

Ref: ip/95/465
95/05/10

422.32

COMMISSION ADOPTS REPORT ON THE FUNCTIONING OF THE MAASTRICHT TREATY

The European Commission has today adopted its report on the functioning of the Treaty on European Union. The report is the Commission's response to a request made by the European Council in Corfu to the various European institutions for their own evaluation of the way the Treaty has operated.

It constitutes a first contribution to the work leading up to the Inter-Governmental Conference of 1996.

The report itself is preceded by a preamble which lays out the main guidelines which the Commission believes should be followed within the framework of the IGC. This preamble, entitled "Preparing Europe for the Twenty-First Century", as well as the conclusions of the report, are attached to this IP note.

Preface

Preparing Europe for the 21st Century

This report by the Commission is its response to the mandate of the Corfu European Council that the Community institutions review the operation of the Treaty on European Union. It is the first stage in a long and delicate process. It takes stock of the operation of an instrument that has been in force for only eighteen months. The fact that in the run-up to the 1996 Intergovernmental Conference the institutions are each reviewing their collective modus operandi is a welcome step. Practical proposals on amendments to the Union Treaty will follow in due course.

The 1996 deadline was set in 1991. At that time the Union Treaty was a bold response to a novel situation. Objective analysis shows that it is better than its reputation would suggest. It has the merit of setting out a comprehensive approach to European integration, rather than a purely economic one. It has enhanced the European Parliament's powers, consolidated the Commission's legitimacy, launched Economic and Monetary Union, and generally reinforced the Union's capacities. It has mapped out the path to a stronger Union presence on the world political scene.

Acknowledging the Treaty's strengths, however, also allows us to identify its weak points and the shortcomings in its implementation. Through its critical analysis the Commission will outline the path which it believes should be followed during the Intergovernmental Conference in terms of both form and content. Institutional questions are obviously very important in a Community governed by the rule of law, but they should not blind us to the fundamental issues.

Two major challenges for Europe

The 1996 Intergovernmental Conference will be a key encounter for Europe and its future. The outcome will determine the shape of things European as the 21st century dawns. Two factors are especially decisive .

First, the Union's internal context has changed. The Maastricht Treaty ratification debate revealed that there was still a degree of scepticism about European integration. Europe is not easy for people to understand; many do not see what it is about. The same problem can also arise within an individual country, where the citizen may not always realize what policies are being followed in his or her name, or why. The distance between the citizen and the place where decisions are made, means that the problem is more acute in the Union, however.

So the first challenge is immediately obvious -- to make Europe the business of every citizen. The emergence of open debate, covering all points of view on Europe, is in fact a happy opportunity : Europe is no longer deciding on its future behind closed doors.

The Commission does not regard the Union Treaty's objective of a Community closer to the citizen as mere an empty formula, but as a categorical imperative which guides its actions.

The Commission will be listening to the views of ordinary men and women, and looking for common European ways of combatting unemployment, safeguarding the environment and promoting solidarity.

Here, as elsewhere, the Commission will try to speak for the general interest.

The Commission is convinced that the solution to today's problems needs firm action at European level. None of our Member States can truly tackle the problems of unemployment and pollution on its own. Organized crime cannot be resisted by forces which are dispersed; above all, there can be no effective foreign policy without the existence of joint action at the Union level.

This does not mean that everything should be centralized. Subsidiarity means working out the right level for most effective action on whatever question is conceived. That level may be local, regional, national, european or in some cases even world-wide.

The context has altered not only within the Union. The international context has changed even more radically. The historic shock waves that took place in 1989 -- on the Union's very doorstep -- has not come to a halt. The changes following the fall of the Berlin Wall have borne fruit. The new democracies in Central and Eastern Europe have made tremendous efforts, and they have confirmed their attachment to the values that are at the very basis of the Union. The Union, for its part, has committed itself to the integration of these countries.

Herein lies the second challenge. How are these countries to be welcomed into the Union without striking at the foundations of all that has been achieved in forty years of European integration? How, in other words, can we ensure that enlargement will not multiply our weaknesses but unite our forces? How can we enhance our capacity to take decisions and act when our diversity becomes more pronounced? Enlargement must represent a new arrangement worked out with our eyes open. We have to be aware of its implications for the institutions and policies of the Union. The Commission is convinced that there is an answer to these questions. There is no compelling reason why an endeavour based on a spirit of openness and solidarity should mean weakness and dilution : enlargement and deepening are perfectly compatible.

If these two challenges -- making Europe the business of the citizen and making a success of future enlargement -- are to be taken up, we must begin by reminding ourselves of the values and successes of European integration in the past.

The achievements of four decades of European integration

In the 1950s, as the principles which were to lead eventually to the signing of the Treaty of Rome were starting to take shape, the war was still in everyone's mind. The deep psychological scars which it left behind helped to create a consensus as to the basic objectives of European integration: the future would have to be different from the past.

And the future has indeed turned out to be very different from the past. Europe has been at peace. Despite the tragedy of unemployment, and the social exclusion which is tearing at the fabric of our societies today, we

must not forget that since the 1950s Europe has been through a wholly unprecedented period of development.

In setting up a Community designed to last indefinitely, equipped with its own institutions, enjoying legal personality and internationally represented in its own name, the Member States have given their allegiance to an "organization of states" which is governed by legal provisions particular to the treaties under which it was set up, a fact which makes it fundamentally different from the organizations established by traditional international treaties. They have pooled their sovereign rights and created a new legal order, involving not just the Member States but also their citizens, in the specific fields concerned.

Thus there has sprung up a Community based on law. The states of which it is composed, whether big or small, enjoy equal rights and dignity. The Union which brings them together respects their different identities and cultures; but those differences do not stand in the way of their ability to take decisions and act. This is the fruit of an institutional system with many strengths: thanks to the principle of subsidiarity, it strikes the proper balance between the Union, the Member States and the regions, it adds a new source of legitimacy common to the peoples of Europe; and, lastly, it guarantees the effective application of Community law under the review of the Court of Justice. Within this system the Commission plays an indispensable role, acting as the driving force through its right of initiative and its position as guardian of the Treaty. This right of initiative must be preserved intact, if the inevitable confusion and lack of overall direction which would result if there were multiple competing sources of initiative, is to be avoided.

This Community is also a Community based on solidarity: solidarity between Member States, solidarity between regions, solidarity between different parts of society, and solidarity with future generations. The European model forges a fundamental link between the social dimension, human rights and civic rights.

This process of integration and the particular approach which it has followed have been keenly watched all over the world. Often, they have served as models for the regional groupings now coming into being in every corner of the globe. It can be said that Europe, the stage for the two greatest conflicts of the century, has -- in creating the Community -- invented a new form of government in the service of peace.

That is the Community's real achievement. Safeguarding it is vital for the states which form the European Union today and those which aspire to join it. But the progress we have seen since the 1950s has been made only by dint of constant effort; and the lesson of history is that it takes less effort to demolish than to construct and that no achievement is ever final. Merely pointing to past achievements, then, is not enough.

As always in the successive stages of building Europe, what will be needed is determination from the Member States and -- more and more -- determination on the part of Europe's citizens: they must make their voices heard in the ongoing task of European integration which concerns them so directly.

A twofold objective: democracy and effectiveness

As we look at the analysis in the Commission's report, two main elements emerge which will have to serve as guiding lines for the work of the forthcoming Intergovernmental Conference:

- the Union must act democratically, transparently and in a way people can understand;
- the Union must act effectively, consistently and in solidarity. This is

obvious when we are talking about its internal workings, but it must also be true in its external dealings, where it will have to bring a genuine European identity to bear.

These, of course, were the objectives before the original drafters of the Treaty of Maastricht, but a look at the way the Treaty works in practice will show that a great deal still remains to be done. The prospect of a Union expanded to include 20 Member States further underlines that necessity.

Democracy forms part of the very essence of the Union, while effectiveness is the precondition for its future. That is why those are the two criteria for assessing how the Treaty is working at the moment : and that assessment, in its turn, will produce the major guidelines the Commission will follow at the coming Intergovernmental Conference.

One of the Treaty's basic innovations in terms of democracy is the concept of European citizenship. The object of this is not to replace national citizenship, but to give Europe's citizens an added benefit and strengthen their sense of belonging to the Union. The Treaty makes citizenship an evolving concept, and the Commission recommends developing it to the full. Moreover, although the task of building Europe is centred on democracy and human rights, citizens of the Union have at this stage no fundamental text which they can invoke as a summary of their rights and duties. The Commission thinks this gap should be filled, more especially since such an instrument would constitute a powerful means of promoting equal opportunities and combating racism and xenophobia.

The Commission is delighted that the Union's democratic legitimacy has been strengthened. Making the Commission's appointment subject to Parliament's approval has been an important step in the right direction. The increase in Parliament's legislative powers is another welcome development.

But as decision-making has become more democratic, it has also become complex to an almost unacceptable degree. The twenty or so procedures in use at present should be reduced to three -- the assent procedure, a simplified codecision procedure, and consultation. We must put an end to the inconsistencies and ambiguities which have so often sparked conflicts over procedural matters.

In addition to democratic control at the level of the Union, we need to find a way to involve national parliaments more directly and visibly in controlling and guiding the national choices that apply to the Union.

More generally, we need to dispel the obscurity which has descended on the Treaties as a result of successive additions being superimposed one on another. The time has come to simplify matters, drafting the whole text anew to make it more comprehensible. This need for transparency is both a practical and a political necessity.

In the same spirit of openness, the principle of subsidiarity, which took pride of place in the Union Treaty, has begun to change the attitudes of the institutions. Debate on the distribution of powers and the grounds for introducing each new proposal is becoming more regular. But we must go even further. All too often the concept of subsidiarity is put forward for specific or short-term ends as a way of diluting the Union. Yet subsidiarity can also be applied positively, to justify measures which are better taken collectively than in isolation. The full political significance of subsidiarity, as a commitment by the Member States and the institutions to find the best way of serving the citizens of the Union, needs to be underlined.

The legitimacy of the institutions also needs to be strengthened. In this context, the Commission believes that Parliament should have the right to give its assent to any amendment to the Treaties.

Lastly, a particular effort should be focused on making our institutional machinery more effective. In the Commission's view, this means paying special attention to the common foreign and security policy and to justice and home affairs. Security at home and abroad are indeed legitimate priorities for every citizen.

The very fact that two different working methods -- the Community approach and the intergovernmental approach -- coexist in the same Treaty is a source of incoherence. Experience has confirmed the fears previously expressed on this subject. The single institutional framework which was supposed to ensure harmony between the various "pillars" of the Treaty has not functioned satisfactorily. The proper lessons have to be drawn.

The experience of the common foreign and security policy has been disappointing so far, although we should be wary of making final judgments after only 18 months of its existence. However, the fact is that the possibilities have not been used to best effect, owing to the weaknesses of the Treaty as well as over-restrictive interpretation of its provisions.

The Treaty sought to establish greater consistency between political and economic objectives of the Union, but this has not been fully achieved. Adjustments will have to be made so that overlap between different instruments does not lead to paralysis.

The Union must develop a genuine common foreign policy commensurate with its economic influence and equipped with effective decision-making machinery; this cannot be achieved through systematic recourse to unanimity.

The Treaty laid the foundation for such a policy, and the forthcoming conference should be used to erect an adequate framework for a genuine common security and defence policy, by building up the capabilities of the Western European Union and linking it to the existing common institutions.

Cooperation in justice and home affairs has been ineffectual, and not only because of the lack of coherence in the institutional framework. The instruments available are inappropriate, and the problem is compounded by the cumbersome decision-making process and a complete lack of openness. The Intergovernmental Conference will offer an opportunity to undertake a radical overhaul of these arrangements.

The reflections set out above show that the main issue during the conference will not be an increase in the Union's powers. The Treaty of Maastricht added a number of powers which make the Union a much more ambitious undertaking than it was in the past. One example is economic and monetary union: here the path has been mapped out and there should be no renewed discussion on the provisions agreed. The recent turbulence on the currency markets merely serves to underline how vital this is.

The main focus will have to be on ways of improving decision-making mechanisms. The increase in the number of states and practical considerations ought naturally to lead to wider use of the majority rule; this will be even more necessary for future enlargements. However, it is absolutely vital that we preserve the nature of the Union as a true community of states and peoples where there is no inbuilt majority or minority.

Further enlargement will not only require the Union to strengthen its decision-making capacity, but will also force us to look more closely at the possibility of different speeds of integration. This concept already exists both in the context of economic and monetary union and in the system set up under the Schengen Agreement -- although the latter regrettably still remains outside the Community framework. There is nothing unusual in allowing some Member States a longer period to adjust to certain policies. But it must, in the Commission's view, be done within a single institutional framework and must centre on a common objective. Those states must play

their part by not blocking any of their partners who wish to move ahead more quickly.

Permanent exemptions such as that now applying to social policy, which in the last analysis have had the regrettable effect of excluding the Social Charter from the Treaty, create a problem, as they raise the prospect of an a la carte Europe, to which the Commission is utterly opposed. Allowing each country the freedom to pick and choose the policies it takes part in would inevitably lead to a negation of Europe.

These, then, are the Commission's first thoughts on the forthcoming Intergovernmental Conference.

The Commission is proposing a Europe in which the different tiers of authority cooperate democratically and effectively to help solve the problems affecting ordinary Europeans.

We want to see a strong and independent Europe, taking up its rightful place in the world. Strength requires internal cohesion. Europe must be much more than the sum of its parts.

In the new international situation Europe's role as a pole of stability is more important than ever. That is what is expected of us, but for the moment -- as war continues to claim more victims on our continent -- we are unable to provide it. Europe must speak with one voice, if major challenges are to be tackled effectively.

We want to see a Europe whose people recognise themselves and each other, precisely because of their conviction that an active community with shared values is the key to a peaceful and prosperous future, and to a juster society for all.

The Commission will make every effort to fulfil this ambition. It has set itself the task of demonstrating the importance and the potential of this goal for ordinary Europeans and ensuring that the Member States and the institutions are guided by a common interest. In doing so, it will be fulfilling its duty as "guardian of the Treaty".

(provisional translation)

CONCLUSION

170. The Treaty on European Union is composite in nature. It was initially intended to introduce economic and monetary union, as a complement to the single market. In response to the major upheavals that struck Europe at the turn of the decade, it then became important to give consideration of further steps towards political union. The Treaty undoubtedly shows signs of these mixed origins.

Notwithstanding the confusion and the fears, together with a background of economic difficulties, the Treaty was endorsed by the people and parliaments of first twelve and then fifteen different countries. This would suggest that it struck a suitable point of balance.

The Treaty on European Union is innovative: it lays the foundations for a real union which contains the essential components of a political edifice which has no equivalent.

The finding of this report is that the Treaty is good in parts.

171. On some essential points the Treaty has produced substantial benefits:

- Economic and Monetary Union has entered the second stage on schedule.

Here the Treaty is not just a series of statements of principle but a set of instructions for the introduction of a single currency by the turn of the century. The credibility of this grand venture is now established. The recent upheavals on the foreign exchanges, far from calling it into question, make it more necessary than ever. Economic and Monetary Union is also an example of individual Member States advancing at their own pace towards an agreed objective.

- The Union has functioned more democratically, mainly because of the enhanced role played by the European Parliament. Its approval of the Commission strengthens the latter's legitimacy. The new codecision procedure has proved operational and effective, in conjunction with qualified majority voting in the Council. It contains the principal ingredients of a balanced legislative regime.

172. The Treaty also has its shortcomings, which are of various kinds:

- (a) Some are probably not too serious because they may be the result of the unavoidable running-in period of a Treaty which has not been in force for very long. These would include certain shortcomings with the new, and indeed promising, concept of Union citizenship: implementation has been far from complete and contrasts sharply with the expectations generated.

Some of the limitations of the foreign and security policy can also be placed in the same category, this policy requiring the development of concerted practices, the ability to analyse situations jointly and systematic searching for the common interest.

- (b) Other inadequacies are the result of the failure to apply the Treaty. These have nothing to do with the Treaty itself, which has potential that has not been exploited either by the Member States or by the institutions. For instance, the possibility which exists of taking decisions by qualified majority in areas covered by intergovernmental cooperation has never been used.

The common foreign and security policy is the flagship area in which this regrettable phenomenon has developed. The loss in terms of impact and identity on the international scene is considerable and, the cost in opinion public far too high.

The conclusion this suggests is disturbing: minimalist interpretation or the refusal to make use of all the possibilities of effective action is subverting the true spirit of the Treaty.

- (c) The Treaty also has some real structural weaknesses.

The many different types of procedure which exist, the result of successive compromises, detract from the effectiveness of decision-making, make the Treaty difficult to understand, and make it unclear who is responsible for what. The complexity of the Treaty's structure and of its decision-making systems, together with the general lack of transparency, are obvious handicaps.

The agreement on social policy between fourteen Member States is a dangerous precedent for the operation and cohesion of the Union in so far as all the Member States do not share the same objective.

The serious inadequacies of the provisions on justice and home affairs also belong to this category: neither the legal instruments provided nor the administrative structures set up appear capable of satisfying the need for coordination in this area.

173. The Commission therefore has to express two concerns:

- first, the-less-than-convincing experience with intergovernmental cooperation under the second and third pillars suggests that there can be no question of trying to accommodate further enlargements with the present arrangements for their operation;
- moreover, it is not certain that the Treaty has actually brought the Union closer to the general public: the subsidiarity principle has in some instances been used for other than its intended purpose, and there is still a shortage of openness in the fields of justice and home affairs.

174. The 1996 Intergovernmental Conference will be the opportunity to make the necessary adjustments. But until the Treaty has been amended, its provisions will continue to apply and the Commission will remain its guardian.

For the moment, it has to be applied to the best possible effect. Each Member State, and each institution, can help to improve the operation of the existing system by rediscovering the will and the imagination that constructive collaboration implies.

This is the spirit which the Commission would like to see prevail, both in the application of the Treaty provisions and in the preparation of the 1996 Intergovernmental Conference.
