

Report on European Institutions

***Presented by
the Committee of Three to the European Council
(October 1979)***

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Foreword

On 5 December 1978 the European Council entrusted us with a mandate to consider adjustments to the machinery and procedures of the Community institutions. The full text of the European Council's mandate is appended to this Report as Annex 1. We shall explain in the body of the Report the practical conception of our task and of its limitations which has guided us in our work. There are, however, two points we should like to make here. First, we understood the mandate to mean that we should not make proposals which demanded Treaty amendment. Secondly, we regarded the European Council's reference to 'specific proposals... which may be implemented swiftly' as a determining factor in deciding the character of the proposals we should make. We have however permitted ourselves certain wider reflections in the final chapter of our Report.

Our Committee first assembled in Brussels on 18 December 1978. Since then we have visited all the Member States of the Community and have had discussions with Heads of State and Government and with Foreign and other Ministers. We have held meetings with the then President of the European Parliament, the President of the Commission, the European Court of Justice, the Economic and Social Committee and the European Court of Auditors, and also with the Committee of Permanent Representatives and the Council Secretariat. We have met the Committee set up under Ambassador Spierenburg to study the functioning of the Commission. We have also had discussions, separately, with many others including Members of the Commission, officials of the Commission and of Member Governments and many other individuals. We have received a number of written representations.

We are grateful to Heads of State and Government for devoting considerable time to explaining to us their purpose in inviting us to undertake this responsibility. We should like to thank them and other members of the Governments and the institutions and organs of the Community who contributed to our work for the hospitality with which they received us, and the frank and thoughtful manner in which they expressed their views. We are grateful to all the many other individuals and organizations who offered their ideas and expertise. Our special thanks

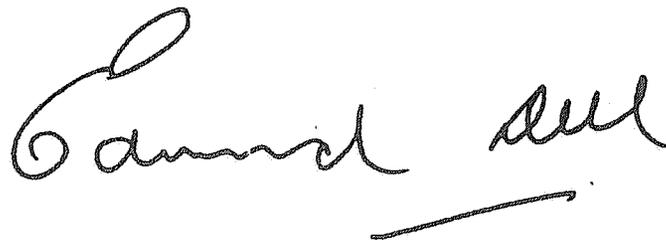
are due to the members of the Council Secretariat, particularly Mr Paul Guében, who supported us in the organization of our tasks; and to our assistants Alyson Bailes, Philippe Petit and Carlo Trojan, without whose dedicated work this Report could not have been completed by the date required by the mandate.

With these words of explanation, acknowledgment and thanks, and on our own entire responsibility, we present our Report to the European Council.

October 1979

A handwritten signature in black ink, appearing to read 'Biesheuvel', with a long horizontal stroke underneath.

Barend Biesheuvel

A handwritten signature in black ink, appearing to read 'Edmund Dell', with a horizontal stroke underneath.

Edmund Dell

A handwritten signature in black ink, appearing to read 'Robert Marjolin', with a horizontal stroke underneath.

Robert Marjolin

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I. Introduction

We have been asked to report on the adjustments to the machinery and procedures of the institutions which are required for the proper operation of the Communities, and for progress towards European Union. This mandate reflects, as we see it, both a hope and a concern. The hope is that the European Community, in the changed circumstances brought about by the accession of new States, direct elections to the European Parliament and the development of the European Monetary System, will be able to deepen and extend co-operation among its members; and that the goals laid down both in and beyond the Treaties can be brought nearer realization and new agreed objectives added to them. The concern is that this may prove a very difficult task, and that the Community's present methods of functioning, far from allowing the new challenges to be faced with confidence, may be showing themselves inadequate even for the demands of today.

The terms of our mandate require us to seek procedural and mechanical adjustments which will allay the concern and allow the hope to be realized. We must state clearly at the outset that we do not believe a solution can be found in such simple terms. An analysis of the reasons for concern — the failures, omissions and inadequacies in Community performance — will show that their deeper causes are not mechanical or procedural. If the desire of Member States for progress has not been realized despite joint declarations and agreed deadlines, it is not because the structures for implementing the latter did not exist. More important were the political and economic strains that discouraged initiative and limited resources, and the lack of clear guidelines for advance such as existed at an earlier stage. If the general agreements on directions for progress have not been translated into specific action programmes, genuine new 'common policies', it is not because the forums for discussing them were absent. The reasons lie rather in political circumstances and attitudes that sometimes produced conflicting conceptions of the right way forward, and sometimes produced no clear conception at all.

In these conditions the role of the machinery and institutional procedures is a strictly secondary one. The substantive problems may be aggravated when the

machinery and procedures are cumbersome and inappropriate. Our discussions with those experienced in Community affairs show that this has all too often been the case. If so, by correcting what is faulty in the mechanics we may hope to remove one additional and gratuitous obstacle to progress. But we cannot guarantee progress thereby, either in the existing or in the enlarged Community. Progress would require that the Community be able to break through the underlying economic and political constraints which currently constitute the main obstacles to advance, and thus to establish a practical consensus on the path as well as the goals for development. Such a task lies far beyond the scope of our report. In our studies we have, however, been confronted at every turn with the problems of substance as well as procedure that inhibit progress towards European Union, and we have been struck in particular by the gravity of the difficulties likely to face the Community in the 1980s quite independently of its internal organization. We shall offer some thoughts on this in the closing section of our report, after completing our practical proposals.

The first part of this report consists of an analysis of how the Communities are performing at present. To achieve objectivity when dealing with the present-day Community is not easy: the same facts will be seen as cause for reassurance by some, as cause for concern by others. We have limited ourselves as far as possible to the facts themselves, taking account of ideological differences only where they have, by obstructing agreement, proved an obstacle to progress in their own right.

The State of the Community: the Positive Side

The credit side is presented first here because it is all too often overlooked or undervalued. In fact the achievements of the Community are impressive both for their richness and for the unique manner in which they have been obtained. For the Community is a quite unprecedented creation. It may be less than a federation, or even less than a confederation, but it represents a great deal more than a traditional alliance or international organization. In establishing the Community Member States have been ready to transfer important powers, although in a limited number of domains, to the Community institutions; they have done so not just once but repeatedly and across a wide range of what has become Community business. A new legal order has been created and common laws have been extended over many fields of public administration. A major new entity — whose standing is often rated far higher by its external partners than by its own members — has taken its place on the world negotiating scene.

The elements of the Community's unique achievement may be traced in four main fields. First, it is generally agreed that the greater part of the Treaties — which seemed so ambitious when first drawn up — has now been implemented.

The fundamental new creation is that of the common market for industrial and agricultural products, labour, capital and services, which with its remaining imperfections still comes closer than ever before outside the confines of a single State to establishing a homogeneous economic area with uniform conditions for competition. The Community today has become one of the most important single trade blocs in the world. The elaboration of a common competition policy and a common trade policy constitutes, overall, a major work of construction. The same applies to common policies as applied for example in the steel sector.

Secondly, the Six and then the nine Member States have managed to co-operate in many ways not prescribed in detail in the Treaties. In some cases they built on a Treaty provision to go further than the basic text would require: signature of the Lomé Convention, collaboration in international negotiations like the North-South Dialogue, progressive extension of the capital and activities of the European Investment Bank. In other cases they have used Article 235 of the Treaty to launch new policies and create new organs serving the general aims of the Treaty. Examples are the Regional Development Fund, the 'Ortoli' loan facility, the first outlines of a common energy policy, a programme of aid to non-associated developing countries. The European Monetary System is a major new creation employing partly the framework of Community obligation and partly special mechanisms of its own. Finally there are the areas of co-operation developed wholly outside the Treaty: the 'Political co-operation' which takes place in the field of foreign affairs, or the discussions among the Nine on judicial and security questions.

A third very important achievement has been the preservation in very different economic circumstances of what has already been created. In the 1970s the Community found itself plunged into a major economic crisis, both external and internal. It was trying simultaneously to absorb three new members and had no common economic or monetary system on which to base a united front. Despite all this, it managed to survive with its central policies and its political solidarity intact, thus sparing its peoples all the consequences of a breakdown in European trading relations.

Even in the area of institutional performance — whose inadequacies prompted our mandate — there are some positive points to set against all the criticisms we shall be making later. The institutions are dealing with a far greater and more complex burden of business today than in the early years, and on the whole they are getting the necessary work done. In the four years 1975—1978 the Commission presented a total of 2 798 legislative proposals to the Council and withdrew 212 proposals (a balance of 2 586). The Council for its part adopted 2 481 acts. (Of the 431 earlier Commission proposals which were held up for want of a Council decision on 1 February 1979, the great majority had been delayed or set aside for reasons acknowledged by the Commission and only a handful were

subject to serious conflicts of view between the institutions.) The institutional system itself has shown a capacity for fresh growth and innovation. Two amending Treaties have given the European Parliament further budgetary powers and created a new organ of financial control, the Court of Auditors. Direct elections to the Parliament have finally taken place. New forums for discussion and new types of inter-institutional contact, like the conciliation procedure, have been created.

Problems and Anxieties

Since the negative side of the picture helped to inspire our appointment, it has naturally loomed largest in the exchanges of view we have had with member Governments. The problems they have mentioned, and the underlying anxieties we have detected, fall under very much the same headings as the four categories of achievement mentioned above.

Many gaps remain in the implementation of the Treaties. There are major lacunae in transport policy, free movement of capital and financial services and so forth. These reflect the emergence of real practical and political obstacles which have so far proved stronger than the best of intentions; but they still cause serious concern in some quarters. Anxiety is even more widely spread, though for varying reasons, about the 'hard core' of policies that have already been constructed on a Treaty base. Some States are now seriously dissatisfied with their effects and operations, to the point sometimes of querying their basic rationale. Others are distressed by precisely this tendency to criticize what they see as the Community's most essential achievements.

This feeling of insecurity about the *acquis* has not been offset, but rather aggravated, by the performance of the Community in new areas. All Governments have confirmed that their co-operations is not limited to the letter of the Treaties. Besides the explicit aims set out when they first came together, there are implicit joint objectives demanding activity in ever newer fields. Some of these aims were spelt out in considerable detail in the Summit declarations of 1972 and 1974. But attempts to follow this up by the extension or further definition of Community competences have made slow and painful progress. Some results have been obtained, as mentioned above — some of them remarkably quickly. But these various initiatives have not, taken as a whole, fulfilled the intention of the original declarations, nor have they cohered into one or more full-scale 'common policies'. This failure to maintain the momentum of integration is deeply worrying. The tendency to relapse into a static, narrow interpretation of the Treaties can be seen as a step towards the actual dismantling of the *acquis*.

The Community has survived the economic crisis, but it has been able to do very little to combat it. Unemployment, inflation, problems of growth and balances of payments have been constantly discussed in Community forums over recent years. Yet the action taken through Community instruments in this field has been extremely limited. There has been no real overall co-ordination of States' economic, financial and monetary policies. The challenges of the 1970s did not, as might have been expected, furnish a new incentive for progress in this field: instead, States have sought to protect their own industries by special measures which have made the conditions more difficult, not only for the harmonization of economic policies, but for the functioning of the common market itself. A new start is being made now with the European Monetary System. This is an experiment of real significance in both substantive and procedural terms.

On the institutional front, the main complaint is not that the work is not getting done. The problem is the disproportionate effort, in terms of energy, time and money, that seems to be needed to produce even a rather modest output. Apart from the waste involved, the cumbersomeness of the process itself discourages higher productivity. The participants have little time to stand back and examine the justification for and operational efficiency of their proceedings, let alone to discuss the more general directions in which they should be striving.

These problems are exposed most sharply in the Council, as the centre of Community decision-taking. There are three or four times as many Council meetings now as there were in 1958 and the lower levels of the Council machinery have ramified even faster. Yet the significance of the business concluded has not increased in proportion to the volume. Many would say it has declined. Partly a contributory cause and partly an effect of this is the declining authority of the Commission. Within both these institutions and in the web of interinstitutional relations that surrounds them there is a trend to fragmentation and loss of central control. While specialized Councils and working groups have multiplied, the 'General' Council of Foreign Ministers¹ has failed to live up to its traditional task of overall co-ordination. The 13-man Commission has not developed a coherent overall vision of its own which could help to give proportion and direction to the large number of its proposals. This general phenomenon of an excessive load of business aggravated by slow and confused handling may be summed up in the one French word *lourdeur*, which will be used as a kind of shorthand elsewhere in this report.

Naturally these problems have not gone unnoticed. One major practical step has been taken in response: the establishment of the European Council as a regular,

¹ That formation of the Council of the European Communities which is attended by Foreign Ministers can be variously described as the Foreign Affairs Council, the General Affairs Council, the Council of Foreign Ministers and so on. These expressions will be used interchangeably in this Report depending on the context.

thrice-yearly event. Heads of State and Government created this special forum as an escape from the bureaucracy weighing down the other institutions, in order to provide leadership and guidance. They succeeded in this to a remarkable extent, generating and implementing a number of valuable initiatives. But the philosophical uncertainties and practical problems associated with the creation of the European Council have not yet been wholly laid to rest and its relations with the Treaty institutions — including the Parliament — have yet to be properly defined.

The existence of the European Council also contributes to wider concerns about the way in which the Community handles its business today. The increasing variety of forums and procedures mentioned earlier means that Member States more often reach their agreements by methods which depart from Treaty rules and from the traditional framework of Community competence. No clear view has emerged of precisely how these methods will fit in with any model of integration. The lack of consensus about the proper uses of Treaty and non-Treaty methods is made more serious by the smaller States' concern that any departure from Treaty norms may upset the institutional balance and erode their own rights *vis-à-vis* their larger partners.

The Causes

In seeking the causes of these shortcomings, in both policies and procedures, we have not been looking for scapegoats. It would be both irresponsible and defeatist to blame everything on the deliberate ill-will of nations or individuals. Our objective is to identify the historical and material factors of which we have all in some sense been the victims.

The first and most important factor is the profound transformation in the economic and political environment of Western Europe in the last ten years. The period of the 'construction of Europe' in the sixties was a time of sustained growth and relative monetary stability. The Governments of the day were sure enough of their authority to take a gamble or to make a sacrifice for the common good. Since 1970 the pendulum has swung back to inflation and lagging growth, accompanied by severe monetary disturbances. Among the countries which make up the Community, defensive reactions, reluctance to experiment and the jealous guarding of scarce resources were only to be expected. Economic and social adversity have, moreover, tended in some countries to weaken the authority of the Governments themselves and to reduce their room for manoeuvre — precisely at a time when increasing Government intervention in national economies has made the latter more dependent on political will and political possibilities. The remarkable thing in these circumstances is not that the tempo of European construction has slowed down, but that the nine Member States have managed to preserve

their solidarity at all and that the more obvious temptations to protectionism have been avoided.

Even with a more favourable economic background, the Community of the 70s could not have escaped two further types of difficulty: those created by the nature of the subject-matter, and those created by membership.

The subject-matter of Community activity has multiplied and become more complex since the early days — not least because of the successes of the period of construction. The *acquis* created then has to be administered, preserved, further adjusted in the light of current demands or criticisms; when new tasks and policies arise, genuinely new resources must be found to cope with them. The three new members of 1973 brought new ideas of their own and new themes they wanted to pursue. The evolution of the institutional system itself increased the range of business. For instance Ministers now spend far more time communicating with the European Parliament, and in far more different ways, than in the time of the founding fathers. Finally, although the expansion of political co-operation and other consultations among the Nine has not increased the load on the Community institutions as such, it has widened the range of tasks between which the Member Governments must allocate resources, particularly while holding the Presidency.

The new areas of activity now being developed present special problems of their own. The issues to be tackled are ones for which, for the most part, no detailed guidelines can be found within the Treaties, so that no agreed definition of Community competences in a particular field exists at the outset. To establish precisely what the Community should be doing, and what precise role each institution should play in the process, becomes a heavy labour giving plentiful opportunities for dispute. In some cases Member States have not even seriously embarked on the work of definition.

To mention membership as the second major administrative problem is not to call in question the validity of the first enlargement. The accessions of 1973 reflected a political decision taken by all concerned on their own responsibility and — as with the second enlargement — those who willed the act must also will the consequences. But apart from the operational difficulties caused by the simple increase in numbers, the special interests of the newcomers were such as to increase the difficulty of agreement on certain key issues such as food prices, fisheries and energy.

How have the institutions themselves reacted to these problems: the hostile environment, the proliferating subject-matter and number of participants? The verdict must be that, in spite of many useful studies and efforts for reform, they have all too often added to instead of easing the difficulties. The rational response to a

growing burden — concentration of resources, co-ordination, division of labour — has not always been clearly perceived, and where perceived has not always been consistently implemented. In their own machinery as well as in their handling of policy problems, the institutions have been prone to a certain confusion and diffusion of effort. Bureaucratic behaviour, in several areas, has gratuitously aggravated the deeper sources of *lourdeur*.

Scope for Institutional Recommendations

This analysis should speak for itself as to the assumptions on which we have to base our report. It may well be as well, however, to spell out quite clearly at this point what ground we believe we can and cannot cover in our recommendations.

The best institutional system in the world could not have saved the Community of Nine (or one of Six) from the economic crisis of the 70s. No reforms we may suggest now can make unemployment, lagging growth, inflation and the political problems to which they give rise disappear. Yet these are the most fatal obstacles to the 'proper operation' of the Communities today.

What, then, can we hope to achieve by adaptations to the machinery and procedures? The only problem we can really tackle by such means is the fourth of those mentioned above: the extra handicaps imposed by inefficiency and dispersion of effort within the machinery itself. The aim we have set ourselves is to ensure that the institutions and their procedures, instead of aggravating the existing difficulties, create the best possible administrative conditions for overcoming them. In general terms this means ensuring that the priority issues are clearly singled out; that the responsibilities and resources for dealing with them are allocated in a specific and coherent manner; and that results are achieved with the maximum economy of effort. In choosing criteria of this sort, we have set aside the possibility of constructing an ideal, philosophically consistent 'model' of a Community constitution. Such a model may have been relevant in the past and may be so again in the future, but it is not a recipe for helping the Community machine to work better here and now. The adjustments which we shall suggest for that purpose are purely practical and on the whole quite limited in scope. The problem is often not to find good new ideas, but to ensure that good old ones are put into practice.

II. The European Council

Introductory Remarks on the Institutions

It is no part of our task to propose altering the balance of institutional powers as it stands today. We take reality as our starting-point and our aim is to make *every* institution operate as effectively as possible in its present-day role. The relations between institutions are, however, a vital part of this picture. All the organs of the Community are inter-dependent — the triangular process of legislation through Commission proposal, Parliamentary consultation and Council enactment being the classic example — and each institution relies for its daily functioning on the contributions made by others. For each institution, then, good and balanced relations with other bodies are a pre-condition of efficiency.

In this chapter, and in the four that follow it, we shall be examining each organ separately and focusing on its own internal and external problems. But our proposals are based on a conception of the institutions, not as separately acting bodies, but in all their complex relations of inter-action and inter-dependence. It follows that the adjustments we suggest will bear most fruit if each institution uses what greater efficiency it achieves for working in harmony with the other bodies. A certain level of tension and rivalry is natural in every great organization and is indeed a condition for progress. There will be clashes from time to time. The risk of their producing effects which are ultimately more destructive than constructive will be avoided only if all the institutions involved work in the interests of Europe as a whole; and if objectives are sought and found on which all institutions, and all States, can work together.

The European Council: Background

The European Council has existed under that name for less than five years. It is now agreed that it has become indispensable in the overall operation of the Community. It illustrates the Community's capacity for self-renewal in difficult circumstances.

The European Council was created to meet the demands of a period in which the detailed guidance in the Treaties was running out, external circumstances had grown hostile, and the capacity to tackle these problems both of the Council of Ministers and of the Commission had declined. As the Community legal order extended into more and more branches of national administration, Foreign Ministers had ceased to have exclusive responsibility for their States' European policies. Specialist Ministers had developed considerable competence and interests of their own in their respective sectors of Community action — interests which were sometimes potentially in conflict. It was logical that the leaders of the Nine Governments, who could take the overall view and speak for all their colleagues to a greater extent than any individual Minister, should decide to create a forum in which they themselves could deliberate on Community affairs.

The first meetings of Heads of State and Government took place at irregular intervals and were known as Summits. The 'constitution' of the European Council as we know it today was not laid down until the Paris Summit of December 1974. On that occasion it was announced that Heads of Government would meet three times a year and whenever necessary, 'in the Council of the Communities and in the context of political co-operation'. The Heads of Government would be accompanied only by their Foreign Ministers: attendance would be limited as strictly as in a national 'Cabinet'.

Since that time the European Council has met regularly thrice a year, and it can look back on significant achievements. Within the Community framework it has resolved a series of contentious issues posing grave threats to solidarity and progress. It has launched valuable new ventures. It has taken a stand on major world issues. Without the European Council these results would have been obtained far more slowly and painfully or not at all. Its right to exist is, then, no longer challenged.

Yet the launching of regular European Council meetings was accompanied on several sides by fears and by uncertainties. Its existence was thought to call in doubt Community legality, the rights of smaller States and of Treaty institutions; its procedures had to be built up from scratch. Five years is a short time for any new organ to integrate itself into so complex a structure as the European Community, and in some respects the European Council is perceived even now as a 'foreign body'. The philosophical concerns surrounding it have not been wholly forgotten. Some of the ground gained in defining its procedures, by an informal agreement among Member States in early 1977, has been lost again by inconsistencies in application. Its relations with the Treaty institutions have yet to be regularized and developed to their full potential.

In this chapter we shall aim to describe the European Council's role and functions; to define the general principles on which the effective exercise of its role

depends; to consider how its guiding role can develop further; and finally, to review some specific problems in its functioning.

Role and Functions of the European Council

The European Council has three characteristic functions which it alone can perform. It can provide a forum for free and informal exchanges of view between the heads of the Nine Member States. It can deliberate at the same time on matters of Treaty competence, questions of political co-operation, and common concerns which do not yet belong to any framework of obligation. It can generate overall impetus, mobilizing the Community's resources for progress. The fourth task it undertakes — acting as a court of appeal on dossiers referred up from below — is less distinctive, being merely an extension of the Council of Ministers' work, and Heads of Government should be aware of the need not to let it dominate their agendas.

The informal exchanges of view among Heads of Government are held in the greatest privacy and are not designed to lead to decisions or public statements.

The discussions which are designed to produce decisions, settle guidelines for future action or lead to the issue of agreed public statements may produce three, procedurally distinct, types of results:

- guidelines and general directions;
- decisions on matters of political co-operation;
- specific decisions on a matter of Community concern and competence.

From the point of view of Community jurisprudence the European Council is, therefore, a hybrid organ. But the precise relationship of its activities to the Community rules and Treaties has become better defined and understood with the passage of time and working principles have emerged which it is no part of our intention to question or change. Thus, when the European Council follows the first of the three paths above — issuing general guidelines and directions on matters of Community competence — it is clearly acting within the Community framework and creating important political commitments in that context. It must therefore take account of Community procedures but it is not taking decisions with legal force in the sense of the Treaties. It is left to another body, usually the Council of Ministers, to give legal force to the European Council's wishes by taking appropriate legislative and executive measures.

When the European Council acts under the second head its deliberations and decisions have no relation to the Treaties since political co-operation as a whole lies outside the latter.

In the third hypothesis, when the European Council takes a specific decision purporting to be legally binding, it can be regarded under Article 2 of the Merger Treaty as a special formation of the Council of Ministers wielding the normal legislative authority of the latter. It is obliged to observe all the appropriate Treaty rules applying to a Council decision — Commission proposal, publication in the Official Journal etc. There has, in fact, been no recorded instance so far of the European Council acting in this way and it is hard to see the case arising very often in practice.

The Effective Exercise of the European Council's Role: General Principles

The European Council was set up to escape from the *lourdeur* afflicting the traditional Community bodies. It succeeded in this, and restored political impetus and spontaneity to the handling of Community affairs at the highest level, because its own procedures were made as 'light' and informal as possible. The prime requirement for its continued good functioning is to preserve this procedural simplicity and flexibility. Only in this way can it fulfil its role as described above — i.e. to offer something different from and more than any ordinary Council of Ministers.

On the other hand, the European Council cannot operate in complete freedom because the greater part of its conclusions depend on other bodies for their execution. Its meetings are few and short and the subject-matter often very complex: they therefore need careful preparation. These practical considerations impose a certain discipline and certain minimum organizational requirements. The key problem with the European Council is to find the right balance between freedom and discipline, so that the organ can continue to generate impetus, but also transmit it effectively to the rest of the machinery.

This balance is also important as a way of defending smaller States and Treaty institutions against encroachment on their rights. It is hard to guarantee that the European Council itself will not operate at times on a balance of national and institutional powers differing from that in the Treaties. But if the right links are maintained between it and the Treaty institutions which prepare and follow up its work, checks and balances will be available to ensure that the Community structure as a whole is not prejudiced.

The European Council's Guiding Role: a Priority Plan

The proper relationship between the European Council and the Treaty institutions can be deduced from the second principle above. The European Council should not erode the competences of these institutions. It should help them work better, by giving encouragement, coherence and an overall direction to their efforts.

The European Council has not yet realized its full potential in this guiding role. Yet the need for its leadership will be stronger than ever in the next few years. The Community is approaching a point — because of the structure of its financial resources — where conscious decisions must be taken on the scale of and priorities for its spending in future. A consensus must be established on the main lines of policy development, to show the way where the detailed guidance of the Treaties no longer applies.

We propose that the European Council should work out an explicit scheme of *priorities for Community action* in the next few years, which it can adopt before the end of 1980.¹ This scheme should cover all the main tasks for the period in question: not only new ventures but also the maintenance and (where necessary) adaptation of the *acquis*. The list must be precise and practical, a declaration of intent rather than a pious hope. It should indicate not only aims but the immediate paths which should be followed to attain them, and the broad lines on which responsibility should be allocated for their execution. The list will not be fixed or exhaustive, and the European Council should review it as often as it thinks necessary — say, not less than once a year. In this way, the priorities can develop into a kind of permanently available ‘master plan’, against which specific proposals can be measured and in the light of which short-term decisions can be taken.

The Commission must collaborate closely in producing the plan of priorities, and could appropriately produce a first draft for Heads of Governments’ consideration. Parliament should be given an opportunity to debate the plan at some stage. Once adopted, it should be used as a framework for the shorter-term policy and operational plans which we believe each institution should draw up on its own account. The six-month programme of the Council Presidency, discussed in the ‘Council’ chapter below, must be closely based on the European Council’s priorities. The Commission should also take account of them in preparing its own policy programme, although it will develop its own ideas on the proposals needed to achieve agreed goals.²

Working Relations with the Council and Commission

However much it may need the European Council’s guidance, the *Council of Ministers* should not be reduced to a less political role. It plays a role in preparation and execution without which the European Council itself cannot operate. If it is to leave Heads of Government free to do what they do best, it must continue to resolve on its own authority all but the most intractable political dossiers.³

¹ See also our chapter on ‘Enlargement’.

² See ‘Commission’ chapter below.

³ On the Council/European Council relationship see also the ‘Council’ chapter below.

The European Council was at first seen by some as a threat to the *Commission*. By launching new policies it seemed to usurp the latter's right of initiative, and where it resorted to non-Treaty methods it might hamper the Commission in its role as guardian of Community legality. In fact the Commission seems content today both with the existence of the European Council — given its undeniable achievements — and with its own participation in its meetings. In these new surroundings, it is finding new ways to play its traditional role.

The relationship between European Council and Commission has, then, been stabilized over the years. But the Commission has only gradually evolved the right format for its input into European Council discussions, and its papers have sometimes lost impact by the simple fact of arriving too late. There is need for more regular and punctual presentation of Commission documents. The authority with which the Commission's President speaks in European Council deliberations could also be further enhanced. One valuable contribution to achieving this would be a strengthening of the President's authority *within* the Commission. He cannot be a valid interlocutor for Heads of Government unless he can mobilize the whole Commission to follow up agreed objectives. This problem is dealt with further in our 'Commission' chapter.

The European Parliament

So far the European Parliament's only information on the activities of the European Council has come from a report made by the Presidency Foreign Minister after each European Council meeting. It had no direct contact with Heads of Government until the Irish Prime Minister, with his colleagues' endorsement, attended the inaugural session of the directly-elected Parliament at Strasbourg this July.

Given the European Council's present role in the fortunes of the Community, it is not right that this obvious gap in its relations with the Treaty institutions should persist. We propose that the President of the European Council should attend the Parliament in person¹ once in each Presidency. The Foreign Minister can continue to report on the third annual meeting as before. The aim should be to give the Parliament a clear idea of what conclusions Heads of Government have reached and why, and to discuss how other institutions might contribute to the tasks in hand. The Parliament will express its views in the ensuing debate and the European Council should take due note of them. Indeed, in all its work in the Community sphere the European Council should be more alive to Parliament's rights and interests. It is up to the Presidency as well as the Commission to bring such factors firmly to the attention of Heads of Government. Only thus can the

¹ Consideration must be given to the special position of the President of the French Republic.

relations between European Council and European Parliament be placed on a firmer footing of trust and co-operation.

Specific Operational Questions

Frequency of Meetings

No rigid rule on the number of European Council meetings was laid down in 1974. The possibility is open for Heads of Government to meet more often — and presumably also less often — than three times a year depending on the burden of business. The number of meetings for a given year should be decided after conscious reflection, in the light of actual operational needs, at the time when the advance plans are settled.

The Agenda

The quality of the European Council's work depends on limiting the quantity: Heads of Government should be asked to spend time only on matters where they have a clear and characteristic contribution to offer. In practice, discussion at most European Council meetings is focussed on a few issues agreed by all to be paramount, but an effort should be made to identify these issues as clearly as possible at every stage of preparation. If Heads of Government are, nevertheless, presented with an overcrowded agenda the remedy lies with themselves. They should be free *not* to discuss a subject which they consider undeserving of their attention, ill-defined or insufficiently prepared. If they make resolute use of this possibility, none of them should ever need to complain of having been 'bounced'.

Preparation of Meetings

The agreement on European Council procedures reached in 1977 distinguished between different types of work and the different preparations which they required. Such distinctions are fully justified and there can be no single, rigid route for preparation. The 'fireside chats' need hardly any advance work at all except brief notification of the subjects. Where guidance is expected from the European Council, some input from the Community or PoCo machinery as appropriate is required; and if a declaration or resolution is to be issued the text needs to be drafted and agreed so far as possible in advance. These preparations may require input from several parts of the Community machine. Specialized Councils have naturally taken on the substantive burden of preparation for European Council actions in their own fields.

This flexibility and diversity in preparation should remain. At times further elements may usefully be added, such as *ad hoc* meetings of high officials to work on a specific item not 'processed' by the regular machinery.

However, *overall supervision* is also necessary if confusion is to be avoided and any relevant Treaty provisions are not to be overlooked. There must be a single point at which the whole agenda can be reviewed, a reasonable time in advance. Thus States can satisfy themselves that they understand the status and purpose of each item and that preparation, whatever the route used, has been adequate. In 1977 Heads of Government asked *Foreign Ministers* to take on this overall responsibility, and the logic of this is clear. Foreign Ministers are the only Ministers who attend the European Council. They are informed on both Community and political co-operation affairs and have special competence for institutional questions. They have a ready-made source of help in their preparatory work in the shape of COREPER. Over the years, therefore, it has become established practice for the Foreign Affairs Council to meet shortly before the European Council, with preparation for the latter as an item on its agenda. The contributions from other Councils are organized so far as possible to allow a complete review of the agenda at this stage. COREPER in turn prepares the Foreign Ministers' discussion, and is the forum in which the first draft agenda is normally circulated.

We see no need to change this arrangement. It should be reaffirmed and more consistently applied. The most important condition for making it work well is discipline on timing. The aim should be to circulate the first draft agenda three weeks in advance of the European Council meeting. The rule laid down in 1977 that any draft declarations should be circulated at least two or three weeks in advance must be respected. Two weeks should be the minimum for circulation of discussion documents, including those provided by the Commission. Such papers must be available in all the Community's official languages.

Attendance

The European Council's 'Cabinet'-like nature has been successfully preserved so far. Attendance is limited to Heads of Government, Foreign Ministers, the President of the Commission plus one Vice-President, and a couple of observers each from the Council Secretariat and the Presidency who are understood to have recording duties. These arrangements are essential for the proper functioning of the European Council and should be strictly observed. The only change we contemplate is the admission of the junior Minister, if any, charged with a share in Presidency duties (see 'Council' chapter below). There is of course nothing to stop groups of officials, or Ministers, meeting concurrently to do a specific job for Heads of Government while the European Council session is in progress, and such separate meetings are now quite frequent. But they risk creating confusion

and overlap: the Presidency should aim to keep parallel sessions to a minimum, and to define their purpose and mandate so clearly as to rule out duplications of effort.

Follow-up

In the past, the European Council has sometimes been accused of reaching conclusions which are over-vague and offer no firm basis for follow-up. States have sometimes disagreed subsequently about the wording of the conclusions and what they imply. One suggestion made to deal with this problem is that a special secretariat should be set up for the European Council, so that conclusions can be recorded in a precise and neutral way.

As mentioned above, both the Council Secretariat and the Presidency take note during plenary sessions (the 'fireside chat' is not recorded). At an early stage in the proceedings the Presidency circulates a draft set of conclusions which are reviewed both by officials and by Heads of Government themselves before being adopted on the Presidency's own authority at the end of the meeting. Any detailed texts agreed during sessions are inserted as they stand. We are not convinced of the need to change this system or to set up a secretariat. The European Council acts and reaches conclusions in several different ways: to impose a fixed system of recording would risk bureaucratizing and standardizing the proceedings to a point where all freshness and flexibility was lost. But if the present arrangement is to remain, the Presidency must realize what a heavy responsibility its 'last word' on the conclusions implies. If the final version it produces is imprecise or fails to correspond to understandings reached in discussion, Member States will not co-operate in follow-up and the desired results will simply not be attained. To help it achieve the necessary accuracy and impartiality, the Presidency should collaborate with the Council Secretariat, which for its part must live up to this important task.

For the organization of Follow-up, the inverse of the preparatory arrangements applies. The Presidency conclusions are laid before Foreign Ministers, who satisfy themselves that all the action required has been set in hand by the appropriate bodies. It will help if the European Council itself makes clear who its requests are addressed to. This part of the system has generally worked well and does not need to be changed.

The Presidency of the European Council

The idea has been put forward of establishing a longer-term Presidency of the European Council. If the present system of rotation is retained in the enlarged

Community, each Head of State or Government will preside at one — or at best two — sessions of the European Council every six years.

It is to avoid such frequent changes that this idea has been advanced. The European Council's structure, unlike that of the Council of Ministers, is not defined in the Treaty. The Council of Ministers holds many meetings during the six-month Presidency period and is not confronted with the same problem. A change in the Presidency of the European Council would not affect the rotation of the Presidency of the Council of Ministers.

On this hypothesis the President of the European Council, instead of changing every six months, might be designated for a longer period — for instance one or two years — by the members of the European Council. Certain rules of alternation would need to be applied, but there would be greater continuity notably in dealings with the outside world.

We have looked at this idea carefully, and it seems to us that it would present real difficulties in the present state of the Community.

In any event, a certain continuity in the handling of business could be achieved here and now if the President-in-Office asked one or more of his colleagues to take on a particular dossier, under the President's own authority. Below we shall offer the same proposal for the Council of Ministers and its subordinate organs. This sharing of burdens should be an option for the Presidency to use with great flexibility and at its own initiative.

Recapitulation

We believe that good solutions to most of the purely operational problems of the European Council have been found already. We have contented ourselves with reaffirming, and in modest ways reinforcing, the practices we believe essential to preserve the balance between freedom and discipline in European Council proceedings: limited agendas, limited attendance, coherent preparation and follow-up, early circulation of documents, Presidency responsibility for conclusions and so on. It is in the European Council's relations with the other, Treaty institutions that we have found most scope and most need for improvement. Our specific suggestions — preserving a due role for the Council, strengthening the Commission in its collaboration with Heads of Government, establishing direct relations between the European Council and Parliament — are designed to integrate the European Council so far as possible within the normal framework of inter-institutional relations, with all the safeguards that implies. In proposing that the European Council adopt before 1981 a 'master plan' of priorities — making provision both for advance consultation with, and for follow-up by, the institutions — we

have aimed to harness the European Council's full potential for political leadership, so that the whole Community machine may be impelled and guided in the most fruitful directions for progress.

The Choice of Procedures

Because of its hybrid nature — covering both Community and political co-operation matters and other possible forms of co-operation — the European Council is the point at which the problem of choice of working methods, in new policy areas in particular, arises in its most immediate form.

Experience has shown that when the Community, with its increased number of members, tries to make rapid progress in a new direction, the strict procedural rules that apply to actions undertaken within the Treaty may act as a disincentive for some participants and a stumbling-block for all. The subject-matter is often difficult to fit into the familiar legal framework of earlier common policies and it may be hard to find specific Treaty provisions that provide indisputable authority and a legal base for Community action as such. Some States are reluctant to accept binding legal obligations in the early stages of collaboration. It has been said to us that this reluctance can be reinforced by the consideration that any Community legislation in a new sphere may be construed as giving the Community exclusive external competence in that area.

The solution often put forward — use of unorthodox methods and procedures falling short of formal Treaty commitments — needs to be approached with realism and with extreme caution. We have mentioned the widely-felt concern that the spread of weaker forms of commitment could undermine the force of existing common policies, of the Community institutions and ultimately of the Treaty itself. There are more immediate practical problems as well. The careless proliferation of new procedures and types of engagement adds new branches to the machinery, increases the complexity of relations between Member States and thus multiplies the risks of confusion and *lourdeur*. It also increases the difficulty of taking a clear overall view of the range of common activity, and makes it hard to guarantee that links between the various fields will be spotted and work in them harmonized accordingly.

It should be possible, taking account of past experience, to define a role for non-Treaty methods in the enlarged Community that acknowledges their occasional usefulness while avoiding the perils of proliferation. We suggest the following three-point approach.

First, the question of the choice of methods in a new sector must always be settled by a clear and conscious decision after consideration of all the factors. In this

consideration, priority must be given to the possibility of acting under Article 235 of the Treaty establishing the European Economic Community. This Article solves the problem of a legal base by empowering the Council to take appropriate measures to establish policies in areas where they are 'necessary to attain... one of the objectives of the Community and this Treaty has not provided the necessary powers'. Only if the route of normal Community legislation under this Article (which requires unanimity) is clearly impossible, and if the action in question can nevertheless contribute to progress in the Community, should other less traditional methods be contemplated. In these circumstances no solution should be *prima facie* excluded which allows Member States to agree on actions in common.

Secondly, when non-Treaty methods and obligations are adopted, they must not be pursued in isolation from Community affairs in the narrower sense. The European Council is uniquely placed to survey the whole spread of Treaty and non-Treaty co-operation, and Heads of Government — together with the Commission — should keep watch on the development of the various types of activity and exercise a co-ordinating influence as necessary. When, for instance, efforts made in the different frameworks seem to be pulling in contrary directions the European Council should reassert the primary policy objective which all concerned must respect. This co-ordination can be particularly valuable when applied between Community policies and actions taken in political co-operation. Member States often have both economic and political interests in common in a given external issue, and the two types of joint action corresponding to these interests can fruitfully reinforce each other. For maximum effectiveness, a certain flexibility in the joint handling of PoCo and Community considerations should continue to be tolerated below the European Council level as well.

Thirdly, where non-Treaty methods are used it should be clear (except in the case of political co-operation) that they represent a provisional solution, a first phase in the procedures of co-operation. Generally it will be possible to move on at a later stage to the formulation of Treaty obligations which might take the form of the consolidation of several separate efforts in a single common policy. However long it takes, this trend of movement from outside to inside the Treaty should be the normal one.

III. The Council of Ministers

The Community Council of Ministers has a dual nature. As an institution of the Communities it has to fulfil the duties entrusted to it in the Treaties, derives its powers exclusively from the Treaties and has to exercise them according to the procedures laid down therein. On the other hand the Council is, in a significant sense, inter-governmental. It is composed of members of the Governments of Member States. The two phases of Council activity which correspond to this dual nature — the harmonization of national views and interests among its members and the collective legislative decisions which follow — should ideally form part of a single constructive process.

If the Council has not always worked as harmoniously and as productively as this implies, the fault may lie partly with the particular accumulation of burdens it has been made to bear. The sheer amount of business that a nine-man body not in permanent session can cope with is limited, and the output and the whole pace of Community development is bound to be limited in consequence. There has also been a growing tendency to dislocate the two phases of the Council's operation. Far more energy and ingenuity has been expended on the process of negotiation within the Council and the sense of collective responsibility for producing useful results has declined. The mood of the negotiation itself has become narrowly national, and hence more inter-governmental in character. These are symptoms of the general evolution in States' attitudes that has weakened the standing of the more 'supranational' institutions and increased the significance of the Council relative to the Commission within the Community machine.

The Problems

This increased significance has not, however, gone hand in hand with improved performance. The general problem — the excess of effort expended in the Council and its subordinate bodies, and the insufficiency of the results — has been mentioned already. It needs to be analysed in rather more detail here.

The failings of the Council may be identified under four main heads.

Firstly, the sheer burden of business has become unmanageable, and the way in which it is handled has not helped. Agendas are over-crowded and badly organized, making no regular distinction between major items and minor ones. The agreed rules on preparation and procedure are constantly disregarded, causing more waste and misdirection of effort. The Presidency, which should take responsibility for imposing discipline in these matters and more generally for guiding the Council towards early and valid results, has itself suffered all too often from lack of discipline and of coherence. The strong, objective but politically sensitive control from the centre which the rotating Presidency was meant to guarantee has not been achieved with any regularity; complaints of political bias and administrative inadequacy have alternated and sometimes been combined. It is sometimes argued that the power of a bad Presidency to harm the Community is strictly limited, and this may be true so far as damage from sins of commission is concerned. But the real sins of such a Presidency are sins of omission. It fails to provide a coherent working pattern, to inspire the numerous bodies it chairs with a clear understanding of their tasks. It fails to impose discipline in discussion, to focus on the real obstacles and exert pressure for solutions. It fails to assert a sense of realism and proportion and to expose States which are holding up business for inadequate reasons. The disappointing results have spoken for themselves.

Secondly, the Council's position as the main seat of authority in the vertical hierarchy is being eroded. It has surrendered many major decisions — apparently by its own will rather than that of the Heads of Government — upwards to the European Council. It is less often appreciated how far the Council's overall responsibility for decision-making has been compromised by its failure to assert control over low-level working groups. As we shall argue, it is right that much of the technical 'processing' of proposals should be delegated to such bodies, to assist the Council in taking its eventual decisions. But too many working groups today seem to have become autonomous negotiating forums, where quite junior national officials can block progress by appealing to 'political' obstacles which their political masters might well fail to acknowledge. The deficiencies of a weak or incoherent Presidency are magnified at these lower levels, and dossiers may languish there aimlessly for years without Ministers ever having a chance to consider their merits.

Thirdly, there is a problem affecting mainly the Foreign Affairs Council: the loss of collegiate sense arising from irregular attendance. Ministers, if they come at all, may fly in for only part of a session, and those arriving at the beginning can never be sure who they are going to meet and negotiate with. The number of officials present has not been controlled on any consistent rational principle. It is symptomatic that Foreign Ministers have had to arrange regular 'informal' meetings where they actually have some chance of talking to each other: these meetings can perhaps ease, but cannot ever take over, the legislative duties of the Council proper.

Fourthly, the Council structure has suffered a kind of horizontal disintegration as Community business has diverged into a number of separate sectors with a highly-detailed subject-matter and procedural traditions of their own. Specialized Council meetings have multiplied, and under them special preparatory committees of officials have appeared which either duplicate or detract from the original functions of COREPER. No strong co-ordinating force has emerged at Council level to counteract these tendencies. The 'General' Council of Foreign Ministers has ceased to be General either in the sense of directing the work of the separate Councils, or in the sense of providing a forum for the discussion of all major new issues. It retains at least three important functions of its own. It acts as a 'specialized' Council for institutional questions and external affairs; it offers a 'political' forum where certain technical matters of high political sensitivity can be discussed (e.g. nuclear energy); and it takes decisions in a number of sectors where it has been decided not to convene a separate formation of the Council (steel, textiles). But it cannot hope to direct the work of, still less dictate to, other formations like the Agriculture and Finance Councils. Devices like joint Councils¹ and Marlia Reports² have not turned the course of this evolution. The resolution of conflicts among the major formations of the Council can nowadays be attempted only at European Council level.

Proposals for Improvement

Our approach to the problems of the Council can be stated quite simply. It is not the balance of institutional powers which needs to be changed, even if it could be. That balance today incorporates the European Council, a body above the Council of Ministers which necessarily modifies the latter's role. Certain tasks which belonged to the Council at the outset of the Community can, therefore, never be exercised in quite the same way again. But the duties which it retains are still indispensable for progress in the Community. To deal with them no new organizational solutions or management techniques are needed beyond those which have been invented in the course of the Community's evolution, and to which States have often explicitly committed themselves. The real task is to get these procedures enforced, and to make the structures operate to the full extent of their capacity. This cannot be achieved without the *clearer definition, and the consistently more efficient execution, of responsibilities for the management of business.*

¹ Joint Councils of Foreign and Agriculture, or Finance and Agriculture, Ministers have been held in the past and Joint Councils of Foreign and Finance Ministers to discuss budgetary priorities are currently an annual event.

² The 'Marlia' procedure involves the presentation to the General Affairs Council, by the Presidency, of a report on progress made and problems outstanding in other formations of the Council which can serve as a basis for debating the latter.

The Role of the Presidency

In improving the Council's performance, the first priority is to strengthen the Presidency in its dual role of organizational control and political impetus. It is no accident that the functions of the Presidency have been both expanded and more widely recognized in recent years. The strong central management which it can provide offers the most natural means of compensating for the centrifugal tendencies within the Council. It bears the prime responsibility for tackling the spread of specialized business, the ramifying inter-institutional relations, the differing interests and behaviour of Member States. The virtual breakdown in Council work under some particularly 'bad' Presidencies (whether their faults lay in weakness, or an over-autocratic approach, or both) has shown that if the Presidency does not do this job, there is no longer anyone else who can fill the breach.

How can the Presidency's functioning be improved, and made more consistent? The first step must be to recognize that the State holding the Chair has certain *fixed responsibilities* for the management of Council business and the good working of the Community as a whole, and that its prior commitment is to carrying these out.

The second step is to ensure that the Presidency has the *authority* to impose good order and discipline in the work of the Council and its subordinate bodies. This authority, of course, is not absolute but conditional. It is granted to be used in the enforcement of certain rules which all States have understood and accepted in advance. The Presidency itself is also bound by these rules and can be called to order if it neglects them.

The third step is to give the Presidency the organizational and personal *resources* it needs to carry out its tasks. Because of the variations in individual States' capabilities and administrative arrangement, each Presidency must ultimately be left to settle the detailed distribution of its own burdens. But certain general principles can be laid down in this matter, and certain useful possibilities may be identified.

Each of these three points is developed in more detail below.

1. Responsibilities of the Presidency

The formal references to the role of the Presidency, in the Treaties and the Council's Rules of Procedure, are extremely brief. The complex development of its actual responsibilities has been a pragmatic process, reflecting wider trends in institutional development. The following is meant as a practical, not a legal, definition of the main tasks the Presidency should perform —

- (a) It convenes meetings of the *Council of Ministers*. It is responsible for advance preparation of the agenda; for the circulation of the necessary documents; for the allocation of time at the meeting and the conduct of debate; for the formulation and implementation of decisions. The Presidency's basic duty in this process is simply to get results. To do so it must work with technical efficiency, but also exercise a strong and politically sensitive control of the proceedings. It must select for the agenda the items which are most urgent, important and ripe for handling. It must prevent time-wasting and confusion at the meeting itself. It must urge the debate towards conclusions by using the most appropriate combination of the weapons at its disposal (pressure, mediation, compromise proposals, time-limits, voting).
- (b) The Presidency plays a similar role at *the European Council*, where the procedural framework is less rigid but the need for good conduct and organization of business even more pressing in view of the potential importance of the results. The Presidency is responsible for seeing that the agreed practices for preparing European Council meetings are respected. It must conduct the proceedings with the right combination of flexibility and sense of responsibility. It must ensure that conclusions are recorded in proper terms and follow-up organized through the proper channels. (The details are in our earlier chapter on the European Council.)
- (c) Preparation for and follow-up to the European Council depends heavily on good co-ordination of the work of various specialized Councils and other bodies. This *horizontal co-ordination* within the Council machinery is a permanent responsibility of the Presidency. It can only be brought about if the Presidency's own representatives — e.g. the Chairmen of specialized Councils — work themselves in a co-ordinated way. (The methods and limits of this co-ordination are discussed in a separate section below.)
- (d) *Vertical co-ordination* is also a Presidency responsibility, and implies that the Chairmen supplied by the Presidency for bodies below Council level must work to the same rules and to the same ends as the President of the Council himself. The Presidency must enforce the procedures for contact between levels on which good vertical co-ordination depends. For example it must maintain the right relationship and division of tasks between Council and COREPER, and ensure that lower-level working groups are efficiently directed and supervised. (See separate section on vertical co-ordination.)
- (e) In *relations with other institutions* the Presidency must act with efficiency and neutrality as the spokesman of the Council as a whole. Its main duties in this regard are collaboration with the Commission and contact and consultation with the Parliament, including the organization of the Council's joint meetings with the latter (on the Budget and in conciliation). It must also set the right

tone, and find the right procedures, for the Council's relations with a variety of other bodies involved in the decision-making process (including the ESC and Court of Auditors). Where these relations are crucial to the success of the Council's own efforts — as is true *par excellence* of the Commission, but also of the Parliament on conciliable legislation — contact must be maintained not only at Council level but through all the various stages of preparation. This is a further important aspect of vertical co-ordination.

- (f) The Presidency has certain responsibilities for representing the Community in the world at large. Its heaviest burden in the external field is the administration of *political co-operation*. No permanent secretariat exists for PoCo work and the Commission's role is much more limited than under the Treaties. The Presidency is thus alone responsible for the management of business, ranging from the practical organization of meetings to the maintenance of a flow of ideas and initiatives. Even for the largest State, to run the PoCo machine effectively at full capacity means a considerable drain on resources. Efforts have been made in the PoCo framework from time to time to devise ways of sharing or otherwise easing the Presidency's burden. While we do not wish to go into the possibilities in detail, it is clear that any such improvements in PoCo administration would make it easier for each State to shoulder the tasks of the Presidency as a whole and would serve the general aim we have in view.

Presidency Planning

This account has brought out the multiplicity and complexity of the Presidency's duties in the modern Community. One of the greatest problems for a State taking the Chair is to form an overall view of the tasks awaiting it and a coherent plan for handling them. Most countries have tackled this by drawing up a list of 'Presidency objectives' which may be more or less public and more or less explicit. We propose that every Presidency should be asked to do this in future, with two main stipulations. The process should be explicit and governed by certain rules; and the working priorities defined by the European Council, as explained in the previous chapter, should be respected. The Presidency's programme will need to cover new, continuing and recurring tasks in all the main fields of Council business. It should be circulated in the Council for the information of all States and all subordinate and specialized bodies. The text can be revised as necessary later to take account of new developments. Towards the end of the six months the Presidency should be obliged to report to the Council as a whole on the progress made in implementing the programme, across the board, and on any tasks and problems that may remain. The following Presidency should be closely involved in this part of the exercise, to ensure continuity. It is natural and useful that the working programme of the Presidency should be debated in the European Parliament at the start of the six months. The Presidency should inform Parliament again at the end of the period of the progress made.

A further device for systematizing Presidency efforts and allowing them to be scrutinized by all States — a progress report on the lower levels of the machinery — will be proposed below. It may be added here that the main precondition for the coherent exercise of all the Presidency responsibilities listed above — and indeed for the production of a 'work programme' that will be worth more than the paper it is written on — is efficient co-ordination *within* the State holding the Chair. The general problem of co-ordination in Member States will be discussed later in this chapter.

2. Authority to enforce rules

Member States have already made a number of good rules for the preparation and conduct of Council business, including the latest dates on which agendas and documents intended for a particular meeting can be circulated in advance. These provisions have been given a new binding force by the recent publication of the Council's formal Rules of Procedure. Similar though less formal guidelines have been worked out for the timing of preparation for the European Council. The trouble is that all these rules have been disregarded with impunity, by some States at all times, and often most flagrantly by the Presidency itself. The results are last-minute briefings, ill-prepared discussion, confusion over the order of business and a general waste of time and effort.

The first stage in putting this right must be to ensure that the necessary rules exist, and are clearly understood. The Council's Rules of Procedure provide a basis, but States should reach an equally clear understanding on the timing and stages of preparation of any meetings not in the regular format, including the European Council. Where the Commission is contributing documents, it goes without saying that it should take its own internal measures to meet circulation deadlines not less strict than those applied to Member States.

Once rules exist, the Presidency must be recognized as the ultimate authority for enforcing them and Member States must be prepared to bow to its judgment. It is inevitable that there will be cases requiring some derogation from the rules, but exceptions should be made only for genuinely exceptional reasons. The converse principle must, of course, also apply. Just as the Presidency can reject a contribution from any State or institution which arrives too late, Member States must have the option of refusing to entertain a contribution from the Presidency which itself breaks the procedural rules.

The selection of items for Council agendas is a matter of particular importance. It determines not only the output of the Council, but also the prestige and tone of its discussions and hence the willingness of senior Ministers to give up their time to attend it. The aim must be to restrict the agenda to a few items of truly politi-

cal significance, on which there is a decision ready to be made or some other concrete contribution that Ministers alone can offer. The Presidency, in consultation with the Commission, has a particular responsibility for enforcing discipline in this respect. It must of course do so on the basis of an objectively perceived 'European' interest — not its own national interest — and this means taking account of the European Council's guidance and the views of other States as expressed in discussion. On this understanding, we believe it would be justified to accept as regular practice (without prejudice to the legal position) the enhancement of the Presidency's rights over the agenda introduced experimentally for some meetings in the past. That is, the Presidency should be able to reject any substantive item proposed by others for the agenda, consulting the Commission as necessary. Any State still wishing to raise an extra item should not be allowed to do so except under 'any other business'.

3. The Provision of Adequate Resources

Each State taking on the Presidency must make its own decisions about the extra resources to set aside for Community tasks in the coming six-month period. It may have to bring in extra officials, or it may be able simply to re-define the duties of existing ones, perhaps freeing them temporarily from any other responsibilities. The Presidency Foreign Minister, who will chair the General Affairs Council and attend the European Council, is particularly responsible to the Community for seeing that the necessary dispositions are made. In most though not all countries, he will also co-ordinate the administrative preparations put in hand at home. Though the final choices will be his own, there are certain regular sources of help he may exploit in the interests of maximum efficiency.

- (i) *The Council Secretariat* has resources of which all States could with advantage make fuller and more regular use. It possesses a knowledge of procedures, an overall view of the machinery, and an opportunity for neutral assessment of other States' attitudes which even the largest national administration cannot match. It is particularly well-placed to help the Presidency in preparing the work programmes and surveys of progress which we have suggested should be carried out in future in a regular and transparent manner. Below we shall suggest extra responsibilities for it in the monitoring of work at lower levels. The definition of a more productive, and more consistently applied, relationship of support between the Council Secretariat and the Council Presidency should be a natural accompaniment to the improved definition of the latter's duties as a whole. The Council Secretariat should prepare itself for this fuller role, not by increasing its numbers, but by ensuring it has at its disposal people of the right calibre at every level.

This development of the Council Secretariat's contribution to the management of Council business should not, of course, in any way affect the quite

different and more independent contribution made by the Commission. To ensure that the various organs are working in harmony, and that there is no risk of duplication, the Council Secretariat should continue its practice of consulting very closely with the responsible Commission officials at departmental level.

- (ii) *Sharing of burdens* should be an option to be used with complete flexibility at the Presidency's own discretion. It should not be obligatory or tied to any set pattern. The aim is to fill gaps in resources and capabilities as they arise, on the merits of each particular case. For instance the Chairman of a lower-level working group may have acquired great expertise in managing a given dossier under the previous Presidency. If there is a prospect of completing the dossier in a few months more, the new Presidency should be allowed to ask him to stay on in the Chair for as long as may be necessary. In the Council itself, as in the European Council, there may be several ways of sharing the burden without actually surrendering the Chair. The Presidency could, for example, ask a colleague or colleagues to take on temporarily the joint responsibilities of the Council in pursuing some particular procedural task or policy dossier.

- (iii) *Junior Ministers*, normally drawn from the Foreign Ministry, have been used by several States to assist Foreign Ministers in their tasks both during the Presidency period and at other times. This device is not equally needed by, nor suitable for, all the States taking the Chair, but for many it offers a valid option for dealing with the increased weight and regularity of Presidency duties. Where it is used, however, two important principles need to be observed. First, the junior Minister is not a substitute. His existence does not relieve the Foreign Minister (or any other Minister) of responsibility for chairing the Council, preparing and following up the European Council, acting as senior spokesman for the Council as a whole and generally supervising the execution of Presidency tasks. Secondly, the share of the burden which the junior Minister *is* to carry must be clearly and publicly defined. Only then can the other States and institutions with which he may have to deal understand the precise limits of his authority, and grant him the access and the resources he needs to back up his Chairman effectively. For example, the junior Minister might devote particular attention to the procedural exercises associated with horizontal and vertical co-ordination, and to maintaining the day-to-day contacts with the European Parliament which will be even more demanding in the aftermath of direct elections. We would think it particularly useful if he could accompany the Foreign Minister to European Council meetings during the period of the Presidency. This will give him the clearest possible impression of the political priorities to which the work of the Presidency at all levels must be geared, and help him convey the right message to the other organs with which he deals. For the greater part of his work, the natural collaborator

and channel of contact for the junior Minister will be the Chairman of COREPER. It is particularly important that he should keep the Council organs fully apprised of his intentions and activities. His role is not designed as that of an independent trouble-shooter, but as a collaborator with his Foreign Minister in representing the will and interests of the Council as a whole.

4. Other Options

These proposals are based on the assumption that the present system of six-monthly rotation of the Presidency, with each State in turn taking sole responsibility, will continue. We have looked at various options for changing the term or the structure of the Presidency, and we do not believe any of them would help matters.

A shorter Presidency term would be wasteful of resources since each State would have to set up the same apparatus, but use it for a shorter period. It would give too little time to deploy working strategies, and would multiply the risks of losing continuity. A one-year Presidency would slow up rotation intolerably: in the fully enlarged Community, each State could take its turn only once every twelve years. The only technical change in the rotation which we *would* recommend to States is a change in the dates of the hand-over. At present the Presidency which takes over on 1 July has one month to get into gear, then a month's gap for the holidays, and must practically make a fresh beginning in September. It would be more sensible to begin one Presidency term on 1 August and the other on 1 February. This change would not require Treaty amendment and could be introduced very simply, by asking any current Presidency to stay on one month longer to reach the new rotation date. It would, it is true, introduce a break in the handling of the annual Budget at Ministerial level, whose main stages are in July and November, but the disadvantages of this can be reduced by good co-ordination between Presidencies.

As to the structure of the Presidency, we believe the rotation of individual States has, at its best, a double merit. It gives the State involved new experience of and insight into the affairs of the Community as a whole, and it gives the Community the benefit of that State's fresh energies and political commitment. A permanent Presidency would forfeit both advantages. A compound Presidency, such as the 'troika' system (the current Presidency flanked by 'Vice-Presidents' from the preceding and following Presidencies) has been found useful for certain specific tasks in political co-operation and has sometimes been put forward as a more general solution. Its aim would be to achieve regular burden-sharing and to guarantee a high degree of continuity from one Presidency to the next. If used systematically in the Community context it would, however, bring problems that in our view quite outweigh the advantages. It would diffuse the political authority

of the Presidency, and weaken the incentive to achievement for the State actually in the Chair. It would add yet one more negotiating 'tier' and greatly complicate administration. We should prefer to seek the benefits of burden-sharing and continuity through the more limited and flexible devices outlined in the sections above.

Lightening the Burden

The heaviness of the Council machinery owes something to the fact that the Council — and the Community as a whole — is simply trying to do too much. The Council's capacity for business, given its dual burden as defined above, is limited; the various effects of enlargement will, unless counter-measures are taken, still further inflate its load. The first step to restoring the Council's efficiency, and that of the machine as a whole, must therefore be the fixing of clear priorities and greater selectivity in the choice of cases for action. Principles and methods for achieving this are discussed in other sections of our report.

The secondary cause of *lourdeur*, which needs to be dealt with here, is the actual method of handling business: failure to find the appropriate level for decision-taking, and failure to distinguish between major and minor issues and use the most economical procedures for settling each type.

Finding the right level for decisions implies a more conscious, and more frequent, use of opportunities for delegation. The Council today attempts to take far too many decisions which are of a minor, technical or recurrent nature. These could be taken in some other body or in some other fashion, without any damage to the principle of political control.

There are two main options for reducing the Council's burden of decision-making, both of which should be used more frequently. The first and most classic solution is *delegation to the Commission*. The second option consists of *devolving decisions of little or no political significance to lower levels in the Council's own machinery*. The practicalities of both options will be discussed in turn.

(a) Delegation to the Commission

Delegation may involve the straightforward handing over of a task, or the establishment of a procedure whereby the Commission takes day-to-day decisions in consultation with representatives of Member States (i.e. 'management' and other similar committees). A great many delegations of both kinds have been and continue to be made, but serious difficulties have been encountered recently over the establishment of 'management'-type committees in newer policy fields.

It is in the interest of both institutions involved to overcome these difficulties if the Council is not to succumb totally to its burdens and if reasonable spare capacity for progress is to be maintained.

However, the anxieties which have caused the problems in specific cases are not hard to understand. When the Community moves into a new area of action States find it difficult to anticipate all of the problems that may arise in execution; apparently small practical implementing decisions could create political difficulties or alter the impact of the policy itself in unforeseen ways. Hence the reluctance of some States to delegate any implementing powers to the Commission unless some kind of emergency procedure for dealing with cases of political difficulty can be agreed. And if anxieties of this kind are not satisfied, no delegation will take place at all.

Our approach to dealing with this difficult problem would be as follows:

- (i) In areas where powers have already been delegated to the Commission, the previous arrangements must continue to apply. There can be no question of 'clawing back' the degree of independence the Commission enjoys in, for instance, the daily administration of the CAP.
- (ii) The different operational requirements in various areas where the Commission may be granted new delegated powers should be recognized. The day-to-day pressures dominating the work of a CAP Management Committee are different from the requirements on a Legislation Committee, Technical Progress Committee, etc. A few stock formulae should be worked out between Council and Commission to cover each of the separate types of committee; the appropriate formula can then be selected for insertion without dispute in each new Regulation making a delegation.
- (iii) In cases where States have anxieties of the kind described above over potential problems in the exercise of delegated powers (as is the case at present on various dossiers connected with the execution of the Budget), the Commission should be prepared to come to a political understanding with the Council to cover any actual cases of difficulty. The institutions might agree to use the ever-present possibility of raising in the Council a decision proposed under the Regulation in question which appears to cause serious political (or policy) difficulties.

(b) *Devolution within the Council Structure*

The Council can ease its own burdens by allowing itself to take decisions by a simpler and faster method in future. Thus in certain Regulations, adopted by

unanimity for example under Article 235 of the Treaty, which establish new policies the Council has agreed to take all the more routine and recurring decisions involved in the policy by a qualified majority. This practice should be continued wherever possible.

Most often, however, the solution lies in *more responsibility for COREPER and its subordinate bodies*. States have agreed in the past that COREPER should, on instructions, be able to find solutions to more questions of a minor or routine nature. These can then be put to the Council as 'A' points or by the written procedure: systems which allow the Council to adopt decisions without discussion unless any State signals last-minute objections. 'A' points are already very numerous and have proved their worth in saving Ministers' time and effort. If they are to be further increased and delegation to COREPER made more effective, the Presidency must use its authority to prevent matters being referred up from COREPER to the Council when they do not really deserve the latter's attention. Permanent Representatives need to enjoy a status, and a freedom in negotiation within suitably framed instructions, that reflects their unique pivotal role between the Community apparatus on the one hand and Member Governments on the other. We do not think this role would be any better exercised if the status of Permanent Representatives were formally altered, for instance by appointing State Secretaries (junior Ministers) as members of COREPER. More probably it would become impossible. The most important factor in allowing COREPER to function well is, in fact, efficient co-ordination of Community business at home. This is the only way to ensure that varying national interests can be weighed and reconciled early enough to give Permanent Representatives instructions allowing definitive solutions at COREPER level. It will also permit a steady flow of information to Permanent Representatives on the activities of the bodies set up alongside COREPER, so that instructions sent to these bodies do not escape or conflict with COREPER's overall guidance. (More will be said about the importance of domestic co-ordination at the end of this chapter).

COREPER itself is too high a level for some decisions. The numerous sub-committees and working groups set up under Council authority were designed to relieve its burdens by taking on the detailed examination of Commission proposals, procedural questions, etc., and resolving as many points of difficulty as possible in advance. Sometimes they do this efficiently. More often they refer back upwards points which they should really have been able to deal with themselves, or deal with them impossibly slowly. This has something to do with inefficient methods of decision-taking (see below). It also reflects the failure of Member States to appreciate the conditions needed to let these lower-level bodies find their due share of solutions. These conditions are exactly the same as for COREPER; adequate discretion for national representatives, and the early and co-ordinated preparation of positions in national capitals.

The most economical procedures for decision-taking inevitably raise the sensitive issue of voting. It is perhaps necessary to stress again, before tackling this subject, that we are trying to deal in our report with actual phenomena and practical solutions. We do not see it as our task either to propagate or to prejudice any particular philosophical view.

There can be no doubt that the 'Luxembourg Compromise' — in reality an agreement to disagree — has become a fact of life in the Community. In the reality of the Community today, voting cannot be used to override individual States on matters which they regard as involving very important interests.

There can also be no doubt that an atmosphere has developed in which — even on minor issues and in quite humble circles — States can obstruct agreement for reasons which they know full well to be insufficient, but which are never brought into the open let alone seriously challenged by their colleagues.

Member States have publicly agreed (Paris declaration of December 1974) that the solution to this is to stop demanding *de facto* unanimity on the whole range of decisions and by implication to resort more often to voting. Of course this is not a solution for *all* decision-taking problems. On many important matters unanimity is the Treaty rule and must continue to apply. Majority votes *as such* are not possible in COREPER and subordinate groups. These forums must find some more informal consensus method of reaching their due share of solutions. But if voting is to make what contribution it can to efficiency in the Council, some way must be found of putting the general commitment of the Paris declaration into practical effect. We suggest the following working principle. In all cases where the Treaty does not impose unanimity, and very important interests are not involved for any State, voting should be the normal practice after an appropriate but limited effort for consensus has been made. This does not mean an actual vote will be taken each time. Often the mere prospect of resort to vote will encourage States to join in a compromise.

This rule is subject to the important exception reflected in the 'Luxembourg Compromise'. We are opposed to trying to define set classes of 'major' and 'minor' decisions and making voting wholly automatic on the latter. Each State must remain the judge of where its very important interests lie. Otherwise it could be overruled on an issue which it sincerely considered a 'major' one. It is only when all States feel sure that this will not happen that they will all be willing to follow normal voting procedures on other issues. However, the manner of appeal to the 'Luxembourg Compromise' needs to be better defined. A State which wants to avert a vote because of very important interest should say so clearly and explicitly, and take responsibility for the consequences in the name of its whole Government.

The application of these solutions lies in the hands of the Presidency. The Chairman of the Council is best placed to judge whether and when a vote should be called. Often, the most effective way for the Presidency to 'normalize' voting will be for it to announce at the start of each Council the agenda items on which it intends that a vote should be taken. On other occasions the judgment on whether a vote is appropriate might be delayed until later in the discussion. The vote will become an instrument like any other in the arsenal of an efficient Presidency, to be used flexibly and as necessary in combination with others (compromise formulae, backstairs negotiation). The overall effect must be to increase the frequency of voting, beyond the Budget area where it is already standard practice. Provided this increase is linked with acceptance of the 'Luxembourg Compromise' as a fact of life, we believe no State can do other than benefit from it.

A similar principle should apply *mutatis mutandis* at lower working levels. In working groups and COREPER, the Presidency must ensure that work on an issue is terminated when a good working majority has emerged. If a minority is persistently obstructing agreement, this should be the signal not for abandoning attempts at a solution but for referring the dossier to the level immediately above.

Vertical and Horizontal Co-ordination

Good *vertical co-ordination* starts with, and is crucially dependent on, a proper relationship between the European Council and the Council of Ministers. We have explained in the previous section what form we think this relationship should take.

Vertical communication at the next stage, between the Council of Ministers and COREPER, does not seem to be a major problem. It is anchored firmly on the attendance of Permanent Representatives or their Deputies at Council meetings. The difficulty here is to find the right division of tasks between the political and the official body, so that the latter prepares the former's work efficiently in terms of both timing and substance. Here again the Presidency cannot avoid the ultimate responsibility.

The most difficult area is *the relationship between COREPER and the bodies below it*. We have already stressed the need for the working groups to play their part in decision-taking by eliminating the maximum number of technical problems. We have pointed out the changes in behaviour of national representatives, the improvement in their instructions, and the firmer handling by the Presidency that are necessary to achieve this. But how can performance on these points be monitored, and political control asserted over the whole bottom-heavy machine?

There are two parts to the solution: the manner in which tasks are delegated downwards, and the opportunities for referring them back up again.

The working groups should not — as too often happens now — be handed their tasks without comment. They need clear guidance on the policy context of the proposal they are to examine, the urgency with which States regard it and the main features in it which they support or wish to see altered. On proposals in the main current of Community business, the superior bodies should be able to set the working groups' activity in the context of the overall six-monthly work programme, which is based in turn on the European Council's priorities. On major new proposals where no such overall guidance exists, COREPER (or even the Council) should hold a special 'orientation debate' to set the scene for further handling of the item. This debate must, of course, be based on substantial and well-considered instructions from capitals and the Presidency should refuse to declare discussion completed until and unless such instructions are obtained. Specific deadlines for referral back to COREPER (or other mandating body) should be set whenever possible.

In spite of these instructions — or on the older dossiers, for lack of them — work at the technical level may sometimes reach an impasse. Some mechanism is needed to ensure that control is reasserted from above in these cases and delays not allowed to accumulate. Formal responsibility for referring a dossier back up from one level to another rests with the Presidency and it is right that it should remain there. It is above all for the Chairman of COREPER and his aides to ensure that the Chairmen of lower bodies report to them as soon as they have exhausted their own means for a solution. The presence of the Council Secretariat at all meetings is, however, a useful additional check. The Council Secretariat should be allowed and encouraged to bring to the attention of the Chairman of the next superior body any delays which they consider excessive, together with their own analysis of the problems involved. The Commission has, of course, means of its own to achieve a similar result. No matter who takes the initiative, the aim in such cases should be to review the dossier at a level — COREPER or the equivalent — high enough to allow any obstacles set up by officials on 'political' grounds to be assessed at their true value, and any unreasonable national positions exposed. The dossier should not be referred back down again, except on a very specific and time-limited mandate.

It will be useful, at least until the vertical transmission of priorities has started working in a regular manner, for the Presidency to offer the Council at the start and end of every six-month period — i.e. at the same time as the general work programme is examined — a complete survey of the work being done at lower levels. This report should make clear how far pre-set deadlines and priorities are being respected. It will give the Council as a whole a chance to satisfy itself on the management of its subordinate machinery.

Horizontal co-ordination, as suggested above, is essential to off-set the increasing fragmentation of Community business. Some corrective is needed for the development of specialized 'empires' with their own procedural peculiarities and their own notions of priority. But this must be approached in a realistic spirit. A system of co-ordination which diverts the whole flow of business to pass through new artificial 'check-points' is more trouble than it is worth. A more rational approach is to observe the places at which the various streams of business already tend to flow together, and concentrate efforts for overall control at those places.

In the Community today, the only place at which full co-ordination of *policies* can be achieved is the European Council. We believe the co-ordinating potential of the European Council should be recognized and more regularly exploited in future. The plan of priorities we have proposed above is one step towards achieving this.

Once policy lines are set, however, there is a need for administrative and procedural co-ordination to ensure that the agreed priorities are respected throughout the machine. Here *Foreign Ministers* have a special role to play.

They are present at the European Council and must take responsibility for seeing that its wishes are passed on to and noted by the others involved. This, together with their special role in deciding institutional matters, gives them a *central position* among the spreading branches of the Council. It also gives them a right to know what is going on in the specialized areas, so that they can make a sensible assessment of other Councils' contributions to the preparation of the European Council, and review the overall state of play on Presidency work programmes. The Presidency must put itself in a position to marshal this information by the best means it has available.

We see no point, however, in trying to restore the 'General Affairs' Council to the *dominating position* it enjoyed in the early years. Foreign Ministers cannot now claim the authority to overrule their specialized colleagues in their own particular fields. The task of reconciling conflicting sectoral interests has moved upward to the level of Heads of Government.

Where we believe the General Council's role could and should be reasserted is in relation to the *newer specialized Councils*. These have proliferated in recent years, far more rapidly than the concrete burden of business with which they have to deal, and no consistent principle has emerged for relating the number and frequency of meetings to real operational needs.

We believe that no Council should meet without a clear idea of the purpose it is to perform. The Councils which meet least frequently are particularly prone to

lack such purpose, either because they work in traditional areas where conditions have changed greatly, or because they cover new policy fields where little consensus exists on the way forward. Some way must be found to debate these basic questions of purpose and policy orientation, whether in the particular Councils themselves, in the General Affairs Council or at European Council level. The recent history of the Energy Council has shown the stimulating effect and practical usefulness for such Councils' work of a clear statement of guidance from Heads of Government. To help the specialized Councils focus their agendas on genuine policy issues, and limit their meetings to occasions when such issues exist, more use should be made of the possibility of having small legislative items in their areas put on the Agenda of the monthly General Affairs Council when they are ready for adoption. Specialized Ministers may attend to take part in such decisions if they wish.

The principle of not holding Council meetings where there is insufficient business applies, of course, just as much to the Foreign Affairs, Finance and Agriculture Councils.

These recommendations do not amount to creating a real centre of co-ordination at Council level. This lack need not be a weakness, provided there is a further 'check-point' through which business can be routed and supervised lower down. This check-point does exist, at least potentially, in the shape of COREPER. The Committee of Permanent Representatives is designed to occupy even more of a 'central position' than the General Council which supervises it, insofar as in its various formations it discusses the agenda of all Council meetings. Some of its substantive control over the separate fields of business has been irretrievably lost to new 'high-level' bodies. But it should still be capable of regaining an 'overview' function in the technical phases of work rather like that which the European Council occupies at the political level.

Enough has been said already about COREPER's responsibilities in relation to the working groups. and in the preparation and lightening of the Council agenda. The problem that remains is that of the 'parallel' bodies set up to achieve high-level preparation of the work in specialized Councils. We do not think it practical, or necessary, to suppress the more well-established of these (the Special Committee for Agriculture, the various committees under the ECO/FIN Council), any more than the Agriculture or Finance Councils could themselves be suppressed. What is important is that COREPER should both receive, and be free to discuss, timely information on their activities. This depends partly on good liaison within Permanent Representations and national administrations.

Efficient co-ordination on these lines demands mastery of information and good judgment from the representatives of all States, particularly in the General Council and COREPER. It implies the existence of a corresponding 'overview' capacity

within national Governments (see the separate passage on this subject below). But the responsibilities it involves fall most heavily on the Presidency, which will need to make full use of the support of the Council Secretariat. The closest collaboration is also needed between the managers of Council business and their opposite numbers in the Commission. The Commission, as shown in the section dealing with its affairs below, can by effective co-ordination of its own efforts make a decisive contribution to coherent functioning in the Council as well.

Recapitulation

The general approach we have proposed for the problems of the Council machinery is the same as for the other institutions: identification of overall priorities, and a clear central authority to allocate resources in accordance with them and monitor the implementation. The suggestions we have made on a regular Presidency work programme, and improvements in vertical and horizontal co-ordination, carry on the theme established in the previous chapter where we spoke of the European Council's 'Master Plan'.

To tackle the problems of *lourdeur* in the characteristic forms which they take in the Council, we have identified four main directions for improvements:

- reinforcement of the Presidency in its authority to apply agreed rules, and in its ability to draw on the necessary resources;
- more use of normal voting procedures on matters not engaging very important interests;
- greater use of COREPER's potential for supporting the Council and supervising lower levels of the machine;
- extension of the Commission's delegated management powers, and their use on agreed terms in new areas.

These various types of adjustment should balance and reinforce each other. They can be further underpinned by ensuring that all national administrations involved in Community affairs play their part more efficiently, a point discussed in the final pages of this chapter.

Rules of Procedure

It has been suggested that improvements in Council practices could best be brought about, and given permanence, by writing suitable provisions into the

Council's rules of procedure. These have only very recently been adopted in a definitive form.

At several points in this section we have stressed the need for better definition, for example of Presidency rights and duties. Inscription in the rules of procedure would be an obvious way to bring about that definition. Some of the specific ideas we have put forward (e.g. Presidency discretion to maintain a previous Chairman in office) might in any case require amendment to the rules.

Our main interest, however, is to see the necessary improvements implemented rapidly. They should not be delayed while States try to agree on a precise formula to insert in rules which are now legally binding. In any case, many of our proposals require a flexibility and exercise of discretion which might be hampered rather than helped by written formulae.

We hope, therefore, that States might consider first which improvements in Council practices they wish to adopt. Then, as a secondary question, and after implementation has got under way, they may discuss which of them they would like to enshrine in the definitive rules.

The Responsibility of National Capitals

We have already stressed the crucial importance for the functioning of the Communities of what goes on in national capitals. It is time to look at this aspect more closely. What contribution could national administrations make, through their own arrangements, to the better functioning of the central institutions?

The 'Brussels bureaucracy' consists mainly of national experts visiting Brussels more or less frequently to deliberate together. The main decision-making organs — the Council and its substructure — are made up of national delegations. It is clear, therefore, that the efficiency of Community decision-taking depends in the highest degree on the nature of the instructions — or the lack of them — formulated by the authorities at home.

We have made a survey, with the help of information from States themselves, of the arrangements for handling Community business set up in the various capitals. The most striking feature of these is their diversity. There are significant differences in the allocation of prime co-ordinating responsibility; in the amount and frequency of Ministerial discussion; in the importance of the role played by national Parliaments. This variety is a reflection of the diverse historical, constitutional and political factors at work. It would be neither right nor realistic to try to eliminate it by imposing some 'harmonized' model of a domestic co-ordinating system. The systems which do work well already are themselves quite different

from each other. Each State will achieve greatest efficiency with the solutions that best match its individual needs and traditions. However, the *tasks* to be performed by each national administration are virtually the same. The Community as a whole cannot operate efficiently unless *all* States achieve a consistent standard in executing them. It may therefore be worth spelling out here what general functions we believe each governmental machine should be able to perform.

The greater part of the burden consists of preparing instructions, to be transmitted to the Permanent Representation or carried to Brussels by visiting officials. The first requirement is that these instructions — and any other contribution which the State has undertaken to make to the discussion — should be prepared *in good time*. Slowness of response in the early stages of work on a dossier does not achieve conservation of effort. It merely faces all States with the need for desperately quick adjustment in the final stages as obstacles not properly identified earlier start to emerge. It also defeats the whole aim of achieving solutions at the lowest possible level which we see as crucial for the efficiency of the Council machine. Secondly, the instructions must be *considered*. They should not be based on an instinctive, usually defensive reaction but on a proper weighing of the merits of the case from both a national and a Community point of view. Such careful consideration should not only minimise the need for later changes of course. It should allow the issue to be judged with a due sense of proportion and instructions to be given which allow the negotiators the full flexibility that national interests permit. Finally and essentially, the instructions must be *coherent* both as regards the line taken in lower and higher forums, and as regards the various related fields of Community business. This kind of co-ordination of policy positions and procedures in capitals is, in the last analysis, almost more important than co-ordination at the Community level. Even a perfectly integrated set of institutions in Brussels will fail to function if the instructions coming to different parts of the machinery from a single State conflict with each other. Conversely, the multiplication of forums at Community level can be completely offset (in administrative terms) by a State which sends consistent instructions to each separate body.

One feature should be mentioned which has a contribution to make to co-ordination in *all* States. That is the participation in national policy-making of the Permanent Representative and his advisers. The Permanent Representative is uniquely placed both to scan the whole range of instructions sent to Brussels by national departments and to gauge their impact on his State's interests in Community business. He must first be allowed the access to information needed to make such judgments. He must then be given a chance to impress the lessons learned on his national masters at the political, as well as the official, level. Those States which invite their Permanent Representatives regularly to high policy-forming committees have testified to the advantages of such a practice.

The need to standardize tasks, while keeping some flexibility in the choice of means for executing them, has been a constant theme in our section on Council business. It lies behind our recommendations for the setting of priority lists and work programmes, the reinforcement of control of agendas, more regularity in preparation of and follow-up to European Council meetings and so on. Such regular management exercises will help make the management functions demanded of all Member States increasingly obvious. We trust they will also inspire States to find early remedies for such insufficiencies at home as come to light in the process.

The Council among the Institutions

Since we have spent so long on the internal problems of the Council, the point made in the general introduction to Chapter II must be stressed again in conclusion. The Council cannot reach its full efficiency in isolation. It is critically dependent on the Commission for the greater part of its work which rests on the latter's legislative proposals. By the quality of its initial contribution, and by the way it intervenes in subsequent discussion — including possible amendments to or withdrawal of the proposal — the Commission can make all the difference to the outcome of the Council's efforts. The triangle of Treaty-based consultation which has the European Parliament (and often the Economic and Social Committee) at its third point can enrich the end-product or complicate and retard it depending on the spirit in which the various institutions approach one another. This is why the sensitive and efficient handling of relations with other institutions is so vital a responsibility of the Presidency, and indeed of the Council as a whole. Its importance will be further brought out and improvements discussed in the following sections on the Commission and the Parliament.

IV. The Commission

Introduction

Without the European Commission, the Community could never have been constructed. Without the Commission, the Community could not function even with the limited efficiency that it does today.

The Commission's role under the Treaties has three main components. First, the right of initiative: except in very rare cases, all legislative action by the Council takes place on the basis of a Commission proposal. Secondly, the Commission is the guardian of the Treaties and has power to act on infringements of their provisions (e.g. to ban State aids which conflict with the rule on competition). Thirdly, the Commission is designed by Treaty to be the Community's executive arm. In order to ensure the proper functioning and development of the common market, it may receive delegated powers not only to carry out Council decisions, but to take on its own authority the day-to-day measures needed to keep common policies functioning and up-to-date.

Over the years since the Treaties were signed, the circumstances in which the Commission exercises these three functions have changed profoundly. The effect of many of the changes has, undeniably, been to reduce the Commission's standing and authority from the very high level at which it stood in the early years. The balance of power between Commission and Council has shifted more and more in the latter's favour and the Commission has lost much of its independent prestige.

In this section we shall first try to analyse the real causes of the Commission's decline. How far were they external, and irreversible? How far did they reflect internal failings on the Commission's part and its inability to adjust to changed circumstances? We shall then consider how the Commission's organization might be improved to eliminate this second source of weakness. Finally we shall try to show what role the Commission can and should be playing in the present-day Community, in the interests both of efficiency and of further progress, and what conditions are required to allow its potential contribution to be realized in full.

Elements in the Commission's Decline

The external factors tending to weaken the Commission are the same as have hampered the development of Europe as a whole. They have already been analysed in the introduction to this report.

The conditions for exercising the Commission's role of initiative changed as the detailed guidance contained in the Treaties was gradually exhausted. The Community had to move into new areas to maintain progress and meet fresh challenges. Since these areas were not covered by detailed Treaty provisions the Commission's role as interpreter of the Treaties was no longer such a guaranteed source of strength. Of course the Commission could make proposals on new rules, but it was not certain these would fit in with Governments' own conceptions of the way ahead. If they did not, Member States tended increasingly to work out the lines of a new policy themselves, sometimes resorting to non-Treaty methods which reduced the Commission's say in the process of implementation as well.

Even within the Treaties, the Commission's scope for elaborating and enforcing policy obligations was steadily reduced. Economic troubles leading to political/social weaknesses at home were driving Governments into more nationalistic attitudes both on Community policy in general and in the daily working of the institutions. This affected the Commission directly insofar as States were less willing to heed its advice or to let it administer policies in the 'European' interest. It also weakened indirectly the Commission's hold over the legislative process. A Council in which States fought for narrowly national interests was not a place in which the Commission could easily mediate by appealing to the common ground. The scarcity of voting and prevalence of consensus procedures meant that the Commission could no longer decide the outcome by adjusting its proposals until a majority of States were in favour. More often the Council itself, by unanimity, amended the Commission's proposal on lines worked out in a Presidency compromise.

Lacking an independent power to decide new policies, the Commission had no chance of by-passing these obstacles. The essential fact of its dependence on the Council, as the decision-making organ, could never be more than partly offset by the calibre and effectiveness of the Commission's own personnel. Commission weakness was to this extent a product of Council attitudes, which in their turn were partly determined by economic/political trends.

However, the external constraints on the Commission's effectiveness were accompanied by a lack of coherence, and increasing bureaucracy, in its own internal operations. Since the enlargement of the Commission in 1967, there has been a loss of collegiality in its members' method of working, combined with in-

adequate internal co-ordination. The increase in numbers of Commissioners made it impossible to give equally meaningful portfolios to them all; in practice this has led to an overload of work for some Commissioners, frustration for others. The Commission has no strong image as a team: it has been the actions of its President or individual members that have made most impression on the world outside. In its organization generally, there is a lack of collegiate management and no collective policy approach. Inadequate overall planning, and lack of communication between Commissioners and other levels of the administration, have adversely affected both efficiency and morale among the Commission's staff.

The combination of all these factors has weakened Commission performance in each of the three provinces listed above. The Commission no longer intervenes as strongly or flexibly as it used to in the process of Council negotiation. The development of national attitudes described above causes increasing problems for the Commission in exercising its role as guardian of the Treaties. The Commission's management role is carried out effectively where it exists already. Its development has been hampered mainly by the difficulty of obtaining Council assent to certain delegations in new fields. Sometimes the implementation of certain policies has been handicapped in consequence.

Tackling the Internal Weaknesses

The internal problems of the Commission were the subject of a study carried out recently by a group appointed by the Commission itself and headed by Ambassador Spierenburg. Their report, published a few weeks ago, seems to us to have found the right approach to all the major failings in organization mentioned above. It would be idle for us to cover the same ground in detail. We shall mention only briefly the main points in the Spierenburg group's report which we should like to endorse.

1. We agree that to continue to extend Commission membership on the present basis after enlargement could be fatal for the organization's coherence and efficiency. Adequate portfolios could not be found for a total of 17 Commissioners and more and more Members would be relegated in effect to a 'junior' status. All hope of collegiate operation would be lost. We therefore support the proposal that in future the Commission should be composed of one Member per country (and the President found within that number). We also agree that the switch to the new principle must be made at the next re-appointment of the Commission, which usefully coincides with Greek accession (January 1981). If the will cannot be found to act at this stage, it will certainly not be found at any later date.

