different institutions in which different Western countries take part, Eastern positions are carefully co-ordinated and prepared. If the Community is to be able to judge how the question of trade relations between the EEC and Comecon fits into the overall pattern of East-West relations it is essential that some hard thinking be carried out about the relationship between East-West commercial relations and East-West political and military relations. Neither the Council nor the Commission are at present able to do this, but Parliament, through an "initiative report", could do so. Your Rapporteur, for one, would consider an initiative in this sense to be of great value to the Community as a whole and to other allied Western countries.

117. Your Rapporteur is aware that if Parliament continues to develop an active interest in foreign affairs this might provoke criticisms from the European and Atlantic international parliamentary bodies which have traditionally concerned themselves with these questions. But in your Rapporteur's view it is clear that the European Parliament should be the parliamentary forum in which all aspects of the work of the Nine - both within and outside a strictly Community framework - should be examined and debated. This consideration is particularly significant in moving towards "European Union" and should be the over-riding consideration in justifying Parliament's widening of its scope for parliamentary control.

#### Defence Cooperation

118. Whereas the links between the Foreign Ministers and Parliament's Political Affairs Committee and Parliament's participation in association and trade agreements through the "Luns" and "Westerterp" procedures have given the European Parliament a foothold in the early stages of the development of a common foreign policy by the Nine, no comparable situation exists with respect to defence cooperation. This is mainly due to the simple fact that the Nine have not yet acted as an entity in European defence cooperation.

119. Nonetheless, as stressed earlier, a "European Union" must logically include defence within its scope. Further, paragraph 8 of the European Identity Paper agreed at the Copenhagen Summit of 14 December 1973 stated: "The Nine, one of whose essential aims is to maintain peace, will never succeed in doing so if they neglect their own security." So long as European defence cooperation continues to develop outside a Community framework or outside "parallel" cooperation by the Nine, parliamentary supervision can be left to the WEU and North Atlantic Assemblies. If and when, however, the Nine create some form of European defence entity the European Parliament must be ready and able to develop parliamentary control over its work in a similar manner to the way in which it has started to develop parliamentary control over the political cooperation process.

120. In your Rapporteur's view it would be preferable for the scope and competences of the Nine in both the political and defence cooperation fields to be laid down in new treaties, in which the institutional role and responsibilities of Parliament would be formally spelled out in detail. If, however, political and defence cooperation develop as "parallel" activities it will be for Parliament itself to stake out its role in controlling cooperation in these two fields.

#### Economic and Monetary Union

121. Finally, it may be useful to examine how Parliament might fit into the development of economic and monetary union. During the inevitably progressive convergence of economic policies over time it is hoped that the fundamental relationship between Parliament and the Commission concerning economic policy will gradually change in the sense of the Resolution adopted by the Council and the Representatives of the Governments of the Member States on 22 March 1971, of which paragraph 4 of clause 3 stated: "The Community policies implemented within the framework of economic and monetary union shall be subject to discussion and control of the European Parliament."

122. The "Werner Report" of 1969 on which the resolution was based suggested a different line of approach since it proposed 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 economic policy of the Community." According to the "Werner Report" this "centre of decision for economic policy will be politically responsible to a European Parliament. The latter will have a status corresponding to the extension of the Community's tasks, not only from the point of view of the extent of its power but also having regard to the method of election of its members." Your Rapporteur wishes to reject, at least as far as he himself is concerned, any notion that this "centre of decision for economic policy" could be anything other than the Commission.

123. Parliament's resolution of December 1970 on the "Werner Report" emphasised 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." Since, however, the prospects are for only a gradual movement towards economic and monetary union the proposals made in the resolution of the Council and the Member Governments and in the "Werner Report" may need to be reassessed in the light of changing circumstances and attitudes towards economic and monetary union.

124. Your Rapporteur realizes that apart from political cooperation, defence cooperation and economic and monetary union, there are a number of other new fields over which Parliament could appropriately try to develop a degree of control. But in the present chapter your Rapporteur has considered it impractical to go beyond these three subjects.



## VIII

### CONCLUSIONS AND SUMMARY

125. Since your Rapporteur has covered a great deal of complicated subject matter in this report it may be useful for him to summarise briefly, in this chapter, the main conclusions drawn in the separate chapters of the Report.

126. Your Rapporteur wishes to emphasise, once again, that Parliament will never play an entirely satisfactory role within the Community framework until it is possible for it to develop a real degree of control over the Council's activities. Some of the proposals which are summarised in this chapter reflect this aim. But in the short-term Parliament must also try to help re-establish the Commission's political influence and initiative, which would, in turn, give greater reality and significance to Parliament's "supervision" or "control" of the Commission.

#### Decision-making and Parliament

127. In Chapter II your Rapporteur analyses the "Luxembourg agreement" and makes proposals concerning:

- (a) Summit meetings (paragraphs 17, 18 and 19)
- (b) Resolutions (paragraph 23).

128. Your Rapporteur draws attention in Chapter II to the possibilities that exist to define policies in new fields, within the scope of the Treaties of Rome and Paris by using Article 235 of the EEC Treaty (paragraphs 27 and 28).

129. Your Rapporteur also proposes in this Chapter, that the new method of decision-making he outlined in his Opinion on Mr Spénale's Report on strengthening the budgetary powers of Parliament (PE 33.890) of October 1973, and which is already, as far as the concertation procedure is concerned, being applied by Parliament and Council, be applied not only to proposals for Acts with financial implications but for all legislation proposals. The introduction of this system would probably require Treaty changes in Article 236 of the EEC Treaty (paragraphs 31-33). Additionally, your Rapporteur proposed that Parliament should exercise a power of initiative, concerning legislation, analogous to "Private Members Bills" (paragraph 30).

### Control over the Commission and Relationships with the Council

130. In Chapter III your Rapporteur suggests ways in which Parliament's main instrument of control over the Commission, the motion of censure, might become a more flexible and sophisticated weapon (paragraphs 38-40) and discusses ways in which Parliament might participate in the appointment of members of the Commission (paragraphs 41-43).

131. Your Rapporteur emphasises the importance of developing public "hearings" as a regular practice on the part of Parliament's Committees (paragraphs 44-48). He comments on the General Report (paragraphs 49-51) and the tabling of questions to the Commission (paragraph 52).

132. Your Rapporteur stresses that Parliament should seek to establish a much closer relationship with the Council, and expresses the hope that the Council might agree to accept majority voting for most decisions which would give meaning to the Commission's power of initiative and significance to Parliament's relationship with the Commission (paragraphs 54-56).

133. Your Rapporteur expresses the hope that the Council might become involved in "hearings" held by Parliament (paragraph 57) and also suggests that the President of the Council should agree to receive the President of the Parliament whenever the latter is requested by Parliament to present his views on a particular question (paragraph 58).

### Budgetary Control

134. In Chapter IV your Rapporteur develops the proposal that Parliament's Committees should establish Sub-committees responsible for examining, in detail, the budgetary implications of all proposals of the Commission within their parent Committees' fields of competence. The function of the budgetary Sub-committees would be two-fold. First, they would be expected to examine all the financial details of proposals for Acts with financial implications. Second, they would advise their parent Committees concerning the medium-term development of the Commission's policies within the relevant sector. In view of the work of the budgetary Sub-committees, parent Committees should be able to assess and influence the major policy options open to the Commission in the relevant sector. The budgetary Sub-committees should make use of public "hearings" wherever appropriate in their work (paragraphs 59-72).

135. Your Rapporteur suggests that the Committee on Budgets should give a second opinion on the budgetary implications of all proposals of the Commission for an Act with financial implications at a late stage in the deliberations of the competent Committees (paragraph 73).

136. Your Rapporteur suggests that the Commission should provide, each year, a five-year projection of its budget so that Parliament's Committees can assess how far planned expenditure corresponds with political options and priorities in their fields (paragraphs 74-76).

Relations with the Court of Justice, the Court of Auditors, the Economic and Social Committee and Regional Policy Bodies

137. As regards the Court of Justice, your Rapporteur proposes that a specific reference to Parliament be inserted into Article 173 of the EEC Treaty to enable Parliament to bring an action before the Court - within the context of Article 173 - on the same basis as a Member State, the Council or the Commission (paragraphs 78-79). He also proposes a re-wording of Article 174 of the EEC Treaty (Article 148 of the Euratom Treaty) (paragraph 80).

138. Your Rapporteur draws attention to the opportunity which Parliament has of intervening in cases before the Court of Justice and recommends Parliament to intervene in those cases in whose results it has an interest. (Paragraphs 81-84).

139. Your Rapporteur proposes that the nominees of Member States for the positions of Judges and Advocates-General should be interviewed in the form of "hearings" by Parliament's Legal Committee, it being for Parliament as a whole to confirm or re-confirm that appointment, before their final appointment by "common accord" of the Governments of the Member States (paragraph 85).

140. As concerns the Court of Auditors, your Rapporteur makes suggestions concerning the appointment of Members of the proposed Court, and outlines ways in which the Court should be accountable for its operations to Parliament (paragraphs 86-87).

141. Your Rapporteur suggests a systematic exchange of draft opinions between Parliament's Committees and the Economic and Social Committee concerning matters on which both bodies have to give the Council an opinion. He also suggests that experts of the Economic and Social Committee should inform Parliament's Committees of their findings, concerning questions on which both Parliament and the Economic and Social Committee are due to give opinions to the Council, at public "hearings" arranged by Parliament's Committees. (paragraph 88).

142. As regards the Committee for Regional Policy and the Fund Committee which it is hoped will be established in the near future, your Rapporteur suggests that the Committee for Regional Policy should report directly to the European Parliament, as well as to the Council and to the Commission, on the results of its work in view of an annual debate on regional fund expenditure (paragraphs 89-91).

### External Relations

143. Your Rapporteur proposes, in Chapter VI, a new procedure to apply both to association and trade and cooperation agreements, which would include an "orientation" debate in Parliament before the Council gives the Commission a mandate, and also the introduction of a "ratification" stage (paragraphs 92-104).

### Scope for Parliamentary Control

144. In Chapter VII your Rapporteur stresses that a meaningful "European Union" must include foreign policy and defence and he points to the need for Parliament to ensure that as the Nine develop foreign policy and possibly defence cooperation machinery Parliament must, step by step, ensure that this is accountable to itself (paragraphs 105-106).

145. As far as the political cooperation process is concerned your Rapporteur considers that Parliament should hold an annual debate on political cooperation on the basis of a printed report submitted by the Council (paragraphs 108-110). Further, your Rapporteur suggests that Parliament increase its involvement in political cooperation by following up the proposal made in the Second Report on Political Cooperation that Parliament might make suggestions as to questions which could suitably be considered by the Foreign Ministers of the Nine (paragraph 111).

146. Your Rapporteur stresses the right of Parliament to devote "initiative reports" to foreign policy issues (paragraph 115).

147. Your Rapporteur points to the need for Parliament to develop control over any European defence entity that may be created at the level of the Nine (paragraphs 118-120).

148. Finally, your Rapporteur examines how Parliament might fit into the development of economic and monetary union (paragraphs 121-123).