EUROPEAN PARLIAMENT

DIRECTORATE-GENERAL FOR RESEARCH AND DOCUMENTATION

PRELIMINARY REPORT
ON THE LOSS OF POWER
BY THE PARLIAMENTS OF THE MEMBER STATES
AS A RESULT OF THE TREATY ESTABLISHING
THE EUROPEAN ECONOMIC COMMUNITY

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General Contents

The attention of the reader is drawn to the general terms of reference set out in Parts One and Two and to the references given in the introduction to individual chapters in Part Three.

PART ONE - INTRODUCTION

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A. PRELIMINARY

By letter of 23 March 1973 the Socialist Group of the European Parliament asked the Secretary-General to prepare a study on the power lost by Member States' Parliaments but not transferred to the European Parliament, as a result of the Treaty establishing the European Economic Community and its implementation. It was felt that a study of this kind would be particularly important when the European Parliament attempts to obtain more power, especially in view of the projected transition from the first to the second stage of Economic and Monetary Union.

The Liberal and Allies Group made a similar request to the Secretary-General on 10 April 1973 as did the Christian-Democratic Group on 17 April 1973, and the Communist and Allies Group on 9 October 1973.

The Secretary-General of the European Parliament entrusted this task to the Directorate-General for Research and Documentation. The study requested is presented in this report.

B. SCOPE AND LIMITS OF THE STUDY

The terms of reference given are so wide in scope that certain limits must be set.

The object is not so much to determine which constitutional provisions in general allow the transfer of power from Member States to the European Economic Community; it appears more important to study the actual transfer of specific powers and to compare and contrast this development among Member States in order to draw up a 'balance-sheet'. This enquiry is, therefore, primarily factual and comparative. It is limited to the European Economic Community and does not discuss the other two Institutions (ECSC and Euratom) or the possible transfer of power to other international or European organizations such as Benelux.

For technical reasons 1 July 1973 was chosen as the key date for a distinction between past and present powers.of national parliaments.

The major problem was the definition of the concept 'loss of power'. Throughout this study, it proved difficult to define this term because terminological and conceptual differences between Member States were found to be wider than was generally assumed. The constitutional development of the individual Member States has been governed by a wide variety of political and legal factors, as a result of which the concept is understood differently.

Various attempts at a definition are made below, on the principle of moving from the general to the particular.

C. GENERAL DEFINITION OF 'POWER' AND 'LOSS OF POWER'

I. The concept of 'power'

Under constitutional law power is the right of a body to adopt certain measures in specific areas of public life.

A body may be an individual (e.g. the State President, a policeman) or a corporate body (e.g. the Government) or an organized number of persons (e.g. the Parliament). This right may be vested in the body concerned explicitly (by constitution or law) or tacitly. 'Measures' include all actions taken under official authority (not only by the State), i.e. both legislative and executive acts. They range, therefore, from the arrest of a felon to the enactment of a law, the declaration of war, etc. In our democratic society, each 'actor' is only entitled to perform certain actions within the entire range of possibilities: omnipotence no longer exists.

A further limit to freedom of action is the restriction to certain measures in specific areas of public life. As a rule, governments and parliaments are responsible for the entire spectrum of public life within a state, but their activities are subject to functional restrictions. It should furthermore be noted that only rarely can the state itself act with absolute autonomy; indeed the Western European democracies are characterized by a network of legal and political relationships between the individual sectors of public life. In the Member States of the Community the primary responsibility for legislation falls on the Parliament (mostly comprising two Chambers). In some cases, however, the legislative process requires the intervention of other elements (e.g. the Head of State, the Government).

This study only deals with power at the highest, national level. Regional and local power is discussed only if the parliaments of Member States have transferred power not only to the EEC but also to regional and local authorities for the purpose of implementing Community law.

II. The power of the national parliaments

We would be exceeding the limits of this study if we tried to compare all the powers of the parliaments: rather were we concerned to limit our review to the national parliaments' rights in the fields of (a) Budgetary matters (b) Control and (c) Legislation:

(a) Budgetary power is the oldest parliamentary right, although it takes very different forms in the different Member States. There is a great difference between the right to impose taxes and the decision-making powers in respect of the revenue and expenditure of a comprehensive budget of a modern state. At the present time the majority of expenditure is determined by previous legislative acts.

When they ratified or by legislation adopted the EEC Treaty, the national parliaments committed their respective countries to contribute to the Community budget.

There are two factors which tend to aggravate the loss of national parliamentary power in this respect.

(i) Uncertainty as to the amount to be contributed. It became clear as long ago as 1962 that because of the automatic character of expenditure under the Guarantee Section of the EAGGF and because of the inevitable influence of price fluctuations of agricultural products on the world market, the annual contribution to be paid by each Member State could not be determined precisely in advance.

The national parliament of any Member State would be faced with a similar problem if it applied an agricultural support policy based on the same guarantee principles at national level.

(ii) Creation of the Communities' own resources. Member States have accepted since 1971 that the Communities' budget should be progressively financed by resources - limited, it is true - over which they would have no control.

(b) The national parliaments' power of control also differs one from another: normally they extend to the activity of governments and national administrations. Certain governmental measures (particularly in respect of national security) are in practice often subject to little or no parliamentary control. Local authorities, regions, etc. are often free from this control too.

Control may be exercised through written or oral questions, reports, the setting up of committees of enquiry, enquiries into items of expenditure, local spot-checks, hearings, etc. Or it may be reflected in the activity of one or more delegates. Often the parliamentary minority - especially the official Opposition Party - has specifically defined or protected rights.

While there are significant differences between the Member States in this respect, there is little parliamentary control over national governments' active participation in non-public international negotiations. Government activity in this sector has increased substantially since European integration began. The EEC Council of Ministers takes its decisions at frequent meetings behind closed doors; the respective ministers (Foreign Affairs, Economic Affairs, Agriculture, Energy, Transport, Social Affairs, etc.) normally meet separately. Since the Council meets in secret in a legislative capacity, the parliaments of the Member States only have limited control over the actions of their national ministers.

(c) The area of legislative power is perhaps the best example of the loss of power of the parliaments of Member States.

Legislative power is the right to establish binding rules of conduct which regulate the various spheres of public life. These rules may be laws, regulations, decrees, or may be otherwise described. They are binding upon those to whom they are addressed, i.e. all citizens (e.g. penal law) or only those directly or indirectly concerned (e.g. car drivers). Such rules of conduct may contain instructions, prohibitions, enabling measures, etc.; they may extend or restrict the freedom of the individual. As a rule they also impose certain actions on the authorities. By enacting laws a parliament can, therefore, cause the government and its machinery to adopt a specific policy, which is why legislative power is sometimes described as 'prior control'.

In all the Member States, the parliaments alone have the power to enact such laws. Their internal constitution decrees whether laws are required or regulations are adequate in a specific sector of public life, either in general or in respect of specific measures.

The executive's governmental power to make regulations has grown considerably in all Member States. Often the governments are empowered by law to make regulations establishing further implementing rules or rules of application. The scope for action can be wide or narrow. The power to regulate entire sectors of public life is seldom invested in the government. In the customs sector, where quick decisions may be required to promote or reduce imports in the light of the supply position or the short-term economic situation this was true of nearly all Member States even before the EEC was established.

This power is usually delegated: in this way the right to exercise a particular power - but not the power itself - is transferred to another institution; it may also be revoked, and indeed revocation is obligatory in some legal systems. If, however, there is no time-limit on the delegation of power or such delegation is extended more or less

automatically, we may speak of a de facto shift of power; for the exercise of a power carries more political weight than its mere possession. Our study is based on this consideration, which will be discussed in more detail later.

III. General effects of the EEC on legislative power

The entry into force of the EEC Treaty brought nearly all sectors of the economy within the political terms of reference of European integration. In legal terms this meant firstly a shift of decision-making powers from the national to Community authorities and secondly, that the national authorities empowered to establish rules of conduct were bound by Community legislation.

There was an automatic transfer of power with the entry into force of the EEC Treaty or later deadlines set by the Treaty. Thenceforth Member States could no longer impose new import and export duties. The EEC Treaty also contained many other directly applicable provisions (which did not require implementation by the Community legislature).

The EEC never acquired immediate or complete power over entire sectors (e.g. customs). Instead, power to take specific measures was gradually transferred to Community institutions, since European integration was to be a gradual process.

That is why the more important transfers of power occurred in sectors where the Community legislation took effect (e.g. agricultural policy). In general terms, it can be said that compliance with the EEC Treaty and its implementation by secondary Community legislation reduces national legislative power little by little. It is also apparent that Community law takes precedence over national law. For example, the German Federal Republic's second law on wine was measured by EEC standards and found to be invalid in many respects; the Italian legislature had the same experience with the law prohibiting the export of antiques.

It is in effect forbidden on the basis of the EEC Treaty to establish rules of conduct which contradict Community law.

Besides this prohibition, the Treaty and secondary Community legislation comprise a series of rules obliging Member States to take active measures in conformity with their legislative procedures. They must remove obstacles to the achievement of the Common Market (e.g. reduction of quantitative export restrictions - Article 34(2) EEC) or create appropriate instruments to expand the common basis of Community policy (e.g. Italy was obliged to establish a vinyard register).

IV. Loss or reduction of power

The previous example shows the need to distinguish between a comparative and a total loss of power.

There is certainly a loss of power if a Member State unequivocally and wholly loses the right to adopt measures in a specific area of public life. The extent of this loss of power is determined by the content of the directly applicable Treaty provisions. There may of course be difficulties of interpretation, as shown by the wide-ranging and binding rulings of the Court of Justice of the European Communities.

If rules are established pursuant to the EEC Treaty which leave Member States' legislatures no room for action or decision-making, there is also a loss of power. Its extent is once again determined by the content of these rules. An example is European agricultural policy, which is regulated down to the last detail.

If the EEC Treaty and secondary Community legislation prescribe a certain action for Member States - with or without deadlines - it is binding upon them. For example, Member States have had to adjust certain monopolies of a commercial character so as to ensure that there was no discrimination between nationals of Member States and to comply with Article 37 (1) of the EEC Treaty.

This obligation derives from the fact that they themselves adopted and brought into force the Treaty establishing the EEC. If they acted against the Treaty or failed to act at all, this would be incompatible with their obligations under the Treaty and the Commission would institute proceedings (Article 169) eventually leading to the Court of Justice of the European Communities. National powers are clearly restricted here, if not lost: there is an obligation to follow a prescribed course of action. If Member States may only exercise their power within the limits prescribed by the EEC Treaty or secondary legislation, without being obliged to take active measures, this too is a restriction of power, as shown by the examples quoted earlier (second German wine law, Italian law on the export of antiques, cited above).

D. THE EUROPEAN COMMUNITIES' LEGAL INSTRUMENTS

This brief list of legal instruments available to the Communities makes the transfer of power from the Member States to the European Community more readily intelligible.

I. Ordinary instruments

Article 189 of the EEC Treaty lists these instruments in a specific order. In accordance with these provisions the Council and Commission may make regulations, issue directives, take decisions, make recommendations or deliver opinions.

'A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.' That is why it is generally described as a law in practical terms and regarded as the most comprehensive instrument.

'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.' Directives are issued whenever different constitutional structures make it seem impossible or impractical to make regulations applicable to all Member States.

'A decision shall be binding in its entirety upon those to whom it is addressed.' It is often equated with an administrative act because it regulates specific practical matters and is addressed to specific recipients (often only one).

'Recommendations and opinions shall have no binding force.' They do not, therefore, have any bearing on loss of power. Nor are they likely to restrict power. The Community legislature (generally the Council, more rarely the Commission) may choose the instrument to be employed if this is not expressly determined by the Treaty or subsequent implementing rules.

Another important factor is the date on which such 'measures' enter into force. Article 191 of the EEC Treaty provides that regulations shall be published in the Official Journal of the Community. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication. Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

II. Extraordinary instruments

These are designed to fill gaps that appear in the Treaties in the course of time. The ordinary instruments cannot be used here because the Treaties provide no power to do so. If, on the other hand, the Treaties were supplemented by new provisions, new Treaties would have to be negotiated requiring subsequent ratification or formal adoption by the parliaments of Member States. That is why the EEC Treaty gives the Community institutions

the power to fill these gaps on their own initiative subject to certain conditions.

Article 235 of the EEC Treaty empowers the Council to take the appropriate measures if action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and the Treaty has not provided the necessary power.

The procedure accords with the Community's legislative procedure, i.e. proposal from the Commission, consultation of the European Parliament and, in this case, unanimous decision by the Council. Moreover, the Community legislature can use the ordinary instruments described above.

It is important to note that the Treaties can be supplemented autonomously without the participation of Member States' parliaments. This independent action on the part of the Communities could tend towards a loss of power for the national parliaments. Hitherto the EEC has made little use of this power: some thirty cases are known in all, the first of which has now been prolonged or modified eight times. During the development of the common agricultural policy it became clear that this policy could not apply to processed agricultural products. The Treaty was therefore supplemented pursuant to Article 235 to prevent any distortion of agricultural policy.

The most significant case in practical terms, however, is the creation of the European Monetary Fund as an independent legal entity, because this meant the birth of a new institution.

In recent years the Council has made less use of the instruments listed in Art. 189 and turned instead to others, for example, resolutions*. Naturally they too are regarded as politically binding upon the Council. How far they affect the power of the institutions of Member States is open to question. These 'additional' instruments cannot be assessed until we have more practical experience; they are therefore disregarded here.

III. The significance of the European Court of Justice.

The Court of Justice of the European Communities secures observance of the agreed rules of conduct throughout the EEC. Under the Treaty and rulings of the Court, it has power to act as Administrative Tribunal, as a Civil Law Tribunal and as a court for the settlement of disputes between Member States and Institutions and for upholding Community law. By international treaty the power of the Court can be extended to other fields of arbitration - as has indeed already happened.

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* cf. Council resolutions accompanying the Treaty on the creation of 'own resources

The Court of Justice can only intervene upon request. The Commission is charged with the duty of ensuring that the provisions of the Treaty are applied (Article 155) and for this purpose may call on the Court of Justice under Article 169. The decisions of the Court ensure the precedence of Community law over national law and define the extent of a transfer of power.

F. DESCRIPTION OF THE WORKING METHOD

A working party was formed in the Directorate-General for the purpose of this study. It had to have at least as many members as there are Member States so that it could benefit from expert knowledge of the different constitutional structures. This was also necessary for linguistic reasons. In the beginning the working party attempted to circumscribe its task, but difficulties arose throughout in establishing definitions (e.g. 'loss' or merely 'restriction' of power). The working party will therefore appreciate any criticism or suggestions concerning its work. It regards this document as a tentative study, which could be reviewed in the light of subsequent discussion.

An additional member of the working party was responsible for a preparatory paper showing the state of integration in each sector, so as to provide the representatives of each Member State with the necessary data for their studies. Detailed discussions were held on all the papers to clarify doubts and define their scope. The various conclusions were then summarized, discussed again and revised. The working party also had to ensure that the document did not exceed a certain length if it was to be useful. It is not intended to - and indeed could not - replace the studies by research institutes in the individual Member States. It attempts to give an overall picture and provide a basis for more detailed individual studies. Summarisation always means omitting some details and - unfortunately - leads to generalisations. Furthermore, quotations from theoretical studies could not be included. It was possible to adhere to the working method almost completely. That does not mean that specific facts and data, in particular the definitions, have not been checked in the relevant literature. Every effort has been made to ensure that the facts stated were checked by officials of the national parliaments or governments concerned.

The working party was short of time from the outset, since often not all its members were present and they could only devote a limited amount of their working time to this task. They had other work throughout. This too must be taken into account in any assessment of the document.

PART TWO - GENERAL AND CONSTITUTIONAL POSITION IN THE MEMBER STATES

A. Introduction

B. Situation in the various Member States:
   - I. Belgium
   - II. Denmark
   - III. Federal Republic of Germany
   - IV. France
   - V. Ireland
   - VI. Italy
   - VII. Luxembourg
   - VIII. Netherlands
   - IX. United Kingdom

C. Tabular summary of the relevant articles of the constitutions

A. INTRODUCTION

Because of its objective of integration at all levels of economic activities, the European Economic Community has encountered problems of Constitutional law in individual Member States from the very beginning.

The following is therefore a collection of reports giving a general description and assessment of the constitutional situation in the individual Member States. A great part of this chapter is based on the Dehousse report*, which has been used as a basis for the present study. It deals in particular with the obligations deriving from the application of Community Law and has been brought up to date by the inclusion of reports on the three new Member States.

B. SITUATION IN THE VARIOUS MEMBER STATES

BELGIUM

I. Constitutional provisions

Leaving aside regional questions, the distribution of power can be considered at two levels:

- internal: Article 26: 'The legislative power is exercised collectively by the King, the Chamber of Representatives and the Senate'; Article 67: 'The King shall issue the regulations and decrees required for implementation of laws but shall have no power to rescind laws or waive their application.';

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* Report drawn up on behalf of the Legal Affairs Committee on the application of Community law by the Member States; Rapporteur, Mr DeHousse; European Parliament, Working Documents 1967-68, Document 38, 3 May 1967

- international: Article 25a: 'The exercise of specific power may be conferred by a treaty or law on institutions governed by international public law.' This new article was adopted during the 1968-1971 revision of the Constitution.

A number of observations appear necessary concerning Article 25a:

(a) To decide on the precedence of national and international acts, the constituent Chambers considered the possibility of inserting an Article 107a: 'The courts and tribunals shall only apply the laws and decrees insofar as they comply with the rules of international law and in particular with duly published treaties in force.' For lack of time, the Chambers were unable to vote on this proposal. It is quite clear, however, that the spirit of Article 25a tends to confirm - if only incidentally - the pre-eminence of Community law.

(b) However, the constituent Chambers did not wish to make the transfer of power to institutions governed by international public law a definitive act. The purpose of Article 25a is to limit the importance of the transfers to be agreed or already agreed:

  - only the right to exercise a power is transferred; transfer in the opposite direction would therefore be possible if the Community should come to an end;

  - the transfer is not comprehensive: it relates to 'certain' powers;

  - a proposed amendment to Article 68 of the Constitution (which was not adopted for lack of time) was intended to require special majority conditions for vesting certain powers in institutions governed by international public law. The transfer can therefore be adopted by the Chambers by a simple majority.

(c) Certain acts are inserted immediately into Belgian law. Under the heading 'Avis officiels, publications légales' the 'Moniteur belge' publishes Community measures which are incorporated in acts of internal law. In addition, it regularly publishes the indices to the Official Journal of the Communities.

II. Implementation of the Treaties and acts adopted pursuant to them

A previous interpretation of Article 67 gave the King the right to issue regulations and decrees on the implementation of the Treaties. The Council of State, however, has stated that this interpretation has been abandoned* and that case law and doctrine, as they have developed since 1872 have brought

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* Doc. 89 (1968) 1. Chamber of Representatives

out the essential difference between a treaty and a law by considering that in giving their assent to treaties, the legislative chambers are acting in a capacity similar to that of a trustee.

The Council of State added that present legal opinion was that the provisions of the Treaties could be implemented by means of regulations only if the implementing provision to be issued by the King falls within the King's area of competence or has its legal basis either in a specific clause in the law or Assent or in another law.

The Treaties and secondary acts must therefore be implemented either by laws or by royal decrees issued by virtue of delegations of authority previously given to the executive. In certain cases the delegation already existed; in other cases the legislature has acted to give the executive the power to implement Community provisions. It should be noted that acts adopted by the executive to apply Community law may in certain cases modify existing legislative provisions.

The control exercised by the national parliament over the Government in respect of acts of the Council of the Communities adopted in implementation of Community Treaties has always been a difficult problem. In the case of a majority decision by the Council, the minister could point out that, despite his own opposition, an act considered to be unfavourable by the national parliament was nevertheless adopted. However, since 1966, the rule of unanimity has been observed by the Council so that responsibility rests with each minister.

In fact, however, the Belgian Parliament has confined itself to a few measures which do not greatly affect the Government:

(a) the Chamber of Representatives has set up a purely advisory committee on European affairs;

(b) the Belgian Parliament has been informed of the actions of the Government in the Council of the Communities and the debates which have taken place on topical questions have never resulted in any sanction whatever, against the Government.

DENMARK

I. The Constitution

The Constitution ('Grundlov') contains three sections which have been applied to enable Denmark to become a member of the European Community.

1. Section 19 provides that the King acts on behalf of the country in international affairs, although the consent of the Folketing* is required for certain matters of major importance and where obligations are concerned that may only be fulfilled in cooperation with the Folketing*.

2. Section 20, subsection 1: 'Powers vested in the authorities of the Realm under this Constitution may, by statute but only to a specified extent, be delegated to international authorities set up by mutual agreements with other states for the promotion of international rules of law and cooperation.'

3. Subsection 2: 'For the passing of a Bill dealing with the above, a majority of five-sixths of the Members of the Folketing shall be required. If this majority is not obtained, but the majority required for the passing of ordinary Bills is obtained, and if the Government maintains the Bill, it shall be submitted to the electorate for approval or rejection in accordance with the rules for referenda laid down in section 42.'

II. Act of Accession

A special Act was passed by the Folketing containing the provisions required by the Constitution for Denmark's accession to a supranational organization.

1. The first section of this Act contains the parliamentary consent to the ratification of Denmark's accession to the EEC and EAEC. In subsection 2, parliamentary consent is also given to the Decision of the Council of the European Communities concerning the accession of Denmark and other countries to the ECSC.

2. Section 2 of the Act reads as follows: 'Powers vested in the authorities of the Realm under the Constitution may, to the extent specified in the treaties, etc., referred to in section 4, be exercised by the institutions of the European Communities.'

   This means that section 20 of the Constitution has been applied for the first time. It affords the possibility of incorporating certain treaties into Danish law (though special legislation) whose implementation in Denmark would otherwise be possible only by way of amending the Constitution itself.

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* Folketing : Danish Parliament

Section 2 deals only with future Community acts and has nothing to do with regulations issued before the date of accession, nor with the treaty provisions directly applicable whose effect in Denmark is dealt with in section 3 of the Act, which reads as follows:

'(1) The provisions of the treaties, etc., referred to in section 4 shall take effect in Denmark to the extent that they are directly applicable in Denmark under Community law.

(2) This shall also apply to the acts adopted by the institutions of the Communities before Denmark's accession to the Communities and published in the Official Journal of the European Communities.'

Consequently, provisions in existing Danish statutes at variance with existing regulations or with directly applicable treaty provisions were automatically superseded.

The provisions contained in section 3 were to be immediately applied by Danish law-applying authorities. The same holds good, under section 20 of the Constitution, for regulations adopted by the EEC after Denmark's accession. The authority for the application of Community law in Denmark is therefore (be) section 3 of the Act of Accession and section 20 of the Constitution.

It will thus no doubt be possible to decide the question of the priority to be given to Community law on the basis of those provisions and the general rules of Danish law on the relationship between Danish and international law.

4. Section 5 of the Act reads: 'The appropriate Minister may provide that legal requirements as to nationality, residence and place of registered office in Denmark shall be set aside where necessary in consequence of Denmark's obligations under the Communities' rules on rights of establishment, exchange of services and the free movement of workers.'

5. Section 6 of the Act contains the following provisions:

Subsection 1: 'The Government shall report to the Folketing on developments in the European Communities.'

Subsection 2: 'The Government shall notify a committee appointed by the Folketing of proposals for Council Decisions which will become directly applicable in Denmark, or whose implementation requires action by the Folketing.'

This implies an obligation on the Government's part to inform the Committee not only of all draft Council regulations, but also of all draft directives that can only be implemented by Parliament.

III. Power of the Folketing

It is important to note that under the Constitution the Folketing has authority to legislate in all areas not specially reserved to other State bodies: these special areas are comparatively limited, e.g., the King's (Government's) right to call a general election, the right to employ military forces and certain rights to conclude treaties ('the King's prerogatives').

With certain restrictions, then, the Folketing's powers are all-embracing. All matters can be brought within its scope and its decisions can be in the nature of both general rules providing for all eventualities or more narrowly defined situations and specific acts concerning particular cases or individual persons' legal status. The legislature may also take up matters of immediate concern only as regards internal administrative affairs.

In a number of cases the Folketing has of course given the Government statutory powers to issue general rules of law, but, unlike the situation in certain other Member States, it has not entrusted entire sectors of legislation (e.g. the transport sector) to the Government.

The above situation should be the basis of any assessment of what power the Danish Parliament has lost through acceding to the EEC Treaty and the Act of Accession.

FEDERAL REPUBLIC OF GERMANY

I. Legislative power

1. General power

Article 20 (II) of the Basic Law stipulates that:
'All state power proceeds from the people. It is exercized by the people in elections and plebiscites and by special legislative, executive and judicial bodies.'

The term 'legislative bodies' means, in the Federal Republic, the Bundestag and the Bundesrat, regardless of the fact that the Bundesrat does not carry the same weight as the Bundestag for all laws. For many laws its agreement is needed, but for others it can do no more than

enter an objection*.

Under Article 20 (III): 'the executive and the judiciary are bound by the law'.

Therefore, with very few exceptions**, laws can only be enacted by Parliament through a set legislative procedure. The administration can only be empowered to promulgate statutory orders by the special procedure provided for in the Basic Law. A broad delegation of legislative power to the administration would not be permissible. Current opinion in the Federal Republic is that it is not possible to define clearly the demarcation between the administration and the legislature***. All the same, any legal provision which has come into being under the legislative procedure prescribed by the constitution is considered as law, provided that it satisfies certain other requirements with regard to content.

The framework within which the legislature may transfer power to the administration for the issue of statutory orders is defined in Article 80 of the Basic Law. Under this article, a law voted by Parliament must state the content, purpose and scope of the order to be issued by the administration.

The provisions for transferring power to issue orders to the administration are subject to the control of the Constitutional Court. This court has repeatedly declared delegation of power by the legislature to be unconstitutional.

The legislative power of the Federal Parliament, which is in principle unlimited, is restricted mainly by

- the basic rights of the individual and related constitutional principles (e.g. the rule of law and the relationship between the individual and the state)
- the division of powers between the Bund and the Länder (i.e. between the Federal and Regional Governments).

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* In view of the extensive rights of the Bundestag (Article 77 of the Basic Law), only the Bundestag is referred to below; it should be noted, however, that restrictions on the jurisdiction of the Bundestag likewise affect the Bundesrat.

** Emergency legislation (Article 81 of the Basic Law) and Defense (Article 115e of the Basic Law)

*** For more details see Maunz, Dürig, Herzog, Grundgesetz, 2nd edition, Munich 1971, Article 20, Note 93 ff.

The power of Parliament may also be restricted when:

'The Federation has...by legislation, transferred sovereign rights to international institutions' (Article 24(1) of the Basic Law).

The laws ratifying the Treaties establishing the European Economic Community are based on this enabling provision.

Although the predominant legal view in Germany is that such transfers of power are constitutional, there is widespread disagreement as to the limits within which Article 24 of the Basic Law allows the transfer of power. This disagreement is of practical importance in two cases:

- if the Treaty is interpreted by secondary Community law in a manner which conflicts with the fundamental rights secured by the Basic Law;
- if Parliament's sovereignty in respect of taxation is substantially restricted by new agreements supplementing the Community Treaties (e.g., to create the Communities' own resources) and, if in certain circumstances, income from taxation is taken away from the Federal States.

Only the Federal Constitutional Court can give a final ruling on the limits to the transfer of power under German law. In the summer of 1973 a case was pending before the Constitutional Court in regard to the first set of problems referred to above*.

2. Special powers

The Basic Law defines the material jurisdiction of the Federal legislature. It should be noted, however, that this is not a definition of the relationship between government and parliament - as is sometimes the case in other Member States - but of the relationship between the Federal Parliament and the parliaments of the Länder, since, as stated in paragraph 1 above, legislation is exclusively** a matter for the parliaments. The actual responsibility for legislation lies predominantly with the Bund, while the actual and legal burden of implementation of the Federal laws and of their administration rests predominantly with the Länder.

The Bund is exclusively responsible for the following in the areas of importance to the EEC Treaties:

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* Bundesverfassungsgericht, 2BvL 52/71

** For an exception see footnote 2 on page 20

- External affairs (including all associated matters (immigration and emigration, customs, foreign trade, balance of payments, monetary questions, etc.)

- Transport (rail, post, telecommunications, air traffic, etc.)

The Bund also has concurrent* powers in the following areas:

- Commercial and social law;
- Promotion of agricultural and forestry production, securing food supplies, import and export of agricultural and forestry products.

3. Consequences of the transfer of power in accordance with Article 24 of the Basic Law on the responsibilities of the Federal legislature.

The transfer of sovereign rights to international bodies in accordance with Article 24 of the Basic Law results in a waiver of responsibilities by the Federal legislature.

The opinion prevailing in the Federal Republic is that as a rule the legislature is not in a position to commit itself and its successors. Therefore, in spite of the waiver of responsibilities in a given field the legislature could theoretically re-enact those laws at a later date, so that it is not permissible to speak of a real loss of power.

For the particular instance of Article 24 of the Basic Law, such a commitment is, however, accepted in the Federal Republic by equating the law of transfer with the Constitution. Therefore, the legislature would infringe constitutional law by enacting laws in an area which has been transferred to the jurisdiction of international organisations*.

1. Thus there is a loss of power by the Bundestag in all cases where the treaties of establishment place certain requirements or prohibitions on Member States or where the Communities, in application of the Treaties, have issued statutory measures in an area which was previously the responsibility of the Bund.

The loss of power can be seen immediately from an examination of Community law.

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* This means that the power lie with the Länder, unless the Bund has enacted laws in this area

** See Maunz, Dürig, Herzog, Grundgesetz, 2nd edition 1971 Note 11 on Article 24

Considering also the extent to which powers of regulation have usually been delegated to the executive, the nature of the actual reduction in the power of the Bundestag can be gauged.

II. Participation by the Bundestag in Community legislation

1. Information

In any study of the reduction in the power of the Bundestag, it should also be borne in mind that, in the law of assent to the Community Treaties of 27.7.1957, the Parliament reserved the right to certain information from the Government:

'The Federal Government must keep the Bundestag and Bundesrat continually informed of developments in the Council of the EEC and in the Council of the EAEC. If as a result of a Council decision internal German laws become necessary or laws are instituted which are directly applicable in the FRG, the information must be given before the Council decision is taken.'

This procedure certainly provides the Bundestag with the information needed for control over the Government, but the associated possibilities of influencing the Government as a member of the Council of Ministers only have an indirect effect on Community legislation. They will therefore not be taken into consideration in determining the loss of power.

2. Implementation of Community law

(a) Directly applicable provisions of the Treaties and regulations

In the Federal Republic of Germany a series of Community regulations has been brought into effect by legislation. On the basis of this, the authorities have taken implementing decisions and issued administrative regulations. Such national provisions do not transform the Community law embodied in the regulations but either discharge the obligations imposed on the Federal Republic by those regulations or serve to bring domestic law into line with Community law.

The Federal Government has on many occasions made use of the authorisation contained in Article 3, Section 1 of the law assenting to the Treaty of Rome, by means of which provisions relating to taxes, and in particular to customs tariffs may be modified. There has not so far been any instance in which the Bundestag has called for the withdrawal of any such statutory order relating to the modification of customs tariffs.

(b) Directives

In Germany there is no general law for the delegation of power for the implementation of directives. Directives are given effect to in the form of acts, statutory orders or administrative decrees (Verwaltungserlasse):

(i) Where an Act is necessary, the Federal Government generally introduces a Bill which may, depending on the subject, also require the consent of the Bundesrat.

(ii) An order usually suffices where power have been delegated for the issue of regulations for putting a directive into effect.

(iii) Administrative decrees suffice for applying a directive that does not involve amending a federal law or statutory order already in force.

(c) Decisions and resolutions

Internal authorities are bound by decisions and resolutions issued by Community institutions to the Federal Republic and they must therefore, for example, take the necessary implementing measures. If the Community institutions state precisely how such implementation is to be effected, the internal authorities are also bound by this*.

In the case of decisions addressed to individuals as well as of judgments of the Court of Justice of the European Communities, the State has to step in where these involve the enforcement of pecuniary obligations (Article 192 of the EEC Treaty). In Germany, according to the pronouncement of 25 August 1954, the Federal Minister of Justice is empowered to issue the order for enforcement of judgments of the Court of Justice and decisions of the High Authority of the ECSC. Through an announcement on 3 February 1961 this provision was extended to the institutions of the EEC.

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* e.g. ruling of the European Court of Justice in the matter of the Federal Republic versus the Commission, 70/72 of 12.7.1973

FRANCE

I. Constitutional provisions

The Constitution of 4 October 1958 reversed the situation prevailing under the previous Constitution in respect of the division of responsibilities between Government and Parliament, thereby increasing the 'statutory' power, in other words the governmental prerogative.

Formerly the legislative power of common law was vested in Parliament, and the Government could act only by delegation of power. Under the new Constitution the power of common law are conferred upon the Government, and Parliament is vested with certain powers referred to as the 'domain of the law'. Naturally this 'domain' includes essential fields of responsibility. These are defined in Article 34 of the Constitution, part of which reads as follows:

'(a) laws shall fix provisions governing:
- civic rights and the basic guarantees accorded to citizens for the exercise of public freedoms; the obligations imposed on citizens in respect of their persons and property by the defence of the nation;
- nationality, civil status and capacity of persons; marriage settlements, inheritance and endowments...
- the introduction of new jurisdiction and magistrates' regulations;
- the bases, rates and terms of collection of taxes of all kinds...
- electoral rules for parliamentary and local assemblies;
- the establishment of categories of public institutions;
- the nationalization of undertakings and the transfer of the property of undertakings from the public to the private sector;

(b) laws shall lay down the basic principles of:
- the general organization of national defence;
- the autonomy of local authorities, their powers and resources;
- education;
- labour law, trade union law, social security.'

Under the Constitution the Government is thus in possession of wide power to decree enactment of the measures in implementation necessitated by Community decisions and directives*.

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* It should however be noted that under previous constitutions extensive power was delegated to the Government in certain areas

The Council of State, in its opinion of 20 May 1964, confirmed the guidelines set out in the Constitution, by stating that 'since the Government, when implementing the directly applicable provisions of the Treaties and the regulations and decisions of the European Economic Community...is in the same situation as when it implements a domestic law, the measures implementing the above acts shall normally be enacted by regulation.'

II. Implementation of the Treaties

1. Directly applicable provisions of the Treaties and regulations

Although they are directly applicable, certain provisions of the Treaties and regulations have sometimes to be adapted to internal law. This is done by way of regulations.

Under the terms of the Constitution of 1958 (Articles 9, 13, 19, 21 and 22) the power to issue regulations is vested in the President of the Republic, as head of State, or in the Prime Minister, as head of Government. Both presidential decrees and decrees by the Prime Minister are therefore issued. The preambles to these decrees refer to:

(a) The Community Treaties and Community regulations to which they give effect;
(b) National laws (customs legislation, law on agricultural guidance, etc.), though more and more rarely.

For example, decrees 64-1103 and 1104 of 31 October 1964 (agricultural products) base themselves simply on the EEC Treaty and four EEC regulations.

The implementation of Community measures is on occasion governed in detail by inter-ministerial orders based on decrees.

2. Directives

A distinction has to be made between directives on (a) matters which are the subject of legislation and (b) other matters.

(a) Where the subject matter of a directive does not, according to the definition of Article 34 of the Constitution fall within the category to be dealt with by legislation, it is for the regulation-making authority (the President of the Republic or the Prime Minister) to give effect to it by decree. An example is the Prime Minister's decree of 9 October 1964 implementing two EEC Council directives of 2 April 1963 concerning certain

aspects of freedom of establishment in agriculture. The decree refers to Article 37 of the Constitution under which all matters other than those which are the subject of legislation may be regulated by decree (ont un caractère réglementaire).

Some directives are transposed into domestic law simply through a ministerial or an inter-departmental order, e.g. the inter-departmental order of 15 October 1964 pursuant to the EEC Council directive of 23 October 1962 on colouring agents.

(b) Where the directive concerns a matter 'in the domain of the law' the Government may resort to Article 38 of the Constitution and ask Parliament to 'authorize it, over a limited period, to take measures by way of ordinances normally subject to laws'. Such authorization is not often requested. The first parliamentary intervention over directives concerned Law 64-1231 of 14 December 1964 (JORF of 15 December 1964). This authorized the Government to take, by way of ordinances, by 1 January 1966 and under the conditions laid down in Article 38 of the Constitution, measures normally subject to laws and required to give effect to EEC Council directives on the progressive introduction of the right of establishment and freedom to supply services within the Community, in pursuance of the provisions of the Treaty of Rome. Article 2 stipulated that 'draft laws ratifying ordinances issued pursuant to Article 1 above shall be tabled in Parliament by 1 April 1966'.

The period of validity of this law was extended on 6 July 1966 (JORF of 7 July 1966) until 1 January 1970.

It is pertinent to look at the explanatory statement with which the Government prefaced the draft enabling law: 'Parliament has already accepted all the consequences flowing from the EEC Treaty, including all the domestic legal measures it would necessitate, so that there appears to be no need for it to study all the implementing measures in detail. As regards the right of establishment and freedom to supply services, France's obligations have already been defined by two general programmes and by a very detailed liberalization timetable which Parliament cannot tamper with without neglecting our international obligations.'

3. Decisions

(a) Decisions addressed to the Member States: Prior to September 1964, decrees on tariffs, issued pursuant to Community decisions, made reference to Article 8 of the Customs Code (delegation of power within a restricted sphere) and had to be ratified

subsequently.

Since September 1964, on the other hand, decrees for giving effect to tariff decisions no longer refer to the Customs Code. Decisions are given effect to by presidential decrees which refer only to the Treaty of Rome, Community decisions and, where applicable, to previous decrees relating to the same matter. There is therefore no need for such decrees to be ratified by Parliament.

(b) Decisions addressed to individuals (natural or legal persons): These decisions are in the nature of administrative acts. The State is required to intervene only in the event of enforcement of a decision involving pecuniary sanctions.

The President of the Republic has the power to issue an order for enforcement in respect of any judgment of the Court of Justice.

IRELAND

I. Constitutional Position

The obligations of membership of the Communities created certain constitutional difficulties, mainly relating to the role of Parliament and the Government. These difficulties are illustrated by the following extracts from the Constitution.

Article 6.2:
'Powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.'

Article 15.2.1°:

'The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.'
(The Oireachtas consists of the President and two Houses, Dáil Eireann (House of Representatives) and Seanad Eireann (Senate).

Article 17.2:
'Dáil Eireann shall not pass any vote or resolution, and no law shall be enacted, for the appropriation of revenue or other public moneys unless the purpose of the appropriation shall have been recommended to Dáil Eireann by a message from the Government signed by the Taoiseach' (Prime Minister).

Article 29.6:
'No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.'

It was considered impractical to amend specific articles of the Constitution to remove incompatibilities between them and the obligations of membership of the Communities because the extent of any amendment of the Constitution was in the final analysis a matter for decision by the appropriate courts. Moreover any amendment of the Constitution required a favourable decision by the people at a referendum and it was important that, if possible, the matter be decided as a single issue. Consequently a global amendment was proposed which added a new sub-section 30 to Article 29.4 of the Constitution. This amendment was approved by referendum on 10 May 1972.

Article 29.4 of the Constitution now reads:

'1°. The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government.

2°. For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail itself of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international cooperation in matters of common concern.

3°. The State may become a member of the European Coal and Steel Community..., the European Economic Community... and the European Atomic Energy Community... No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State consequent on membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.

II. Community Regulations

On 26 October 1972 Dáil Eireann passed a resolution approving the treaties governing the European Communities and on 6 December 1972 the European Communities Act, 1972 became law. Section 2 of this Act is as follows:

'From the 1st day of January 1973, the treaties governing the European Communities and the existing and future acts adopted by the institutions of these Communities shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those treaties.'

Consequently, Community Regulations are automatically part of the domestic law of the State and no reference is made to any particular area of Community activity. In this regard there is a loss of power by Parliament, particularly where the application of such regulations would have required legislation by Parliament or delegated legislation by way of Ministerial Order or Regulations subject to Parliamentary scrutiny.

III. Community Directives and Decisions

Section 3 of the European Communities Act confers power on a Minister to make regulations to enable section 2 to have full effect. The regulations may contain such incidental, supplementary and consequential provisions as appear to the Minster making them to be necessary for their purpose. They are required mainly to implement provisions of the treaties, and of secondary legislation of the Communities which are not directly applicable, including directives and decisions. These Ministerial Regulations have statutory effect.

In July 1973 a joint committee of both Houses of Parliament was set up to examine Community enactments. Under the European Communities (Amendment) Act, 1973 the Joint Committee on the Secondary Legislation of the European Communities may recommend to Parliament that any Ministerial regulations made under the European Communities Act, 1972, be annulled. If a resolution annulling such regulations is passed by both Houses within one year after the regulations are made, they cease to have statutory effect.

Moreover, either House of Parliament may be recalled during adjournment at the request of at least one-third of its Members to consider a Ministerial regulation made under the European Communities Act, 1972, within one year after it has been made.

Section 5 of the European Communities Act 1972 requires the Government to report twice yearly to each House of the Oireachtas on developments in the European Communities. In this way Members are kept abreast of developments and it is open to them to seek a debate in each House on these reports.

Parliament may, of course, continue to legislate in the normal way in those areas which are not restricted by the treaties governing the European Communities and acts of their institutions, and to delegate power to Ministers in this regard. Such delegated legislation will, in the normal way, be subject to whatever parliamentary control is written into the parent statute.

ITALY

I. Constitutional Provisions

1. Basic principles

Article 10.1 of the Italian Constitution reads:
'The Italian legal system conforms to generally recognized principles of international law.'

Article 11 stipulates that:
'Italy agrees, on conditions of equality with other States, to the limitations of her sovereignty necessary to an organization which will assure peace and justice among nations, and promote and encourage international organizations constituted for this purpose.'

The application, within the Italian domestic system, of a treaty embodying stipulations of international law of a special kind, is carried out through a legislative act known as an 'ordine de esecuzione'.

2. Enactment of laws

Article 70:
'The legislative function is exercised jointly by the two Chambers.'

Article 76:
'The exercise of the legislative function cannot be delegated to the Government unless principles and standards have been specified and only for a limited time and for definite objectives.'

Article 77:
'The Government cannot issue decrees having the force of ordinary laws without the authorization of the Chambers. When, in extraordinary cases of necessity and urgency, the Government, on its own responsibility, adopts provisional measures having force of law, it must on the same day present them to the Chambers for conversion into law. Should the

Chambers be in recess, they shall be expressly summoned and meet within five days.'

Decrees lose their efficacy as at their date of issue if not converted into law within sixty days of their publication.

II. Implementation of the Treaties

As regards the directly applicable provisions of the Treaties regulations and directives, the Italian authorities determine whether implementing measures are to take the form of a law, a regulation or a simple administrative act, in the light of the subject matter.

Under the ratification law of 14 October 1957 the Italian Government was authorized to enact, by decree issued in accordance with Article 76 of the Constitution, implementing provisions with respect to certain obligations under the EEC Treaty, and to give effect to certain measures provided for in the EEC Treaty.

The Italian Government thus had powers delegated to it in a clearly-defined sphere and was authorized to issue decrees having the force of law, without parliamentary supervision. This authorization expired at the end of the first stage of the transitional period.

During the period from 1 January 1962 to 13 July 1965 there was no delegation of power. The Italian Government did not, however, revert to normal parliamentary procedure when it had to take domestic measures in application of Article 10 of the EEC Treaty; the finance minister took 'provisional' measures in the form of administrative circulars, pending a law giving them retroactive legal effect.

Law No. 871 of 13 July 1965 again delegated power to the Government in respect of matters covered by the EEC and EAEC Treaties. This power were only delegated, however, up till the end of the second stage of the transitional period.

A new delegating law, Law No. 740, valid for the duration of the third stage of the transitional period but not beyond 31 December 1969, was enacted on 13 October 1969.

Finally Law No. 1185 of 23 December 1970 provides for the ratification and implementation of the Treaty amending certain budgetary provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities and annexes thereto.

This law delegates power to the Government to enact provisions implementing the decision of the Council of Ministers of the European Communities on the replacement of financial contributions from Member States by the Communities' own resources, adopted in Luxembourg on 21 April 1970.

The Government is further authorized to enact, by 31 December 1974, by means of decrees having the force of ordinary law, the provisions needed to ensure the fulfilment of obligations arising from:

(a) regulations, directives and decisions issued by the institutions of the European Communities to implement the Treaty on the Communities' 'own resources';

(b) Community regulations on financing the common agricultural policy.

The question of the constitutionality of this delegating law was discussed during the parliamentary debates, some holding that it was constitutional and others taking the opposite view.

Parliamentary supervision seems to be safeguarded by the setting up of a parliamentary committee consisting of 15 senators and 15 deputies, which the Government will have to consult before it issues regulations on the matters covered by the delegating laws. This is all the more true as this committee is empowered to deliver its own opinion on the advisability of exercising the delegation for the implementation of individual measures (Article 3, Law of 13 October 1969).

In Italy the principle of the pre-eminence of primary and secondary Community legislation over ordinary domestic law is still an open question and opposing theoretical positions continue to be adopted on this matter, while in practice administrative and legal bodies have generally avoided adopting a clearcut position. For administrative purposes, it is still considered necessary when dealing with Community regulations embodying amendments to the provisions of existing national laws to 'insert' them into the Italian legal system by means of internal acts which take over their entire content.

It should be pointed out, however, that the existence and autonomy of the system of Community law were clearly recognized by the Constitutional Court in its judgment No. 30 of 1 March 1971, even if this recognition has not led to conclusions as to the need to put relations between Community law and domestic law on a more orderly footing, in the light of the requirements placed on the State by its participation in the Community.

LUXEMBOURG

I. Constitutional provisions

1. Domestic law

The Grand Duke alone exercises executive power and has no other power apart from that conferred upon him by the Constitution and specific laws enacted in pursuance of the Constitution (Articles 32 and 33 of the Constitution). He sanctions and promulgates laws (Articles 34) and enacts the regulations and decrees necessary for their implementation, although he does not have the right to suspend the laws themselves, or to authorise their non-enforcement (Article 36). The statutory power of the Grand Duke is therefore limited in that he cannot enact regulations independently, in other words on a completely new subject which is not yet covered by legislation or is not based on an existing law.

Article 46 of the Constitution provides that 'the agreement of the Chamber of Deputies is required for all laws'.

2. Community law

At international level, the Constitution confers upon the Grand Duke the power to conclude treaties (Article 37(1)), but this power is also restricted in that the treaties cannot take effect until they have been legally approved and published in the appropriate form.

The Constitution (Article 49(a)) also provides for the temporary devolution of national powers, stating that:
'the exercise of powers reserved by the Constitution to the legislature, the executive and the judiciary may be temporarily entrusted to institutions established under international law'.

Luxembourg jurisdiction recognises the primacy of European Community law over domestic legislation.

Measures for giving effect to Community law are a matter for the executive, that is, the Grand Duke and the Government. Article 37(4) of the Constituion reads:

'The Grand Duke issues the necessary regulations and orders to give effect to the treaties and does so in the manner requisite for measures giving effect to laws and having the same effect as such measures, without prejudice to those matters which, under the Constitution, come within the province of the law.'

It was thus that the Luxembourg Government issued the Grand Ducal regulation of 28 July 1962 for giving effect to EEC regulations, decisions, directives, opinions and recommendations in the sphere of agriculture, later replaced by the Grand Ducal regulation of 17 August 1963.

II. Implementing procedure

1. Directly applicable provisions of the Treaties and regulations

Implementing orders and regulations of minor importance refer not only to the EEC Treaty and to Community regulations but also to a law of enablement or delegation.

Thus the enabling law of 6 June 1923 - superseded by the law of August 1963 and amplified by that of 19 June 1965 - on the import, export and re-export of goods, conferred very wide power on the executive in the sphere of external trade.

The implementing measures concerning agriculture referred to were all issued under an emergency procedure under which the Government did not need to consult the Council of State. In another case, unrelated to agriculture, the regulation of 26 May 1965 on the application of certain Articles of EEC Regulation No.17 (competition controls) was passed after consultation with the EEC Commission and the Luxembourg Council of State.

2. Directives

EEC and Euratom directives and ECSC recommendations may be given effect to in two ways, depending on whether the subject matter of the directives lies within the competence of the executive or not.

(a) Directives carried out under an enabling law or a law conferring 'full powers' (loi de pleins pouvoirs)

Such a law renews from year to year the authorization given to the head of State to take any economic measure in the form of a regulation (arrêté réglementaire) after consulting the Council of State and obtaining the consent of a parliamentary committee. The executive resorts to this simplified legislative procedure to give effect to certain Community directives.

Other legal provisions which are specific in scope also provide the means of implementing a directive:

- The enabling law of 30 June 1961 permits the taking of any general measures relating to prices;
- The law of 25 September 1963 on the control of foodstuffs enabled the executive to give effect to the EEC directive of 23 October 1962 by way of a Grand Ducal regulation of 28 February 1964;
- The law of 25 March 1963 relating to protection against the hazards of ionizing radiations also contains provisions permitting the Euratom directive of 2 February 1959 on this matter to be put into effect.

By the law of 9 August 1971 on the enforcement and sanction of decisions and directives and the sanction of EC regulations relating to economic questions, technology, agriculture, forestry, social affairs and transport, the Chamber confers wide-ranging powers on the executive in Community matters. Enforcement and sanction are by means of administrative regulation, subject to the opinion of the Council of State, after consulting the appropriate Professional Chambers and obtaining the agreement of the 'working committee' of the Chamber of Deputies.

These provisions, which may derogate from existing laws, exclude, however, matter which, under the Constitution, falls within the province of the law.

(b) Legislation to give effect to other directives on matters which, under the Constitution, fall within the province of law.
In view of the far-reaching authorizations already existing, such a procedure would no doubt be highly exceptional. No examples of this are to be found at present.

3. Community decisions

(a) In Luxembourg, tariff decisions are put into effect by the methods applicable under the Belgo-Luxembourg Economic Union. This consists in confirmation by the Grand Duchy of legislative acts and regulations introduced in Belgium.

(b) Enforceable decisions addressed directly to individuals are covered by the Grand Ducal regulation of 17 October 1962 giving effect to the decisions and judgments of the European Communities. This regulation repeals the Grand Ducal Order of 28 March 1955 relating to the ECSC's decisions and judgments. The authenticity of Community decisions is checked and certified by the Minister for Foreign Affairs and an enforcement order is made by the Minister of Justice.

(c) Finally the Law of 9 August 1971 also deals with Community decisions.

THE NETHERLANDS

I. Constitutional provisions

The Netherlands found a solution to the question of determining the legal force of a treaty in relation to national law by amending the Constitution in 1953 and 1956.

Article 60 (3) provides:
'A court of law shall not pronounce on the constitutionality of agreements.'

Further, Article 131 (2) provides:
'The laws are inviolable.'

In other words, a Netherlands court is not competent to pronounce on the constitutionality of international treaties or laws.

These articles must, however, be read in conjunction with Articles 65(1), 66 and 67 (2):

Article 65 (1):
'Provisions of agreements that are binding as to their content on all persons shall acquire their binding force as from the time of their publication.'

Article 66:
'Statutory regulations in force within the Kingdom shall not apply if their application would be incompatible with provisions, binding on all persons, of agreements entered into either before or after the enactment of the statutory regulations.'

Article 67 (2):
'The provisions of Articles 65 and 66 shall be applied analogously to decisions taken by organisations established under International Law having powers of legislation, administration and jurisdiction. The principle that international agreements shall take precedence over national law is thus laid down in the Netherlands Constitution.'

Provision is also made for cases where provisions of the Constitution and a treaty are contradictory. Article 63 states:

'Where the development of international legal order so requires, that which is laid down in an agreement may deviate from the provisions of the Constitution. In such cases approval of the agreement must be given expressly; the Chambers of the States General may not pass a Bill drawn up for this purpose save by two-thirds of the votes cast.'

II. Legislative and Administrative Power

The power of the legislature, executive and judiciary is normally separated in the Netherlands. Nevertheless legislative power is exercised by the Crown, i.e. the King and Ministers and the States General together.

(a) The duty of the Crown and States General to cooperate in the legislative function is laid down in the Constitution.

Article 119:
'Legislative power shall be exercised jointly by the King and States General.'

Article 131:
'All Bills adopted by the States General and approved by the King shall have the force of law and be promulgated by the King. The laws are inviolable.'

(b) Under the Constitution, administrative power lies with the Crown:

Article 56:
'Executive power is vested in the King.'

Article 57:
'General administrative orders shall be made by the King...'

Article 58:
'The King shall have supreme direction of foreign relations. He shall promote the development of international legal order.'

Article 72:
'The King shall have supreme direction of the public funds...'

III. Constitution and Sovereignty

A long-term view can be discerned in the Dutch Government's note on the final report concerning the amendments made to the Constitution in 1953.*

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* Report of the Van Eysinga Committee

'Control by the national Parliament over matters of international policy, which is steadily decreasing, can be regained by a federal Parliament inasmuch as international policy is transmuted into federal legislation and federal policy, both of which can be shaped and controlled by the federal Parliament. Given the variety and range of inter-European problems, the committee considers it advisable that such federal organizations be set up gradually to meet specific functional requirements rather than that an attempt be made to establish one over-all High Authority forthwith.'

'In the interim report prepared by the appropriate parliamentary committee, a number of members wonder whether the statement made in the explanatory memorandum means that most of the other delegations objected to the transfer of decision-making or joint decision-making powers to the Assembly and that the Netherlands had in fact been prepared to have the European Parliament given a say in legislation, subject to certain limits. The committee members concerned would regard this as a favourable development.'

In this connection, Mr Gerbrandy (member of the States-General) felt that Parliament had relinquished sovereign power without receiving anything equivalent in return. This was, in his opinion, an unjustifiable, 'fundamentally monstrous development in the field of constitutional law'. Mr Van Rijckevorsel, too, expressed the view that 'even for the transitional period, co-legislative powers of the States-General are surrendered in the very important sectors of social, economic and financial affairs, without the States-General reacquiring (such powers) at European level.'

In order to ensure the exercise of parliamentary control as far as possible at national level, the Government has, at the request of the Second Chamber, added two new articles to the ratification law:

'Steps will be taken to ensure that the States-General receive an annual report on the effect and application of the Treaty referred to in Article 1 (EEC Treaty and EAEC Treaty).'

'Insofar as further agreements are concluded to implement the Treaty referred to in Article 1 (EEC Treaty and EAEC Treaty), they shall be subject to the approval of the States-General.'

IV. Application of secondary legislation of the Community

Both Council directives and regulations of the Council and Commission are usually incorporated in domestic legislation. Existing legal or administrative rules in the area concerned are adapted to Community legislation. This may be effected by amending laws, royal decrees, ministerial decrees or even decrees by local authorities where the latter are authorized by law to originate regulations.

However, the principle that Community law shall have direct effect is not at issue. By virtue of Article 67 of the Constitution, Community regulations, whether incorporated in national legislation or not, are directly applicable.

UNITED KINGDOM

I. Constitutional Position

As the British Constitution is not written, the approach to this study must be different from that in respect of other Member States. The Government requires the authority of Parliament for most legislative acts. Such authority has, in the last 25 years, increasingly been granted by Parliament in the form of a parent Act (~~loi-cadre~~) which authorises the Government to take further action under delegated legislation, some of which is never presented to Parliament.

1. Treaties

There is no procedure in the British Parliament for the formal ratification of Treaties. These are made by prerogative of the Crown and are presented to Parliament by being deposited in one of the offices of the Department of the Clerk of the House (~~Greffier~~). By convention a treaty is not formally ratified until 21 days after presentation. Although neither House has a formal power to prevent ratification, a treaty may be debated in general terms before or after ratification. If however legislation is necessary to implement a treaty, this legislation is subject to the normal parliamentary procedure applicable to all legislation.

The Treaty of Accession 1973 set out the terms of entry of the United Kingdom to the Communities, which were agreed after negotiations. It provided for the full participation of the United Kingdom in the Community to be realized in stages over a period extending, in some cases, to five years.

2. Delegated Legislation

Instruments made as delegated legislation are, unlike Bills, not open to amendment by Parliament; they must be either accepted or rejected as a whole. If the Government wish for any reason to alter the terms of an Instrument, it must be withdrawn and presented again to Parliament. Special facilities are provided for two types of Instrument to be open to debate and to a vote in the House of Commons. These are:

(a) Instruments requiring an 'affirmative resolution' before gaining Parliamentary approval;

(b) Instruments which become law automatically, but in respect of which the present Act provides a period of (usually) 40 days during which the House may pass a 'negative resolution' to annul the Instrument.

In recent years only about one half of motions for negative resolutions have been debated, owing to the pressure of business before the House. However, a Standing Committee to debate Instruments has been established in an attempt to ensure that more Instruments subject to 'negative resolution' are discussed within the 40 day period.

II. Directly Applicable Community Law

The European Communities Act 1972 applies as United Kingdom law the existing directly-applicable provisions of the Community Treaties and of Regulations and Decisions of the Communities, and provided for their future legal effect in the United Kingdom. The automatic application in the United Kingdom of future Community Regulations will involve a loss of power to the British Parliament as in many cases the content of such Regulations would formerly have required legislation in the form of Bills or Statutory Instruments. Furthermore, insofar as Bills or amendments to Bills which may be passed by Parliament in future are found to be contrary to Community obligations, the courts are enjoined by the Act to rule that such provisions will have no effect.

These statements must nevertheless be qualified to the extent that, from a more general standpoint than those adopted above, no British Parliament can bind its successors and in practice a future British Parliament could expressly exclude or override certain Community obligations. (Official Report, Commons, 13 June 1972, col. 1320). Equally, a future Parliament retains 'the ultimate power in principle to repeal the Act' (Official Report, Commons, 13 July 1972, col. 1875).

III. Indirectly Applicable Community Law

A further, though less important, loss of power resulted from Section 2(2) and (4) and Schedule 2 of the European Communities Act 1972. The Government was thereby empowered to make provision for non-directly applicable Community obligations (such as those contained in Directives) upon the United Kingdom to be implemented by delegated legislation. This power is nevertheless limited by the provisions (contained in Schedule 2, para. 1) that powers of taxation, of making retrospective legislation and sub-delegated legislation, and of creating new criminal offences must be embodied in Bills

and not in delegated legislation.

Not all non-directly applicable Community law will fall to be dealt with under the power of Section 2(2) of the European Communities Act 1972. For example, directives on capital movements can be implemented by action under the Exchange Control Act 1947; certain other Community obligations can be met by the use of existing statutes giving the Government power to make subordinate legislation; and provisions under the Treaties relating to the setting-up and reorganisation of the Community institutions require no legislative action by Member States.

(C) TABULAR SUMMARY OF THE PROVISIONS INCLUDED IN THE CONSTITUTIONS OF THE VARIOUS MEMBER STATES WHICH PERMIT THE TRANSFER OF POWERS TO SUPRANATIONAL BODIES

		Article Number of General Clause	Article Number of other Constitutional Provisions (or other laws)
Belgium	Constitution/ Constitutie	25 bis	
Denmark	Grundlov	20 I	19, 20 II, 42 V; Tiltraedelseslov 1972 (Act of Accession)
Germany	Grundgesetz	24 I	80 I, 32 I
France	Constitution	55	9, 13, 19, 21, 22 Journal Officiel de la Rép. Franc.
Ireland	Constitution	29 IV	Treaty of Acc. 1972, EC Act 1972
Italy	Constituzione	10 I; 11	66, 67; L. No 871/1965
Luxembourg	Constitution	49 bis	36, 37
The Netherlands	Grondwet	67	60, 63, 65, 66
United Kingdom	-	-	Treaty of Acc. 1972, EC Act 1972

PART THREE - LOSS OF POWER IN INDIVIDUAL SECTORS

CHAPTER I. THE COMMUNITY'S EXTERNAL RELATIONS

I. Introduction

The EEC has no common foreign policy in the accepted sense. There are, however, numerous contacts between the EEC and third countries and international organizations. Following the economic directives of the Treaty, these contacts relate mainly to trade and cooperation in economic matters. In this regard the Community has made significant progress in establishing a common commercial policy towards third countries in matters of trade and cooperation.

This policy rests on Articles 111 to 116 of the Treaty and consists of the coordination and common handling of the external trade relations of the Member States under the authority of the EEC institutions. Moreover, Article 228 provides that agreements between the Community and one or more States or international organizations shall be negotiated by the Commission and concluded by the Council, after consultation with Parliament when required by the Treaty. The Community may also conclude association agreements with a third State, a union of States or an international organization. These agreements often include provisions relating to financial aid and technical assistance. Articles 229 to 231 envisage the maintenance of relations with international organizations, e.g. with organs of the United Nations, of its specialised agencies and of the General Agreement on Tariffs and Trade and the establishment of cooperation with the Council of Europe and the OECD.

The effect on the power of the parliaments of the Member States arising from Commercial Policy and Association Policy is examined in Chapters III and IV of this study.

II. The Community's Power in Relation to Agreements with Third Countries

Since 1961 a Community regulation based on Article 111 has required each Member State to keep the Commission and other Member States informed of any bilateral commercial negotiations it may have with third countries. Information of this nature must be provided in sufficient time to enable preliminary consultations to take place with the Commission and with other Member States. Moreover, a Member State which intends to amend its liberalisation procedures in regard to third countries is obliged to inform the Commission and other Member States first. Consultations in this regard may be sought by a Member State or by the Commission. A proposal is at present before the Council of Ministers to extend the consultation procedure to 'cooperation' agreements between Member States and third countries. It is felt that such a procedure should make it possible to establish whether the negotiation and implementation of agreements are consistent with the requirements of the Commission's Commercial Policy and do not prejudice the interests of the Community or of any of its Members. It should also facilitate the exchange of information and coordination of approach as regards the third countries concerned.

The Community's power in relation to agreements with third countries was referred to by the European Court in a decision given on 31 March 1971 (Commission v. Council: Case No. 22-70). The Court clearly stated that the Community enjoyed the right to establish contractual links with third countries with regard to the whole range of objectives defined in the Treaty. This power resulted not only from explicit authority given by the Treaty but could flow from other provisions of the Treaty and from action taken under these provisions by the institutions of the Community. In particular, each time the Community, in order to implement a common policy provided for in the Treaty, adopted measures, in whatever form, to establish common rules, Member States no longer had the right individually or collectively to undertake obligations amending these rules or altering their scope. In implementing the provisions of the Treaty, rules made within the Community cannot be separated from those governing external relations.

III. External Commercial Contacts

The EEC has developed an extensive network of bilateral trade agreements with over 40 countries. Some of these agreements have taken the form of 'association agreements' and usually provide for economic cooperation as well as commercial concessions. They mostly apply to developing countries in the African and Mediterranean areas. Other bilateral agreements have a predominantly commercial nature and have established either preferential (e.g. agreements with Spain and Israel) or non-preferential (e.g. agreements with EFTA countries) trading relations. The conclusions of agreements

between the European Community, the EFTA countries and Finland would make possible the establishment of a 16-country European free-trade zone from 1 July 1977.

The EEC has participated in the negotiation and conclusion of multilateral tariff and trade agreements, notably in the GATT framework (i.e. Dillon, Kennedy and, at present, Nixon 'Rounds'). It also took part in the elaboration and management of international commodity agreements (tin, cocoa, coffee, etc.).

Moreover, the EEC institutions have aimed at the harmonization of trade regulations of Member States vis-à-vis third countries in such matters as import and export restrictions, export credit and insurance. In this regard the Community has also granted unilateral and generalized preferences to developing countries and has laid down the basis for an autonomous common commercial policy vis-à-vis third countries that have no official relations with the Community institutions (i.e. most state-trading countries).

Studies, discussions and negotiations on various trade matters are normally undertaken by EEC institutions within the framework of international economic organizations such as the UN/ECE, GATT, OECD, UNCTAD, etc.

There is no global coherence or clear homogeneity in the trade agreement network constructed by the EEC. This is true, for example, in the African and Mediterranean areas. It also arises because EEC relations with some trade partners (e.g. state trading countries and Japan) are still partly under national control.

In the future, the Community will be in the process of negotiating - or re-negotiating - its relations with almost all of its world trading partners: GATT contracting parties, African countries (Yaoundé, Arusha and Commonwealth members), Mediterranean countries, Japan and possibly member countries of the COMECON.

IV. Loss of Power in this Field

Member States have undoubtedly lost power insofar as they are bound by agreements with third countries and international organizations which in principle since 1970 have been negotiated by the Commission and concluded by the Council. Moreover, as we have seen they may not make agreements with third countries which are at variance with rules already made by the Community governing internal affairs. Prior to the entry of the EEC into this field, such agreements were usually negotiated at government level and Parliament was not concerned. Parliamentary approval was required to ratify them only in countries where such a ratification procedure was followed. In other countries parliamentary approval was required for any changes in the law consequent on an agreement or where it entailed State expenditure.

CHAPTER II. CUSTOMS UNION (Articles 12-37)

A. GENERAL
- I. Introduction
- II. Treaty Provisions

B. THE INDIVIDUAL MEMBER STATES
- I. The Benelux Countries
  - 1. Belgium
  - 2. Luxembourg
  - 3. The Netherlands
- II. Denmark
- III. Federal Republic of Germany
- IV. France
- V. Ireland
- VI. Italy
- VII. United Kingdom

A. GENERAL

I. Introduction

In the customs sphere, as distinct from other areas covered by this study, some national parliaments had lost certain powers even before the EEC was founded. For example, the governments of the Benelux countries were empowered by their parliaments to take action to suspend customs duties without consulting their parliaments.

This synopsis includes a separate section on the Belgo-Luxembourg Economic Union (UEBL) and the Benelux customs union. It gives a general picture of the reciprocal undertakings between the three states and discusses the actual customs agreements.

II. Treaty Provisions

1. The EEC Treaty (1957) lays down (Article 9) that 'the Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff with third countries.'

2. The EEC Treaty was applied to the new Member States by the Treaty and Act of Accession, 1972, which applied as the domestic law of the three new Members the existing provisions of the Treaties and of Regulations of the Communities and provided for their future legal effect in the three States. Article 59 of the Act of Accession requires, after the end of the transitional period, the levying, collection and payment of Community customs duty on goods imported into the three new Member States.

3. The EEC Treaty and Articles 31-49 of the Act of Accession provide for the following principal arrangements:

   (a) Customs duties on imports and exports -
   Article 12 (EEC Treaty) prohibits the introductions of new or increased customs duties between Member States. Moreover, under Community rules Member States are not permitted to apply customs duties of a revenue nature but they can replace them by excise duties which apply equally to imports and home produced goods.

   (b) Quantitiative restrictions -
   In regard to trade between Members States, Article 30 (EEC Treaty) prohibits quantitative restrictions on imports and all measures having equivalent effect and Article 31 forbids the introduction of new restrictions in this regard. The Act of Accession (Article 42) required that quantitative restrictions on both imports and exports must be abolished from the date of accession.

   In regard to trade with third countries two liberalisation lists were established in 1970. Regulation 109/70 (since revised) related to State-trading countries and Regulation 1025/70 related to third countries. Tariff headings in these lists are free of quantitative restrictions in all Member States and this liberalisation cannot be revoked unilaterally by any Member State.

(c) Common tariffs with third countries and free movement of goods - Article 39 (Treaty of Accession) relates to the progressive introduction of the Common Customs Tariff and the ECSC unified tariff*. Community rules have been made in this regard and in regard to the free movement of goods. These rules govern such matters as the valuation of goods for customs purposes, warehousing, inward processing and customs free zones (after a transitional period of three years).

B. THE INDIVIDUAL MEMBER STATES

I. THE BENELUX COUNTRIES

Article 233 does not preclude the existence of regional unions between Belgium and Luxembourg, and between Belgium, Luxembourg and the Netherlands to the extent that the objectives of these regional unions are not attained by the application of the Treaty.

Belgio-Luxembourg Economic Union (UEBL)

The Treaty establishing a customs union between Belgium and Luxembourg was signed in 1921 and entered into force, for an initial period of 50 years, in 1922. It was based on the following principles:

- unity of customs territory, identity of customs legislation and joint revenue from most excise duties;
- full freedom of trade; equal treatment of both economies, etc...;
- joint trade agreements.

The Treaty also included financial, monetary and administrative provisions, and provisions in regard to the railways.

However, there were no provisions governing joint foreign trade. The 1935 Convention, establishing a common system for regulating imports, exports and transit between Belgium and Luxembourg filled this gap by laying down common measures to regulate foreign trade.

The Convention, supplemented by later conventions, established a monetary association between the two States. A new agreement, signed on 31 August 1944, established common legislation for exchange control and the administration of foreign reserves by the Belgo-Luxembourg Exchange Institute.

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* Special arrangements for agricultural products (e.g. import levies) are dealt with in the chapter on agriculture.

It became essential to bring the UEBL Treaty up to date after the signature of the ECSC (1952), EEC, Euratom (1957) and Benelux (1958) Treaties since they created structures over a wider geographical area which might, therefore, have called in question the need for special relations between Belgium and Luxembourg.

The two countries confirmed and consolidated their cooperation and common institutions in the revised Treaty signed in Brussels in 1963. It was also decided to publish a joint text of the revised Convention on Union*, thereby reinforcing the institutional nature of the Union; it comprised a Committee of Ministers (new), an Administrative Committee and a Customs Council. In 1971, therefore, talks began on the prolongation of the UEBL and on 1 March 1972 the two governments decided to extend the Union for a further 10 years, adjusting it to the current economic situation.

The customs union between Belgium, the Netherlands and Luxembourg (Benelux)

The customs union between Belgium, the Netherlands and Luxembourg was established by the Customs Convention of 1947 under the Treaty establishing the Benelux Economic Union which allows free movement of persons, goods, capital and services within the three Member States. The Treaty provides for coordination of economic, financial and social policy and a common policy on trade relations with third countries, including the regulation of payments. The Treaty also contains special provisions on freedom of establishment, limited companies, agriculture, harmonisation of the conditions of competition in transport and customs policy, etc.

The political institutions of the Economic Union are: the Committee of Ministers (an executive body), the consultative Interparliamentary Council, the Council of the Economic Union and the Committees. A consultative Economic and Social Council has also been formed as well as a Board of Arbitration responsible for interpretation of the Treaty.

The decisions of the Committee of Ministers are always made unanimously. These decisions of the Committee are binding on all the Member States. The Committee also draws up conventions which the Member States must approve.

Benelux is a form of intergovernmental cooperation which distinguishes it from the EEC. The Treaty has a basic similarity with the Convention establishing the Organization for Economic Cooperation and Development.

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* Act of 26 May 1965, 'Luxeçbourg Memorial' 1965, p.743

Insofar as the Customs Union is concerned, customs control at internal borders was completely abolished in 1973, although a measure of control was maintained for the compilation of statistics.

1. Belgium

The law of 20 February 1970* lays down that modifications to the entry duty rates and to the customs legislation of Belgium:

- shall be published, at the initiative of the Ministry of Finance, in the official announcements section of the 'Moniteur belge' (Belgian Gazette), if they result from acts of the European Communities which are binding in all their aspects; or, if this is not the case;
- shall form the subject of a royal decree debated in the Council of Ministers.

The same law lays down that all these royal decrees relating to tariffs shall form the subject of a consolidated bill of ratification to be placed before the legislative Chambers at the beginning of the following year. This procedure is mainly designed to put a stop to all attempts at speculation when the applicable duty rates are modified.

A royal decree may relate to:

- modifications to the entry duty rates;
- the suspension, in whole or in part, of entry duties or the reintroduction of such duties when they have been suspended;
- any other customs and excise measures to ensure the proper enforcement of international acts, including the repeal or modification of legal provisions.

The explanatory memorandum to this law specifies that the reason for continuing to allocate this authority to the executive lies in the need to settle cases in which the institutions of the European Communities do not yet have the power to make regulations or take decisions. As before, the King will also be able to take measures to ensure the enforcement of international acts, including directives and decisions of the European Communities with regard to the harmonization of customs legislation.

In 1972 the Government submitted to the Chambers a bill ratifying two royal decrees issued in 1971 and relating to entry duty rates.

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* This law replaces the law of 2 May 1958 concerning legislation on fiscal matters

These decrees concerned modifications to the entry duty rates resulting from the Arusha Agreement (industrial products); they also covered importation into the Community of agricultural produce from the AASM, the ACT and Tanzania, Uganda and Kenya*.

In this connection the Council of State expressed the view that modifications to the common customs tariff are expressly attributed to the EEC Council (Article 28) and that this article rules out unilateral action by the national authorities of the Six European countries; 'thus, insofar as exemptions from duties and the Common Customs Tariff granted in pursuance to these agreements were not directly applicable and required the adoption of an implementing instrument, this instrument should have come from the Council of the Communities acting in pursuance of Article 28 of the Treaty of Rome.'

The Council of State's criticism was directed more at the Council of the Communities than at the Belgian Government. If the Council of the Communities had applied Article 28 of the EEC Treaty, the legislative ratification of royal decrees would not have been necessary.

Conclusion

The majority of acts relating to customs questions no longer fall within the Belgian Parliament's sphere of competence. This is borne out by the fact that they are simply published as official announcements.

However, there are certain branches of the customs sector in which there has not as yet been, or will never be, any transfer of powers. In these fields the Parliament has reserved to itself, by the procedure of 'ratification', the power of decision, even though there has been some delegation to the Government.

Admittedly, the power of 'ratification' would appear to be a formality, its only purpose being to avoid unconstitutionality*. It would be surprising indeed if the Parliament refused to ratify a royal decree. At most it might cause the Government to revert to the situation existing previously.

The areas covered by 'royal decree' would be even more limited if the Council of the Communities were to apply Article 28 of the EEC Treaty more often, since this gives immediate internal effect to customs provisions.

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* The agreements were signed by the Government of the Member States and by the Council of the Communities

2. Luxembourg.

Under successive conventions concluded within the framework of the UEBL, Luxembourg undertook to harmonise its legislation with Belgian law in the areas falling under the terms of the Union, notably: common customs and excises (Convention of 1921, Article 4a), external trade regulations (Convention of 1935, Article 1) and provisions concerning exchange control. The Coordinated Convention of 1965 does not depart from the principle of such common legislation and regulations, which are essential to the smooth working of the Union, but the Luxembourg Government insisted on more precise implementing provisions. As a result, Article 38 (of the Coordinated Convention) determines with the exception of certain cases the procedure for formulating common legislative provisions and regulations.

It therefore remained to be decided in what form acts should be introduced in Luxembourg. Under the terms of the Convention of 1921, Article 6 of the Grand Ducal decree of 24 April 1922 had resolved the problem once and for all. This decree instructed the Ministers of Finance to ensure publication in the 'Memorial' (Gazette) of Belgian provisions on customs and excise applicable in the Grand Duchy. The Grand Ducal authorities' power of intervention was therefore limited to the final stage of the legislative procedure.

Import, export and transit regulations, based on the 1935 convention, were laid down by decrees identical in substance, published simultaneously in the two countries (Article 1 of the Convention of 1935).

The Coordinated Convention maintained the principle of publication by the Executive, for the implementation of acts of common legislation, pursuant to Article 37 (4) of the Constitution.

As from 1923 the law of 6 June authorized the Executive to regulate (by Grand Ducal decrees) the import, export and transit of certain articles, foodstuffs or goods. The only obligation for the Executive was to inform the Chamber of Deputies at its next meeting of the Grand Ducal decrees issued pursuant to this law.

The law of 6 June 1923 remained in force until 1963 when it was repealed by the law of 5 August 1963 on the import, export and transit of goods authorizing the Grand Duke to regulate this matter by decree.

Conclusion

There is no devolution of powers from national to Community level since the signature of the Convention had already delegated extensive power at UEBL level and the enabling laws had done so at national level.

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* Article 110 of the Constitution: 'Taxes to the profit of the State may only be introduced by law...'

3. The Netherlands

When the EEC Treaty was signed, the States-General had exclusive power in regard to customs duties in the Netherlands. Each duty rate had to be ratified by a law. Proposals for the introduction or modification of duties came from the Minister of Finance in consultation with the Minister of Economic Affairs and, if necessary, with any other Ministers concerned.

The introduction of quantitative restrictions fell within the sphere of competence of the Minister of Economic Affairs, who first had to obtain the opinion of the Economic and Social Council.

The power of the States-General was restricted by numerous international agreements (e.g., the Benelux Convention), although this had previously been approved by the States-General themselves.

Under the general law on customs and excise duties, adopted by the States-General in 1961, and amended in 1969 to conform with EEC Law, the right to control import duties and excise duties by general administrative measures, was transferred to the Crown.

An Outline Directive was proposed by the Commission, relating to the harmonisation of excise duties, and excise duties on mineral oil, tobacco products, alcohol, beer and wine are to be introduced. The Netherlands already has all these excise duties, so that directives on these matters require no legislation. Insofar as harmonisation measures have not yet been taken by the Community, the Dutch Parliament retains a degree of power. The special consumer taxes and the frontier adjustment charges levied between Member States will have to be abolished by the time economic and monetary union is achieved. sAs a result of these directives, the Dutch Parliament will be compelled to abandon, by a transfer of power to the Crown, its already limited freedom of action. Thus, the power of the Dutch Parliament was already somewhat limited when the EEC Treaty came into force. However, the Treaty itself and regulations made pursuant to it deprived the Parliament of its remaining power insofar as the products concerned came within the scope of the EEC Treaty.

II. DENMARK

1. Position Prior to EEC

Before entry into the EEC, Parliament had not surrendered any of its power in respect of customs policy to the Government. The former Customs Law established a general tariff which was universally valid except where the members of EFTA were concerned and in cases where, under trade treaties,

certain customs rules were to be followed. This law enabled the Minister of Finance to implement such changes in the Customs Tariff as were necessary to fulfil obligations under trade treaties; such treaties would normally always have required Parliamentary approval so that any changes in the tariff would have been subject to parliamentary control.

2. Customs Duties on Imports and Exports

The Folketing will no longer be free to introduce new customs duties or charges having an equivalent effect vis-à-vis the other Member States. This constitutes a major loss of powers by the Parliament since customs duties in imports have traditionally been an important instrument of economic and trade policy.

It should be noted, however, that, except in the case of agricultural products, Denmark had already abolished customs duties vis-à-vis her partners in the EFTA convention some years before her accession to the EEC. She had also accepted the liberalisation measures adopted under GATT.

3. Common Tariffs with Third Countries and Free Movement of Goods

The adoption of the Common Customs Tariff vis-à-vis third countries has also resulted in a major loss of power by the Folketing. While the EFTA convention did not permit its member countries to reintroduce internal EFTA tariffs, the Danish Parliament was nevertheless allowed to maintain or set up separate tariff barriers vis-à-vis third countries.

Denmark had until 31 December 1973 its own preferential system for the developing countries, and the EEC and the Danish arrangements were quite similar. After a short transitional period the Folketing is now obliged to respect the quantitative restrictions of the EEC system, and must continue to allow preferential treatment to developing countries. This represents a loss of power by Parliament.

4. Quantitative Restrictions

Import restrictions were generally abolished in the late fifties and replaced by certain increases in customs duties, primarily on manufactured goods ('fardigvarer'). Article 42 of the Treaty of Accession represents a loss of power by the Parliament which, from a theoretical point of view, is very considerable. The practical importance of such a loss, however, is minor since a return to quantitative import restrictions would have been very unlikely. Only one important export restriction (on waste and scrap iron and steel) is in force in Denmark; this will have to be abolished since, under Article 43 of the Treaty of Accession, it can be retained for only three years after the date of Accession.

Permission for travellers to Denmark to import certain goods free of customs and excise duty has traditionally played an important role. For fiscal reasons certain condtions were imposed to limit duty-free imports. The EEC has its own system, which is more liberal than the Danish one. The implementation - after a transitional period of 3 years - of the EEC regulations will represent an important loss of power by the Folketing because certain internal excise duties will probably have to be reduced in order to prevent large numbers of Danish citizens from simply crossing the border to buy various items free of excise duty. Considerable importance attaches to this, since excise duties on spirits and cigarettes etc., play a major part in fiscal policy.

5. Summary

Whereas the Government played the dominant role in commercial policy owing to its foreign policy prerogative, in customs policy Parliament had held the essential power by virtue of its legislative function. The general conclusion must be that the Folketing has lost important power of a commercial and fiscal nature by giving up the right to pursue its own customs policy.

III. FEDERAL REPUBLIC OF GERMANY

1. Under Article 73 (5) of the Basic Law, the Federal Republic as opposed to the individual Länder has the exclusive power of legislation over 'The customs and trade areas as a whole..., the free movement of goods, and payment transactions with foreign countries, including customs and frontier protection', and under Article 105 of the Basic Law '...exclusive power of legislation over cutoms and state monopolies'.

   Under the Basic Law the Bundestag therefore had wide power of regulation in the field of customs and quotas. All binding acts issued by the Community in the same field reduce the power of the German Bundestag.

2. In practice, important responsibilities in the customs sector were transferred by law to the Government. Before the establishment of the Communities, the (frequently amended) Customs Law of 20 March 1939 was in force in the Federal Republic. Since 1961 the new Customs Law of 14 June 1961* has been in force. Under both laws the division of power between the executive and legislative bodies is approximately as follows:

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* Federal Gazette (BGB1) I, p.737

The customs tariff is basically a law, but with the agreement of the Bundestag, the Government may issue regulations temporarily suspending, reducing or increasing the customs tariff.

The Government alone decides (by regulation) on:
- the definition of dutiable goods and goods in transit,
- the establishment of additional customs tariffs, anti-dumping duty, countervailing duty and adjustments duty,
- regulation of customs exemption,
- customs value of goods,
- sale of goods in free ports,
- adaptation to the Community's Common Customs Tariff,
- definition of terms used in the law.

3. The practical power of the German Bundestag is therefore reduced in the following areas as a result of the Community's power:
- establishment of the external customs tariff,
- import and export quotas,
- conclusion of customs agreements.

Restrictions in the substance of the Bundestag's power of action, as a result of Community regulations and directives standardising the customs law, arise in particular in the following areas:
- customs value of goods,
- the Community's customs area,
- origin of goods,
- transit,
- bonded warehouses and duty-free areas,
- inward and outward processing.

This reduction in power is not immediately obvious, as the Bundestag is constantly adapting its customs laws to meet Community requirements*.

Finally, the Bundestag's power of action is restricted by the fact that no internal duties may be levied within the Community and levies with equivalent effect may only be charged in emergency situations and with the cooperation of the Community. Apart from the reduction in powers caused by the Community treaties, there are also restrictions in substance as a result of bilateral agreements with GATT.

4. Summary

The powers of the Bundestag have been considerably reduced in the field of customs. In the first place it is prohibited from fixing customs

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* e.g. 14th and 15th law amending the Customs Law of 7.8.1973 BGB1 I,No. 65

duties with respect to the Member States of the Community and deciding the level of duty with respect to third states.

There are also considerable practical restrictions in connection with customs arrangements.

IV. FRANCE

1. In France the new 1958 Constitution (contemporary with the entry into force of the Treaties of Rome) clearly distinguishes between parliamentary and governmental power. Article 37 allocates to Parliament an 'area', defined as the area of the Law. This gives Parliament the right to pronounce on 'taxation of all kinds', including customs duties.

2. Even before the new Constitution, wide power had in fact already been delegated to the Government, enabling it to take all decisions on customs matters by decree. This goes back to 1949 when Parliament adopted Article 8 of the Customs Code delegating its power to the Government. However, Parliament did not abdicate all its power but, by the same article, reserved itself the right to ratify Government decrees.

3. This provision of the Customs Code gave the Government freedom of action. Later it gained even more freedom when the Council of State decided by an opinion of 20 May 1964 that 'when the Government ensures the implementation of directly applicable provisions of the Treaties and of the regulations and decisions of the European Economic Community...it is in the same position as when it enacts an internal law and the implementing provisions of the said acts are, therefore, normally laid down by regulation'.

   Since 1964 decrees on customs questions issued pursuant to the EEC Treaty no longer fall under the terms of Article 8 of the Customs Code and there is, therefore, no question of ratification by Parliament.

4. The situation is different as regards quantitative restrictions between Member States and all measures having equivalent effect which are prohibited by Article 30 of the EEC Treaty. However, quantitative import and export restrictions and measures having equivalent effect do not, in France, fall within the area of the law. Instead they are the responsibility of the Government.

5. Conclusion

As from 1949 the French Parliament had delegated to the Government its power to reduce customs duties. The Treaty of Rome accentuated this loss of power by relieving the Government, on the recommendation of the Council of State, from the need for ratification by Parliament of decrees in this field.

V. IRELAND

1. Customs Duties on Imports and Exports.

The main customs duties of a revenue nature on beer, spirits, wines, tobacco and oils are subject to annual debate in the budget and subsequently receive Parliamentary assent in the Finance Bill and the financial resolutions on which it is based. The Commission of the European Communities has authorised the retention by Ireland of customs duties on some goods including the main revenue producing items until the end of 1975. After that time Parliament will have lost the power to apply customs duties of a revenue nature. Parliament will still have power to impose or increase internal charges on these goods.

Before accession customs duties, other than those imposed for revenue purposes, and quotas were used principally to protect industry. These restrictions were imposed mainly by means of Quota Orders and Imposition of Duties Orders made by the Government or a member of the Government under the Control of Imports Acts, 1934 to 1964, the Imposition of Duties Act 1957 and the Imports (Miscellaneous Provisions) Act 1966. These Orders cease to have effect before the end of the year following that in which they are made if they are not confirmed by statute within that time.

The progressive abolition of customs duties and other charges is subject to a timetable set out in Articles 32, 36 and 59 of the Treaty of Accession. These reductions occur automatically by virtue of the Treaty itself and the timetable mentioned above limits Parliamentary freedom and deprives it of the power to extend the timetable.

2. Quantitative Restrictions

The Treaty of Accession (Article 42) required that quantitative restrictions on both imports and exports must be abolished from the date of accession but derogations were provided for Ireland in certain limited cases.

In regard to trade with third countries various liberalisation lists were established. Under Article 43, Annex VII and Protocol No. 6 of the Treaty of

Accession Ireland has a derogation for products in the lists on which there were quantitative restrictions before accession.

Quantitative restrictions on imports are imposed or revoked by Quota Orders made under the Control of Imports Acts. As these orders require statutory confirmation Parliament has an opportunity of considering them.

Before accession Parliament was free to enact legislation, to impose new quantitative restrictions or to extend existing ones. Parliament may no longer do so in the future and in this regard there is a limitation of power.

3. Common Tariffs with Third Countries and Free Movement of Goods

By virtue of Section 2 of the European Community Act, 1972 regulations made by the Community which amend existing statutes automatically form part of the domestic law of the State and do not require Parliamentary consideration or approval. There is a loss of power to Parliament where such regulations are made.

4. Conclusion

(a) By virtue of provisions of the Treaty, which are directly binding, Parliament has no freedom to impose new customs duties of a revenue nature or to impose quantitative restrictions. Moreover, a strict timetable must be followed in regard to the progressive abolition of such duties and restrictions and in regard to the progressive introduction of a common customs tariff. These provisions entail a loss of power to Parliament, subject to the qualification that it is still free to impose internal charges to maintain State revenue.

(b) Community Regulations automatically have the force of law and are not subject to Parliamentary scrutiny. There is, therefore, a loss of power to Parliament where such Regulations deal with matters which before accession required legislation to achieve the same end.

(c) Ministerial Regulations may be made under the European Communities Act, 1972 to implement the provisions of the Treaties and secondary legislation of the Communities. These regulations have statutory effect. The European Communities (Amendment) Act 1973 provides, however, that such regulations may be annulled by Parliament within one year after they are made if such amendment is recommended by the Joint Committee on the Secondary Legislation of the European Communities. In this respect there is no loss of power to Parliament.

(d) Before accession delegated legislation dealing with customs duties or quotas required Parliamentary confirmation. Consequently any action taken by Order at Government level to comply with Treaty obligations, Community Directives or Decisions still involves Parliament, in the sense that the matter comes before Parliament for consideration.

VI. ITALY

1. As early as 1949 the Government was empowered by Act No. 993 to lay down a new customs tariff in place of the tariff in force since 1921. This new tariff was introduced by Presidential Order in 1958 at the time of the entry into force of the EEC Treaty. Further modifications were made by Presidential Order in 1961 and 1963.

2. On 1 February 1965 Parliament passed Act No. 13 empowering the Government to prepare a new customs tariff with the following objectives:
   - to incorporate additions and changes in the nomenclature,
   - to modify and supplement the introductory provisions,
   - to move towards the gradual establishment of the Common Market
   - to ensure the observance of recommendations, decisions and directives.

   Article 4 of the above Act stipulates that a Parliamentary Committee shall be formed of 20 senators and 20 deputies, appointed by the President of the Senate and Chamber, with responsibility for delivering opinions on the introduction of the tariffs and the additions and modifications made thereto.

3. The power given to the Government by Article 3 of Act No. 13 of 1 February 1965 to modify import duty rates has been extended on a number of occasions.

   It should, however, be pointed out that Article 3 of the Act of 15 February 1973 authorised the Government to issue Orders having the force of law, in order to bring current legislation into line with the requirements of the smooth working of customs union laid down in the Treaties, in accordance with the obligations entered into and with the principles and criteria contained in the Treaties and the implementing provisions made by the appropriate Community institutions.

4. Conclusion

   In view of the position outlined in paragraph 1, there has been no loss of power to the Parliament.

VII. UNITED KINGDOM

1. Treaty of Accession

Implementation of the Customs Union is governed by the provisions of the Treaty of Accession 1972 and the European Communities Act 1972. The Treaty of Accession 1972 was entered into by the Government, without previous formal recourse to Parliament, and set out arrangements for progressive reductions in customs duties, etc. in a transitional period up to 1978. The House of Commons held a general debate on the procedure to be followed for signature of the Treaty and its implementation.

2. Customs Duties on Imports and Exports

The main customs duties of a revenue nature on beer, spirits, wines, tobacco and fuel oils are subject to annual debate in the Budget and subsequently receive Parliamentary assent in the Finance Bill and the financial resolutions on which it is based. The prohibition in Article 12 of the EEC Treaty entails a direct loss of power to Parliament in this field.

Before accession customs duties, other than those imposed for revenue purposes, and quotas were used principally to protect industry. This control was exercised by Orders made under the Import Duties Act 1958, which were debatable in Parliament and could be voted on by both Houses. Such Orders will continue to be made,but they will either (under Section 5(2) and (5) of the European Communities Act,1972) make provision in derogation of the common customs tariff as provided for in Articles 17(4) and 23(2); or the Orders may impose duties with a view to complying with a Community obligation. There will thus be a limited loss of power to the United Kingdom after the end of the transitional period in regard to customs duties in that, although changes will continue to be introduced in the form of Orders under the Import Duties Act, Parliament, if it rejects the changes proposed, will be rejecting Community law.

The progressive abolition during the transitional period of customs duties and other charges is subject to a timetable set out in Articles 32 and 36 of the Treaty of Accession. These charges are subject to annual review which will be carried out by means of legislation. For example, section 1 and schedules 1 to 5 of the Finance Act 1973 made changes in customs and excise duties to conform with the timetable in the Accession Treaty. Thus Parliament will have an opportunity of considering the matter when orders implementing these provisions are debated. Nevertheless there is a limited loss of power to Parliamant as if it seeks to alter the timetable or the rates of duties, it will be acting in contravention of an international agreement.

3. Quantitative Restrictions

Quantitative restrictions on imports are imposed or revoked by Orders made under the United Kingdom legislation. Before accession, the United Kingdom Parliament was able to supervise such delegated legislation to impose new quantitative restrictions or to extend existing ones. United Kingdom legislation will be required to amend United Kingdom law accordingly, and Parliament will have an opportunity to debate it in the usual way. However, there will be a limited loss of power arising from restrictions imposed by the Community.

4. Common Tariff with Third Countries and Free Movement of Goods

Community regulations made in relation to the above include such matters as the valuation of goods for customs purposes, temporary importation, warehousing, inward processing and customs free zones. In many cases the enactment of these provisions would, before accession, have required amendment of the law. Under Section 2 of the European Communities Act 1972, regulations made by the Community automatically form part of the domestic law of the State and do not require Parliamentary consideration or approval. Consequently, there is a limited loss of power to Parliament in relation to regulations on common tariffs with third countries and free movement of goods.

5. Conclusions

(a) Under the Treaty of Accession Parliament is enjoined to impose new customs duties or quantitative restrictions or to impose customs duties of a revenue nature. Moreover, a strict timetable must be followed in regard to the progressive abolition of such duties and restrictions. This is a limited loss of power to the British Parliament.

(b) Delegated legislation dealing with quotas on imports requires approval by Parliament. Consequently, any action taken by Ministerial Order to comply with Treaty obligations, as expressed in Community Directives or Regulations involves a limited loss of power to Parliament.

(c) Community Regulations on common tariffs and free movement of goods automatically have the force of law and are not subject to Parliamentary scrutiny. There is, therefore, a limited loss of power to the Parliament where such regulations deal with matters which before accession required legislation to achieve the same end.

CHAPTER III. COMMERCIAL POLICY (Articles 110-116 EEC)

A. GENERAL

I. Introduction

1. Developments during the transitional period until 1 January 1973 are not studied in depth here. The picture since that date shows that henceforth only the Community may conclude new trade agreements with any third country. Any bilateral agreements concluded before that key date - which is the general rule - will remain in force*. Member States have, however, lost the right to extend agreements or conclude new ones. In future only the Community may do this. (A notable example is the agreement concluded between the Benelux countries and the Soviet Union in 1972/73 which did not enter into force until 1973.) Within the Community the European Parliament, despite objections on several occasions, has not achieved more than a limited, consultative role in this field.

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* cf. OJ No. L 124, 10 May 1973, p.20 ff.

2. The aim is to examine how far national parliaments participated in trade agreements and whether the ratification procedure was formal or simplified. The national parliaments of some Member States may have been consulted or asked for their approval before agreements were signed, so that ratification was no longer necessary. Or signed trade agreements may have been presented to some parliaments in such a way that silence counted as approval after a specified date.

3. It is important to note that the EEC treaty uses the term commercial agreements in the traditional sense (lowering of customs barriers, abolition of restrictions on international trade of goods, harmonious development of world trade)(cf. Article 110(1)). Modern commercial agreements, however, include regulations on industrial and technological cooperation, reciprocal guarantees for investments and guarantees for nationals of the countries concerned and also for capital assets. For this reason they generally require Member States' approval.

4. Commercial policy acquires great significance in the context of the various negotiations on lowering customs barriers and trade in GATT (Dillon Round, Kennedy Round, Nixon Round) which have been held since 1960 to facilitate and increase world trade. The development of trade accords with the aims of the EEC Treaty (Article 110) and falls within the terms of reference of the European Community. Yet, from the outset, Member States have taken part in these negotiations alongside the Community. Political considerations may have carried some weight here. Member States clearly did not want to leave the Community in full control; or perhaps they feared that third countries would not fully trust an institution as new as the EEC. This has been the cause of some political and legal concern and controversy.

II. Treaty Provisions

1. By virtue of Article 113(1) of the EEC Treaty, after the end of the transitional period (i.e. with effect from 31.12.1969), common commercial policy is to be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, uniformity in liberalisation measures, export policy and trade protection measures.

2. By Article 114, agreements with third countries in the execution of this policy are to be concluded by the Council on behalf of the Community.

3. By Article 116, the Council is obliged, on the basis of proposals submitted by the Commission, to require Member States to take common action within the framework of international organisations of an economic character.

B. INDIVIDUAL MEMBER STATES

I. BELGIUM

1. Under the Belgian constitution, 'the King makes appointments in the area of external relations unless otherwise provided by law (Article 66). The Government, through its ambassadors, thus exercises the power of legislation and dipolmatic exchange. The King also concludes peace treaties, alliances and trade agreements (Article 68). Under Belgian law, the executive is authorised to conduct negotiations and issue related 'directives' (Article 113 EEC). The Government has the power to conclude treaties. Common action within the framework of international organisations is also the responsibility of the Belgian Government Article 116 EEC).

2. The Belgian Parliament had no power to lose in this particular sector. Intervention by the Chambers depends on the nature of the agreements:

   (a) the Government must notify the Chambers of peace treaties, alliances and commercial agreements as soon as the interests and security of the State so allow. It must also provide appropriate supporting information;

   (b) commercial treaties (trade agreements), treaties likely to make demands on the State budget, treaties likely to be binding upon individual Belgian citizens (change of personal status, for example) only take effect within the country after approval by the Chambers. This approval is generally expressed in the form of a law declaring that a particular treaty shall take full effect. Intervention by the Chambers in respect of these treaties consists of bringing them into line with domestic law;

   (c) territory may only be surrendered, exchanged or annexed by virtue of a law.

3. As far as commercial agreements are concerned, the new Article 25(a) of the Constitution suggests that the power of approval was not expressly granted to the European institutions and that the Chambers have not, therefore, lost this power*.

   The Belgian Chambers do not have to be notified of agreements with third countries signed by the Council of the Communities. They may only give their approval to agreements concluded by the Belgian executive.

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* Article 25a: 'The exercise of specific power may be attributed by a treaty or by a law to institutions in international law.'

The Belgian Parliament's power of approval have been reduced insofar as the power to conclude commercial agreements was transferred to the Council.

Parliament still retains this power, however, for all agreements under 2(b) which the Belgian representative must sign. For instance, the Belgian State signed the Fourth Agreement on tin and approved it by passing a law. The same applied to the agreement in the form of an exchange of letters renewing the agreement on trade and technical cooperation between the EEC and Member States on the one hand and the Republic of Lebanon on the other*.

4. There remains the special case of agreements modifying the customs tariff. As noted in the chapter on customs union, the Belgian Parliament must intervene under the law of 20 February 1970, if the Council does not apply Article 28 of the EEC Treaty**. This was necessary for instance to bring into effect the fourth successive series of tariff reductions granted to third countries by the Council within the framework of GATT (Kennedy Round) and in particular to products within the terms of reference of the ECSC Treaty.

5. Recently the Commission applied Article 115 (EEC) authorising a Member State to exclude certain products from the Community commercial arrangements.

Community authorisation of this kind presupposes that the Member State concerned will adopt implementing measures. In Belgium the law delegates the regulation of imports, exports and transit of goods to the King, mainly in order to ensure implementation of the Treaties. As a result of this previous delegation to the King, based on the law of 30 June 1931, the Belgian Parliament has not lost power.

6. Conclusion

The numerous commercial agreements concluded by the Community no longer require the approval of the Legislative Chambers. This very clearly entails a loss of power.

Acts of common commercial policy may, however, require the intervention of the Belgian authorities if they are to be applied in Belgium. The Parliament would rarely be involved, except insofar as it has power of control over government policy.

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* Belgian Senate, Doc. 133, 1972-1973

** See p.53

II. DENMARK

1. Article 19 of the Constitution (cf. chapter on Constitutions) establishes the royal prerogative of dealing with foreign affairs. Generally the initiative in this field rests with the government and the role of Parliament is confined to giving its consent to certain treaties that the Government has adopted. Denmark, unlike some other countries, does not automatically incorporate treaties into national law, and consequently parliamentary consent is needed if the Government adopts treaties that involve changes in legislation or new legislation.

2. In general the Government can adopt a treaty without the consent of Parliament provided that it does not require any Danish legislative measures; and that it does not involve either a change of the territorial status of the country or any other matter of major importance.

3. In cases not requiring parliamentary consent the Folketing does not suffer a loss of power where the Council of Ministers concludes commercial treaties on behalf of the Community which bind Member States. However, some commercial treaties may require parliamentary consent because they involve Danish legislation or are of major importance in other respects. Conclusion by the Council of such commercial treaties on behalf of Member States will mean a loss of power by Parliament insofar as these treaties will not be submitted to Parliament for its consent. Normally this is merely a formal procedure. The Folketing does however sometimes give consent to the Government to enter into treaties of a certain kind: commercial treaties of major importance would however attract considerable interest in the Parliament and thus be subject to closer scrutiny.

4. It seems that treaties concluded by the Government with royal assent are treaties of 'major importance' (cf. Article 19 of the Constitution). It is normally a matter for the Government to decide whether a treaty is of major importance or not. Commercial agreements which involve extensive transactions in goods and payments may not require parliamentary consent, if they do not involve parliamentary legislation or are not of major importance.

5. A new feature has evolved in Danish parliamentary procedure following Denmark's entry into the Communities. Some years ago Parliament set up a special committee on market affairs, which has played an important role in current developments in EFTA, EEC, GATT, etc. This committee has been in a position to demand consultations with the Government and to inform the Government of the attitudes of the various political parties concerning market affairs. Of late the role of this committee has been considerably strengthened. Following a debate on the role of Government vis-à-vis Government participation in negotiations, with special

reference to the new Members of the European Communities, Parliament adopted a resolution restricting negotiations in the Council. Before taking part in such negotiations the Government must confer with the Market Committee on the mandates to be given, and if the mandate needs modifying during the negotiations the Government must seek another conference with the committee before adopting a new position outside the framework of the original mandate.

6. The existence of the Market Committee and the above resolution gives Parliament an important role in influencing the Government's policy within the Community (cf. Constitutional Provisions).

7. Conclusion

In the field of commercial policy, the Folketing has clearly lost power, though its actual role in the past has not been very conspicuous. It remains to be seen whether the operation of the Market Committee and the instruction of Danish Government representatives in the Council of Ministers will result in the retention of some of the parliamentary power that would otherwise be lost in the field of external and commercial policy.

III. FEDERAL REPUBLIC OF GERMANY

1. In the field of commercial policy, loss of power may arise for the Bundestag as a result of infringement of its legislative powers and restrictions on its powers of participation in the conclusion of international agreements.

In principle the Bundestag may participate in the conclusion of international agreements - including commercial agreements - but Article 59(II) of the Basic Law restricts this to the following areas:
'Agreements which regulate the political relationships of the Federal Republic or relate to matters of Federal legislation require the approval or participation of the bodies responsible for the Federal legislation, in the form of a Federal Law.'

2. As commercial agreements in general are neither of a specifically political nature nor directly create rights and obligations for the citizens of the state, the Bundestag is not involved, as a rule, in the conclusion of agreements. The power to conclude commercial agreements which has been transferred to the Communities does not therefore reduce the power of the German Bundestag - apart from the indirect participation which was formerly possible for the purpose of supervision over the Government. The Bundestag has had to accept a greater curtailment of its power in the field of legislation, i.e. in the autonomous shaping of commercial policy.

Under Article 73(1 & 5) of the Basic Law the responsibility for issuing laws to regulate external trade lies with the Bundestag.

Parliament has made use of this legislative power, in particular, in the Foreign Trade and Payments law of 28 April 1961*. This law regulates matters of traffic in goods, services and capital. The Government can issue regulations for the implementation of this law, but the Bundestag may call for the suspension of these regulations.

The application of this law itself is restricted to areas not covered by Community legislation (para. 1, section II).

The Bundestag's previous power of intervention is therefore reduced insofar as the Communities make provisions to regulate external trade. To this extent there is a considerable loss of power for the Bundestag.

3. There is a further loss of power in that, since the Council Decision of 19.12.1972**, it is impossible in practice for a Member State to act independently in the matter of commercial policy without the approval of the Community.

If the Bundestag wishes to enact a law to amend existing import regulations with respect to a third country, the Commission must be notified in advance. Only if the Commission does not request consultation or there is no objection to a particular Community procedure, may the law be adopted in the Bundestag.

As more than 90 per cent of all goods are at present subject to the Community's foreign trade legislation, the Bundestag has had to accept considerable loss of power in the field of independent commercial policy.

IV. FRANCE

1. Article 53 of the French Constitution stipulates that only Parliament may ratify trade agreements:
'Peace treaties, trade agreements, treaties or agreements relating to international affairs, those having financial implications for the State, those amending legal provisions, and those relating to personal status, or to the surrender, exchange or annexation of territory, may only be ratified or approved by a law' (Article 53(1)'

This means that Community trade agreements negotiated and concluded by the Economic Community require ratification by the French Parliament

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* BGB1, III, No. 7400

** OJ L 299/72, p.46

which therefore suffers a loss of power. This loss of power became clear at the conclusion of trade agreements between the Community and Iran (1963) and between the Community, Israel and Spain.

At Community level, the Council has inherited most of this power under the treaties and jurisprudence:
'Agreements shall be concluded by the Council on behalf of the Community' (Article 114 EEC).

2. The French Parliament still has the right to ratify 'mixed' agreements, i.e. such as the agreement between the Community and the Lebanon which covers both trade (Community responsibility) and technical cooperation (national responsibility). Article 14 of the agreement stipulates that 'the Council of the European Economic Community shall notify the Government of the Lebanese Republic when the requisite internal procedures are completed, within the Community and in the Member States, for this agreement to enter into force'. When the national ratification procedures were completed the agreement entered into force on 1 July 1968*.

3. Conclusion

The French Parliament has lost the power of ratifying trade agreements conferred on it by Article 53 of the Constitution.

V. IRELAND

1. Domestic law

The Irish Constitution provides as follows (Article 29(5)):

'1° Every international agreement to which the State becomes a party shall be laid before Dáil Eireann.

2° The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Eireann.

3° This section shall not apply to agreements or conventions of a technical and administrative character.'

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* Council decision of 17 June 1968, OJ No. L 146, 27 June 1968

2. Community Commercial Policy

Before accession most international trade agreements did not involve a charge upon the people or require a change in the law. Consequently they did not require parliamentary consideration. They were implemented by the Government under its existing power and were merely laid before Parliament for its information. Parliament had power to debate any agreement on the basis of a specific motion put down for that purpose.

Regulations made by the Community, in furtherance of its common commercial policy automatically have the force of law and are not subject to Irish parliamentary scrutiny. Insofar as they relate to matters which would have required legislation before accession to achieve the same end, there is a loss of power to Parliament.

Where matters arising from the Community's Commercial Policy are dealt with by Ministerial Regulations under Section 3 of the European Communities Act, 1972, such regulations have statutory effect. Under Irish law they may be annulled by Parliament, as described in Chapter II - General and Constitutional Requirements.

3. Conclusion

In general, as long as Articles 29(5) and (6) of the Constitution are complied with, there is no loss of power to Parliament.

VI. ITALY

1. Authority to conclude trade agreements lies with the Minister of Foreign Affairs, in agreement with the Ministers of Foreign Trade. The procedure is the same as for the conclusion of international agreements.

2. Parliament's role is laid down in Articles 80 and 87 of the Constitution.
Article 80:
'The Chambers authorise by law the ratification of international treaties which are either of a political nature, provide for legal decisions or regulations, affect territorial boundaries, have financial implications or modify laws.'

Article 87:
'The President of the Republic...ratifies international treaties, subject where necessary to authorisation by the Chambers.'

3. The list of international treaties whose ratification requires authorisation by the Chambers is according to current legal opinion exhaustive rather than illustrative.

The term 'ratification' is used in the widest sense here, to refer to the act of whatever kind - adhesion, accession, acceptance - by which the Italian State declares its desire to be a party to an international treaty.

4. Conclusion

The powers granted to the Council and the Commission do not entail a loss of power for Parliament since commercial policy had always been the Government's responsibility.

VII. LUXEMBOURG

Commercial policy is based on Articles 37 to 49(a) of the Constitution and on the Belgo-Luxembourg Economic Union and Benelux Treaties.

1. The power conferred upon the Council in the field of commercial policy by Article 113 of the EEC Treaty does not entail a loss of power for the Luxembourg legislature since the executive is responsible for these matters.

2. The Luxembourg legislature has lost the power to approve treaties and agreements concluded by the Council; this loss of power was, however, provided for in the Constitution (Article 49(a)): 'Legislative, executive and judicial powers laid down in the Constitution may temporarily be assigned by treaty to institutions governed by international law'. Yet the Luxembourg legislature retains its power of approval in respect of agreements between the Community and Member States on the one hand and third countries on the other.

3. Article 115 (protective measures against deflection of trade) of the EEC Treaty cannot be said to imply a loss of power since this power was given to the executive as early as 1963, and even before, in 1923 (law of 5 August 1963 repealing the law of 6 June 1923).

4. Article 116 (common action in international organisations): no loss of power has been suffered by the Luxembourg legislature.

5. Article 111 (harmonisation of commercial policy): no loss of power has been suffered by the legislature, since it never possessed any.

6. Conclusion

The above observations show no loss of power by the Luxembourg Chamber.

VIII. NETHERLANDS

1. The Constitution stipulates that agreements with other powers and organisations governed by international law shall be concluded by or with the authority of the King and, if the agreement so requires, the King shall give his assent. The States General are informed of the agreements as quickly as possible and give their approval (Article 60).

2. Approval can be given expressly or tacitly. On the other hand, approval is not required:
   - if approval of the agreement concerned is not stipulated by law;
   - if the agreement exclusively concerns the implementation of an approved agreement insofar as the law makes no reservations to the contrary;
   - if the agreement does not require the Kingdom to enter into significant monetary obligations and is concluded for a maximum of one year (Article 61).

   Trade agreements are therefore governed by the provisions of either Article 60 or 61.

3. The Constitution does not require short-term trade agreements to be approved by the States-General. However, in the case of agreements which must be approved the tacit procedure is generally adopted. If trade agreements also include financial arrangements they are subject to Parliament's approval pursuant to the provisions of Article 61 of the Constitution. Insofar as other commercial treaties are concerned the Government determines in practice whether or not Parliamentary consent is required.

4. Before the EEC Treaty was signed and before the Constitution was changed accordingly, trade agreements were forwarded to the States-General for information. Under the Constitution the authority to conclude trade agreements lay with the Crown.

   Before the EEC Treaty came into force, i.e. 1953 and 1956, the States-General amended the Constitution to strengthen Parliament's control over foreign and trade relations in particular. The States-General also decided to introduce a procedure of prior consultation with the Government in order to gain control over foreign policy. Since then the Government has fulfilled its task by sending to the Second Chamber letters, which may or may not be confidential, on certain subjects on its own initiative or when requested to do so.

5. Since the Benelux Union came into force, trade agreements have been concluded by the Committee of Ministers of the Union and, if necessary, ratified in their entirety by the parliaments of the three States. Amendments may,however, be made to the laws thus submitted for approval.

6. Conclusion

Under the EEC Treaty (Article 114) the Dutch Parliament no longer has the authority to approve trade agreements. Previously the States-General had taken full advantage of this right (a) in the case of long-term agreements or (b) when they had reservations about the subsequent approval of implementing agreements and (c) when financial arrangements were involved. Otherwise, the States-General made at least formal use of their power when approval was given tacitly but not in cases where Parliament's approval was not required by Article 62 of the Constitution.

X. UNITED KINGDOM

The House does not normally have an opportunity to debate commercial agreements as they are made by Royal Prerogative without prior reference to Parliament.

1. The position of the United Kingdom as regards the commercial policy of the Community was established in the course of negotiations in 1970/71. As the negotiations progressed, various statements were made to the House of Commons by the Ministers concerned, which were not however debated at the time. In July 1971 a White Paper was published incorporating the agreements made to date with the Community and a 4-day debate was held. This gave the House an opportunity to comment on these agreements (but not to alter them), to discuss the negotiations still outstanding (e.g. on fisheries policy) and to influence the attitude of the Government on them. In October 1971 a 6-day debate was held on the principle of entry to the Community, at the conclusion of which the House voted to approve the entry of the United Kingdom on the basis of the agreements reached.

2. The agreements were then embodied in the Treaty of Accession, which would, in the case of a normal treaty, have been ratified by the Government, without further reference to Parliament, 21 days after signature. But in this case ratification was not carried out until after the Royal Assent had been given to the European Communities Bill in October 1972. The debates on the Bill thus offered the House a further opportunity on second reading to debate the commercial agreements and in committee (in regard to customs duties, sugar, films

and restrictive trade practices only) to move amendments to them.

3. In relation to the situation after the end of the transitional period in 1978, loss of power to the British Parliament will be limited because, as has been indicated, commercial agreements were not normally the subject of special parliamentary procedure.

4. The wider issues of industrial and technological cooperation and mutual guarantees of investments are largely matters to be dealt with by Community legislation or by agreements, for example with third countries. These matters would before accession to some extent have been dealt with by the British Government by exercise of Royal Prerogative, and the House would not necessarily have been concerned with them. The loss of power that will result in this regard therefore to the British Parliament following accession is therefore limited.

5. To the extent to which these wider issues of commercial policy would require amendment of United Kingdom legislation, Parliament will continue to exercise its present function of debating and amending Bills and giving or withholding approval of delegated legislation, subject only to the constraints imposed by the supremacy of EEC legislation.

CHAPTER IV. ASSOCIATION POLICY

A. INTRODUCTION: Definition of the term 'Association'

B. TREATY PROVISIONS
   - I. Association Agreements with former dependent territories of the Member States
   - II. New association Agreements following the independence of most overseas countries and territories (OCT)
   - III. Associations other than those under the Yaoundé Convention and the Arusha Agreement

C. SITUATION IN THE INDIVIDUAL MEMBER STATES (the Six)
   - I. Belgium
   - II. Federal Republic of Germany
   - III. France
   - IV. Italy
   - V. Luxembourg
   - VI. The Netherlands

D. THE NEW MEMBER STATES AND TRANSITIONAL CONDITIONS IN THE EXISTING ASSOCIATION AGREEMENTS
   - I. Denmark
   - II. Ireland
   - III. United Kingdom

E. SUMMARY AND CONCLUSION

A. INTRODUCTION: Definition of the term 'Association'

The term 'Association' denotes a long-term relationship between a state outside the EEC and the Community, which affects neither the latter's character nor, more specifically, its institutions: in other words, associations may not give rise to any changes in the Community or to the

creation of any new powers. Regulations may only be made in respect of spheres of activity for which the Treaty already invests the Community with legal power. 'Association' is therefore a particular form of agreement entered into by the Community under the Treaty.

The contractual power of the Community is set out explicitly in the Treaty. It is contained in instruments issued by the Community institutions under the Treaty provisions.

If regulations have already been issued by the Community, especially regulations to implement a common policy provided for in the EEC Treaty, Member States may no longer conclude international treaties in that sphere. Where the Community makes use of its law-making power, the result is an effective curtailment of national legislative power.

It therefore follows that the loss of national power resulting from the conclusion of international agreements by the Communities must be considered not as an independent factor but in relation to the specific field covered by the Treaty.

B. TREATY PROVISIONS

I. Association agreements with former dependent territories of the Member States.

Special arrangements were made for Belgium, France, the United Kingdom, Italy and the Netherlands, as former colonial powers, to take account of the relations existing between them and their dependent overseas countries and territories (OCT). In order to extend the relationship between home countries and their colonies - in the case of France, for example, this took the form of a customs union - to the other EEC States, EEC Treaty Articles 131-136 contained provisions on:

(a) Financial aid (Article 132(3)
(b) Right of establishment (Article 132(5))
(c) Customs duties (Article 133)
(d) Quantitative restrictions (Article 134)
(e) Introduction of freedom of movement (provision made for subsequent agreement)(Article 135)

Points (a)-(b) represent an extension of EEC Treaty provisions to cover the former dependent territories (as listed in Annex IV of the Treaty). Point (a) is exclusive to the Association Agreements (regional development measures within EEC States are only comparable to a limited extent). Point (a) thus calls for closer examination.

II. New Association agreements following the independence of most overseas countries and territories (OCT)

After many of the OCT had achieved independence in the late fifties their relations with the Community were reviewed, so as to extend in effect the previous Association agreements. The African state of Guinea did not join the Communauté Française after being granted independence. The new arrangement under the EEC Treaty, Article 238 (authorising the EEC to conclude association agreements) was applied to all the other independent colonies.

Under the EEC Treaty, Article 238, only the Community - and not the Member States - may conclude such agreements. The procedure is for the Commission to negotiate the terms of the agreement and to submit them to the European Parliament for consultation, following which the Council may take a decision. Because of the provisions on contribution to investments in the OCT (see Article 132(3)) the individual Member States claimed that such Association agreements were 'mixed' agreements and unanimously concluded that they should be subject to ratification by their national parliaments. The reason given was that the special nature of the financial aid meant that it lay outside the areas of responsibility assigned to the Community under Articles 228 and 238 of the EEC Treaty and that an additional article would have to be included in the First Yaoundé Convention to the effect that 'it shall be ratified by the Signatory States in conformity with their respective constitutional requirements' (Article 56 of the First Yaoundé Convention (1963) and Article 58 of the Second Yaoundé Convention (1969)).

Similarly worded additional clauses, requiring ratification by both the Council and the national parliaments or governments in each case, were also included in the Arusha agreement (1970/71) between the Community, Kenya, Uganda and Tanzania.

The individual parliaments did not relinquish any power as a consequence of agreements concluded in this way, but retained their own constitutional authority.

There was criticism both in the European Parliament and elsewhere of the double ratification procedure and opposition was expressed to the 'mixed' type of agreement in terms which argued that consultation of the European Parliament was sufficient for compliance with EEC Treaty Articles 228 and 238 and that further ratification at national level was not necessary. Furthermore, it was argued that the development of the EEC in this field would be held up if these articles were not properly observed.

III. Associations other than those under the Yaoundé Convention and the Arusha Agreement

These include:

1. The Agreements with Greece and Turkey
2. The Agreement with Nigeria
3. The Agreements with Morocco, Tunisia, Malta and Cyprus.

1. The Agreements with Greece and Turkey

There was a double ratification procedure for these agreements. Because of their financial provisions and additional protocols they were considered to go beyond the terms of reference of the EEC and were classed as mixed agreements. Furthermore, it was expressly stated in the Agreements that they were subject to ratification by the national parliaments (Article 75 of the agreement with Greece, Article 63 of the Ankara Agreement).

Member States' parliaments were, however, involved in the agreements with Greece and Turkey insofar as association with these countries was regarded as a preliminary step towards full membership.

There was renewed criticism from several quarters pointing out that despite the financial commitments contained in the Agreements, there were no legal grounds for dual ratification. The critics maintained that if there was any dual ratification at all, it should apply only to the additional protocols and not to the whole agreement.

2. The Agreement with Nigeria

None of the provisions of the Agreement with Nigeria went beyond the competence of the Community and had the agreement come into force, ratification by the national parliaments would have been incompatible with Article 238.

3. The Agreements with Morocco, Tunisia, Malta and Cyprus

The Member States had no part in the conclusion of the Agreements with Morocco, Tunisia, Malta and Cyprus nor did these Agreements contain any additional financial protocols. Thus there was no reason for ratification by the national parliaments. They might, however, be seen in a different light when financial protocols are subsequently concluded with the participation of the Member States.

The problem of loss of power arises mainly with this category of Agreement.

C. SITUATION IN THE INDIVIDUAL MEMBER STATES ('THE SIX')

I. BELGIUM

When the two Yaoundé Conventions were being approved by both Houses of the Belgian Parliament, the question arose as to who was empowered to sign such agreements. The Conseil d'Etat considered that the Community was empowered by Article 238 of the EEC Treaty to conclude such agreements itself. In this connection, the Government pointed out that:

- 'Yaoundé II' (1969) was a continuation of 'Yaoundé I' (1963) in which both the Community and the individual Member States were contracting parties;
- 'Yaoundé II' was of a distinctly political nature and might affect the power of the Member States; and
- the Member States were agreeing to provide financial aid.

Therefore, if both the Member States and the Council of Ministers are given the power to conclude association agreements with the Associated African States and Madagascar, the consequence is that both Houses of Parliament retain the right of approval and do not suffer a loss of power.

II. FEDERAL REPUBLIC OF GERMANY

The conclusion of Association Agreements by the Community mainly affects the power of the Federal Republic in the fields of external trade and development aid policy. Under Article 73 (1 and 5) of the Basic Law, the Government (Bund) has legislative power in these areas.

Under Article 59(II) of the Basic Law, the Bundestag is involved in the conclusion of international agreements in this field only if such an agreement is political in character or establishes direct rights or obligations for the citizens of the State.

Where association agreements contain commercial arrangements, the comments made previously in the section on commercial policy* in respect of loss of power will again apply. As the Bundestag has not been involved, as a rule, in the conclusion of commercial agreements, Community association agreements do not have the effect of reducing the power of the Bundestag.

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* See Section III: 'Commercial Policy'

In individual cases, however, association agreements may have considerable political implications and therefore become more than mere commercial agreements. If this is so, the Bundestag must then become involved, under Article 59(II) and Article 73(1 and 5) of the Basic Law. Thus the transfer to the Community of responsibility for the conclusion of association agreements which are political in character means a loss of power for the Bundestag. In the majority of the association agreements concluded so far, however, this loss of power has not become apparent, as Member States participated in the conclusion of these agreements and the German Bundestag was therefore involved in the ratification agreement.

III. FRANCE

Although in principle the provisions of the EEC Treaty do not stipulate ratification by the national parliaments, like the other parliaments of the Six, the French Parliament decided to pronounce upon those association agreements which contained financial and technical aid clauses. In general, it has, therefore, maintained its power. In fact, its control is limited insofar as Article 128 of the Rules of Procedure of the Assemblée Nationale prohibits the submission of amendments to bills on the ratification of international agreements, which must be adopted or rejected in toto.

Where association agreements were not submitted to the French Parliament for ratification, certain power was lost to the Council.

IV. ITALY

When the EEC Treaty was signed, Italy was administering the Trust Territory of Somaliland. Italy ratified the first EEC-OCT Association Agreement in conformity with its internal constitutional law which provides for ratification by parliament. There was, therefore, no loss of power. A new article was inserted in the Yaoundé I and Yaoundé II Conventions and the Arusha Agreement providing for ratification by the Signatory States.

The Italian Parliament authorised ratification of each of these agreements. Thus it suffered no loss of power.

The Italian Parliament also authorised the association agreements with Greece and Turkey, on the grounds that these too were 'mixed' agreements, and so experienced no loss of power in this field.

Agreements without additional financial protocols have been signed without the participation of the Member States.

Since Article 80 of the Italian Constitution does not stipulate authorisation by parliament for the ratification of trade agreements, there was no loss of power.

V. LUXEMBOURG

As Luxembourg had neither special relations nor associations with countries outside Europe, there can be no question of a loss of power by the Luxembourg Parliament, although it could theoretically have concluded agreements with third countries.

VI. THE NETHERLANDS

During the debate on ratification of the establishment of the EEC in 1957 the States-General, invoking Articles 61 and 62(b) of the Constitution, reserved full rights to approve agreements for the implementation of the EEC Treaty. A clause to this effect was included in the ratification act. In practice, however, there is no possibility of a draft association agreement being amended, since Parliament may only reject a draft agreement in its entirety.

Thus, the Netherlands Parliament ratified the first and second Yaoundé Conventions and the agreements with Greece, Turkey and Nigeria. Similarly, it also ratified the decision of the representatives of the Member States on special measures for oil-bearing products containing oil from the Associated African States and Madagascar and other Overseas Territories and Countries.*

The power of the States-General remains formally intact as regards association agreements to which both the Community and the individual Member States are party (Yaoundé I and II, and the Agreements with Greece and Turkey). On the other hand, their powers have lapsed in the case of other association agreements to which only the Community, as such, is a party.

The loss of power by the States-General is to some extent offset by the debate on the annual report on the development and implementation of the EEC Treaty, which the Government must submit to Parliament in pursuance of the relevant ratification act. In presenting this report and during the subsequent debate the Minister of Foreign Affairs explains the standpoints adopted by the Netherlands Government in the Council of the European Communities and the policy it has pursued.

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* See OJ No. 173 (1967)

D. THE NEW MEMBER STATES AND TRANSITIONAL CONDITIONS IN EXISTING ASSOCIATION AGREEMENTS

While Denmark, Ireland and the United Kingdom have become equal parties to the Yaoundé II Convention and the Arusha agreement, until the expiry or extension of the agreements on 31 January 1975, they are largely unaffected under the transitional provisions by the commitments of the original States. The nine Member States are all party to the agreements referred to in B III.

The transitional measures are contained in the Protocols to the Association agreements (Act of Accession, Article 108).

Articles 109-114 contain provisions on trade agreements between the Community, the new Member States, the Associated States and the Commonwealth countries. Under Article 24(2) and 117 of the Act of Accession, Commonwealth territories may, by decision of the Council, be associated from February 1975 in addition to the states already associated under Articles 131-136 of the Basic Treaty. The territories concerned are mainly islands in the Caribbean and Pacific Oceans.

A special agreement for the new Member States was added to the Act of Accession under which they are not required to apply the Common Customs Tariff to the AASM/Arusha countries. Under Article 109(2) of the Act of Accession they must maintain until January 1975 the same customs arrangements for imported goods from the AASM/Arusha States as were applicable before accession.

If alignment with the Common Customs Tariff leads, in a new Member State, to a reduction of the customs duty hitherto payable on a given article, the AASM/Arusha States should also benefit from that reduction, notwithstanding the provisions of Article 109(2).

I. DENMARK

The Folketing's loss of power in connection with the association of certain States with the Community corresponds to a large extent with the loss of power generally apparent in customs and commercial policy matters. One of the consequences is that the Folketing will no longer be in a position to influence trade with the States in question by means of customs regulations. It will not be possible for Denmark to conclude trade agreements with the associated countries and the Folketing's ratifying function in respect of such agreements will

accordingly cease.

Imports from the associated countries have in general been subject to duty based on either the normal Danish customs tariff or on special tariff preferences for developing countries. The rates of duty in both the customs tariff and the preferential arrangements have usually been a matter for the Folketing. Denmark's loss of its right to make independent customs arrangements vis-à-vis the associated countries therefore means a definite loss of power for the Folketing.

To the extent that associations under Article 238 of the Treaty are entered into, in future the Folketing will indeed suffer a loss of power since, if Denmark had not been a Member of the Community, the Folketing would have been responsible for ratifying agreements of this nature with other countries or groups of countries.

II. IRELAND

Ireland has no special relations with non-European countries as envisaged in the Treaty and consequently is not a party to special preferential agreements with such countries.

In the meantime Ireland will maintain its existing trade arrangements with the countries concerned. Special technical procedures will, however, have to be observed in the case of agricultural products which are subject to a common organisation of the market.

There is at present no loss of power to Parliament in this regard.

International trade agreements which are implemented by Ministerial Regulations or by administrative action are merely laid before Parliament. Such agreements which are entered into by the Communities and which have financial implications can only deal with Community funds and any implications can only be for 'own resources' of the Community. These funds are already covered by Ireland's obligations under the EEC Treaty. Any international agreement which purported to have national financial implications could not be entered into by the Communities on Ireland's behalf but would require that the State become party to such agreement. Normal procedure for these cases would then be followed.

International agreements which might require amendment of national law are possible in theory but in practice it is difficult to envisage a case where this might arise.

Conclusion

There has been no loss of power to the Irish Parliament in this field.

III. UNITED KINGDOM

Trade agreements between Britain and other countries, whether overseas countries or Commonwealth countries or territories, are made by the Government on behalf of the Crown. Under normal procedure, they are laid before Parliament before ratification but after 21 days the agreements can be ratified by the Government. There is no formal procedure for the British Parliament to delay this process or to annul the agreements and hence no formal power to prevent ratification. There cannot, therefore, be said to have been a loss of power by the British Parliament in this field, apart from a reduction in its general omni-competence.

E. SUMMARY AND CONCLUSION

1. In Association agreements based solely on Articles 131-136, the Community is theoretically the sole contracting party. In practice, the national parliaments of the Six have been involved in every case. There has thus been no loss of power.

2. With regard to Association agreements based on Article 238 of the EEC Treaty, the national parliaments were involved in the case of the agreements referred to in B II, albeit on disputable grounds. Here too, then, there has been no loss of power. (This also applies to the new Member States by virtue of parliamentary ratification or adoption of the Treaties of Accession.)

3. The conclusion of the agreements mentioned in B II has so far been undertaken exclusively by the Community. (Here the Council has the final decision and the Commission is only indirectly responsible.) There has been a loss of power by the parliaments of the original Member States in that these agreements cover areas previously subject to the approval of national parliaments. Inclusion of the new Member States in these agreements proceeded from the Act of Accession ratified or adopted by each parliament (Act of Accession, Article 108) and insofar as this has happened, there can be no question of a loss of power.

CHAPTER V. AGRICULTURAL POLICY (Articles 38-47)

A. GENERAL

I. Nature and Scope of Community Law in Respect of Agriculture
   1. Common organisation of markets
   2. Structural policy

II. Community Power to Set Standards and the Laws of Individual Countries
   1. Setting standards
   2. Implementation of Community Standards

B. THE INDIVIDUAL MEMBER STATES
   I. Belgium
   II. Denmark
   III. Federal Republic of Germany
   IV. France
   V. Ireland
   VI. Italy
   VII. Luxembourg
   VIII. Netherlands
   IX. United Kingdom

C. SUMMARY AND CONCLUSIONS

A. GENERAL

I. Nature and Scope of Community Law in respect of Agriculture

Agricultural policy is pprominent among the matters governed by the EEC Treaty and as a result the Community exercises power to set standards in this

sector. The Treaty specifies the general principles of a common agricultural policy and confers upon the Community institutions the right to lay down appropriate implementing measures.

1. Common organisation of the markets

Article 38(4) lays down that 'the operation and development of the Common Market for agricultural products must be accompanied by the establishment of a common agricultural policy among the Member States'. Under Article 40(2) the common policy requires a common organisation of agricultural markets, which may take different forms depending on the product concerned.

In 1962 and 1964 the Council adopted a number of general regulations on the progressive establishment of a common organisation of the markets in various agricultural products*, on the financing of this common policy**, and on the applicability of certain rules of competition to agricultural products***.

In May 1966 the Council decided to establish a complete common market for agricultural products with freedom of movement in order to speed up the fixing of common prices. This decision resulted in the adoption of new general regulations**** and various implementing regulations.

A detailed examination of the various methods whereby the market is organised would go beyond the scope of this study. The objective is merely to indicate the aims and structure of the common organisation of

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* Regulations Nos. 19-24 on the progressive establishment of a common organisation of the markets in cereals, pigmeat, eggs, poultrymeat, fruit and vegetables and wines (OJ No. 30 of 20.4.62);
- Regulations Nos. 13, 14 and 16-64 on the progressive establishment of a common organisation of the markets in milk and milk products, beef and veal and rice (OJ No. 34 of 27.2.64)

** Regulation No. 25 on the financing of the common agricultural policy (OJ No. 30 of 20.4.62)
- Regulation No. 17/64 on the conditions for granting aid from the EAGGF (OJ No. 34 of 27.2.64)

*** Regulation No. 26 applying certain rules of competition to the production of and trade in agricultural products (OJ No. 30 of the 20.4.62)

**** See, inter alia, Regulations Nos. 120-123/67 on the common organisation of the market in cereals, pigmeat, eggs and poultrymeat (OJ No. 117 of 19.6.68)

the market in agricultural products in the final phase of the establishment of the Common Market and to highlight the differences between this and the transitional phase.

The various ways in which markets are organised can be divided into three major categories, leaving out of account many variations of detail*:

(a) Products with full price guarantee (e.g. cereals);

(b) Products with partial price guarantee (e.g. sugar, processed products of animal origin);

(c) Products with no price guarantee (e.g. ornamental plants).

The relationship between national and Community law depends upon the category of product concerned.

Thus, regulations concerning products subject to major Community intervention (Category (a)) differ considerably in their effects on the legislation of individual states from regulations concerning products in Category (b) where the objectives are more modest. The market and price policy for cereals, for example, is regulated in great detail. The Community institutions (Commission, with or without the help of 'administrative committees') are fully responsible for fixing agricultural levies and calculating refunds in accordance with the market situation. In this sector, therefore, the Community has assumed complete responsibility for the administrative functions (and for those which assume a legislative character in some Member States) necessary for the organisation of the market.

On the other hand, the regulations for products having no price guarantee leave scope for the individual States to draw up their own policies within the framework of Community rules.

Thus the 'target price' varies in the individual regions of the Community although its function, namely to guide Community production, remains the same. This also applies to intervention prices, which are designed to prevent a drop in producer prices as a result of over-supply.

To regulate trade, a uniform agricultural import levy and export refund system has been adopted for each product throughout the Member States

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* The means of assuring protection against third countries, which vary from product to product, are not taken into account here.

which is designed to contribute to the stabilisation of the Common Market and to help prevent price fluctuations on the world market from having repercussions on prices within the Community. The agricultural levies and refunds serve to equalise the price differences inside and outside the Community. In the case of processed goods, the levy also serves to protect the processing enterprises (by means of a 'fixed component' for processed products of animal origin).

The regulatory role of agriculture levies can also operate in the opposite direction if external prices are higher than those within the market. In such a case it would be a question of export levies which could be imposed by the Council on a proposal from the Commission (see Article 19 of Regulation No. 120/67 EEC OJ 117/1967).

The above is only an outline of the situation since the practical measures and the instruments applied naturally differ according to the product involved. For example, in the case of poultrymeat and eggs there are agricultural levies and refunds and no intervention system, and in the case of fruit and vegetables protection is afforded mainly through customs duties, with scope for compensatory payments.

A system of Community quality standards has been developed for products without price guarantees or with guarantees which are only partial (ornamental plants, fruit and vegetables). The Member States are bound by the standards as regards minimum quality but they are free to go beyond them if they wish. The organisation of the market in fruit and vegetables has undergone many changes since its introduction and has moved towards price guarantees, so that the boundaries between the systems are fluid. A common feature of all of them is that they have deprived the national institutions of their previous power in respect of price fixing, protective and other measures.

To sum up, as regards the common organisation of the market, the power of decision now rests with the Council and Commission. The European Parliament has only a consultative role. The details with regard to individual Member States which follow will indicate the extent of loss of power to national parliaments by comparison with their former power.

2. Structural policy

Community measures in this area of agricultural policy consisted for a long time mainly in the coordination of national action.

Thus, the Community contributed to the financing of individual projects for improvement schemes pursuant to Regulations Nos. 25 and 17/64, and adopted certain specific measures to coordinate Member States'

structural policies in the fisheries sector*.

At the same time a prior consultation procedure was set up, involving opinions by the Commission on structural policies but with no binding constraints on Member States**.

Over and above mere coordination, the Community has adopted several regulations which, although aimed at facilitating the administration of Common Market organisation, are nevertheless concerned with structural problems. For example, there is the payment of premiums for slaughtering cows and the non-marketing subsidy for milk***, as well as the special measures for improving production and marketing in the citrus fruits sector.

Outside the particular framework of a few products, the Community adopted in 1972, on the basis of the Mansholt plan, three directives**** which, by limiting Member States' freedom of action, emphasise the priority of Community legislation in the structural field, not this time at the particular level of a few market organisations, but more generally.

II. Community power to set standards and the laws of individual countries

The Community legislative procedure has already been described in the introduction (see Part One, Introduction E). Its application to the agricultural sector can be summarised as follows:

- the decision may rest with the Council, acting on a proposal from the Commission pursuant to the procedure laid down by Article 43 of the EEC Treaty (i.e. after consulting Parliament);

- the decision may rest with the Council, acting on a proposal from the Commission pursuant to the voting procedure laid down by Article 43 of the EEC Treaty (i.e. without consulting Parliament);

- the Commission or alternatively the Council on the basis of recommendations of the appropriate committee of experts;

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* See Regulation No. 2141/70, Article 1 (OJ L 236, 27.10.1970)

** See Council decision of 4 December 1962 (OJ 136, 17.12.1962)

*** See Regulation No. 1975 (OJ L252, 8.10.1969)

**** In view of their length, these three directives could not be reproduced here.

- the Commission may decide after consulting the administrative committee responsible for the product;

- the Commission may decide alone;

For the practical implementation of the Community agricultural policy, Community law (e.g. organisation of the market) gives the Commission certain administrative, legislative and decision-making powers. It may exercise these powers alone or in collaboration with administrative committees, which are composed of representatives of the Member States. If a disagreement arises between an administrative committee and the Commission, the final decision rests with the Commission unless the Council reaches a contrary decision within one month. The European Parliament is not involved in the Commission's activities, which are mainly of an implementing nature. It merely has the right to carry out a post facto policy check on these activities.

It is now proposed to examine the changes brought about by European agricultural policy in the policies previously pursued by Member States. This chapter is devoted to the institutional effects of this policy, concentrating on the questions of who now sets the standards and who is responsible for their implementation.

B. THE INDIVIDUAL MEMBER STATES

I. BELGIUM

1. Before 1962, i.e. before the beginning of the European agricultural policy, Parliament intervened in the question of price measures only through the medium of debates on general agricultural policy since the Government was empowered by law to take action to influence national production and imports in order to maintain prices at the desired level. This Government action was determined by the times at which the agricultural products were harvested or came on to the market.

   Parliament also intervened in laws relating to measures for structural improvement.

2. Today, the Belgian Parliament's main power lies in the discussion of the report submitted annually by the Government with a view to furthering the profitability of agriculture and its equivalence with the other sectors of the economy. In addition, Parliament receives further administrative reports which are examined together with the annual budget for agriculture approved by Parliament.

3. The Belgian Parliament has delegated most of its power in respect of the implementation of Community Acts to the Government (e.g. the 1971 amendment to the law creating an investment fund for agriculture and the 1971 law concerning the reform of agriculture).

4. Conclusion

The Belgian Parliament cannot therefore be said to have lost any of its power as regards the fixing of agricultural prices and the organisation of the markets.

On the other hand, it has delegated to the Government certain power it possessed in the field of aid for agricultural structures. As a result of this most of the legislation necessary for the implementation of the directives on the reform of agriculture, for example, could be adopted by the Government alone.

Parliament may, if it wishes, take back the power it has delegated to the Government. However, in a field where it can no longer intervene in the broad lines of a policy the trend seems to be for it to delegate to the Government the power to implement this policy. This amounts to an abdication in fact, if not in law, of all power of legislative intervention.

II. DENMARK

1. Articles 50-107 of the Treaty of Accession provide the basis for the implementation of the Common Agricultural Policy in Denmark as well as in the other new Member States. The creation of a Common Market for agricultural products implies certain obligations involving the abolition of former Danish restrictions and levies as well as customs duties on imports and exports of agricultural products. With some preliminary exceptions as regards compensatory duties and ordinary customs duties, this has brought about major change in Danish commercial policy in the field of agriculture, because Denmark had restrictions and levies of various kinds on agricultural imports in connection with the maintenance of a complex system of home-market price systems. Denmark also had to adopt the EEC system of variable import levies and export refunds vis-à-vis third countries, and Denmark must participate in the common financing of the EEC agricultural policy. Because of the gradual implementation in Denmark of the EEC price system the special Danish home-market price system* and the special price systems

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* cf. the former 'lov om afsæting af danske landbrugsvarer' of 1969 m.fl.

operated by the dairy producers' organisation, etc. have been abolished and cannot be reintroduced by the Folketing*. Thus the Folketing has lost the power of maintaining an independent commercial policy as regards agricultural products as well as the power of conducting an independent Danish marketing and price system in this field which it has previously had the power to regulate, and has done to a large extent.

2. The Folketing has had to abolish the extensive, direct production subsidies, but it can maintain and possibly further develop some other more indirect kinds of support, e.g. concerning consultative contributions, veterinarian control, sales promotion activities, research facilities, modernisation of farms, agricultural land distribution and development, etc. Certain problems remain concerning the Community definition of the precise extent to which subsidies and support to agriculture can be maintained in the future.

3. According to the Treaty of Accession, Article 104, Denmark can maintain certain national provisions in veterinary legislation for a transitional period of five years, but is otherwise bound by the directives issued in the field of harmonisation of food and veterinary legislation. To date the Folketing retains, however, considerable power in the field of legislation on food and on veterinary matters, but they may dwindle within a few years because differing national standards continue to provide technical trade barriers of some importance.

4. The EEC's three directives (March 1972) along the lines of the structural policy of the Mansholt Plan aim at faster modernisation of farms, a decrease in the agricultural population, brought about by grants to farmers to encourage them to leave farming, and advice and job-training for farmers. The Folketing has adopted a bill that complies with the modernisation directive** and a bill to allow for contributions from the European Agricultural Fund to certain structural projects, based on Regulation No. 17/64***. Such contributions can only be granted provided there is a certain degree of national participation.

5. While the EEC has provided for Community support as part of a structural policy in agriculture involving support provisions by the

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* But the Folketing can introduce support to consumer prices if it does so without discriminating against products from other Member States

** Cf. 'lov om støtte til moderisering af jordbrugsbedrifter' No. 222 of 26.4.1973

*** Cf. 'lov om tilskud til strukturprojekter inden for jordbruget' No. 187 of 30.3.1973

Member States it also forbids certain kinds of state aid within the framework of the structural policy. Thus the EEC structural policy is gradually taking shape and has already to some extent limited the power of the Folketing which was previously in a position to regulate such matters independently.

6. Early in 1973, the Folketing adopted a bill that indicated that it had maintained considerable power in structural policy*. This law introduces an obligation for farmers to settle on their farms and to maintain farming as their primary occupation; it sets up rules concerning long-term tenancy, the addition of farm land to existing farms, the utilisation of farm land, etc.

7. As regards research and educational policy in the field of agriculture the Folketing has suffered no loss of power and is not likely to do so except in regard to Community provisions regarding mutual acceptance among the Member States of diplomas and degrees.

8. Conclusion

At the end of the transitional period, Denmark will be bound in full by the essential part of the Common Agricultural Policy, namely the common organisation of the market. The loss of power on the part of the Folketing is extensive in this field, and the Folketing has given the Minister of Agriculture very wide power for the administration of the EEC agricultural programme.** The Folketing has lost the power of granting direct production subsidies but it can maintain a series of other kinds of aid to agriculture. As regards food and veterinary legislation considerable power is still retained during the transitional period. As regards agricultural organisation the Folketing retains the power to implement new structural measures, but has to a limited extent lost power. As regards research and educational policy in the field of agriculture there has been no loss of power by the Folketing.

III. FEDERAL REPUBLIC OF GERMANY

1. Under Article 74 (17 and 20) of the Basic Law, in the Federal Republic responsibility for legislation on:
   - promotion of agricultural production,
   - maintenance of food supplies,
   - import and export of agricultural products, and
   - trade in food and feedstuffs,

   lies with the Bundestag.

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* Cf. 'lov om aendring af lov om landbrugsejendomme'm.v. No.300 of 6.6.73

** Cf. 'lov om landbrugsvarer'No. 595 of 22.12.72, para.1

In exercising these responsibilities the Bundestag enacted a number of laws, before the Community was given responsibility in the agricultural sector, and these brought about a system of state intervention in agriculture similar to that established by the EEC Treaty. These laws show clearly that the Bundestag exerted considerable influence on agricultural policy through legislation.

They included in particular:
- the Cereals Law of 24 November 1951,
- the Cattle and Meat Law of 25 April 1951,
- the Milk and Fats Law of 10 December 1952,
- the Sugar Law of 5 January 1951,
- a Cereals Prices Law to be adopted annually by the Bundstag.

Even though all these laws delegated power of implementation to the Federal Government, the transfer of responsibility for agricultural policy to the Community has nevertheless resulted in considerable reduction in parliamentary influence in this sector.

2. The Bundestag also established by law the general aims of agricultural policy to be pursued in the Federal Republic (Farming Law of 5 September 1955). However, as this law has largely become ineffective in practice because it has been superseded by Article 39 of the EEC Treaty, the Bundestag has again suffered a loss of power in that the political objectives formulated in the law no longer have the same binding force.

   The Farming Law still requires the Government to submit an annual report on agriculture, giving the Bundestag an opportunity for wide-ranging debates on agricultural policy*.

3. Even after the Community Agricultural Policy was introduced, the Bundestag enacted many laws affecting this sector. Certain distinctions can be made here:

   - Areas of agricultural policy in which the Community does not yet claim comprehensive and detailed responsibility, e.g. structural policy. On 3 September 1969 the Bundestag adopted the law on the improvement of agricultural structure and coastal protection. As far as can be seen, this law accords with the structural directives adopted since then by the Council. On the other hand, implementation of the Council directive to encourage the cessation of farming requires amendment of the German Law on assistance to elderly farmers. There is general restriction of national power (and

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* See 'Agrarbericht 1973' Bundestag paper 7/46

hence of the power of the Bundestag) inasmuch as the exercise of this power may not conflict with Community agricultural policy; within these general limits, however, the Bundestag may still take sectoral decisions.

- There is a more far-reaching reduction in power when the Member State is required to take certain measures implementing Community directives. In this case the course of action of the Bundestag is defined at Community level (e.g. the Wine Law of 14 July 1971, Market Structure law of 16 May 1969).

- The loss of power is even more apparent in the case of laws enacted by the Bundestag on the basis of its Community obligations. The regulation of market organisation has been implemented by law in the Federal Republic, so that the Bundestag has always participated in its application at national level; Community regulations only allow the Bundestag extremely limited influence over the substance of the implementing rules.

4. Finally, another form of reduction of power can be seen in the fact that certain laws adopted by the Bundestag were originally also applicable to agricultural products, but, following the establishment of Community market rules, no longer apply to these products. This is true, in particular of the Foreign Trade and Payments Law of 28 April 1961. Originally this law could be used to control the import and export of agricultural products; now, however, almost all of the food industry and agriculture have been removed from the area of application of this law.

5. Conclusion

Before the introduction of the Community agricultural policy the Bundestag implemented national agricultural policy through laws; now, however, the Parliament merely has a formal right of participation in the application of Community law at national level. The responsibilities which it still has for individual areas and for issuing procedural provisions are negligible in comparison with the powers it has lost.

IV. FRANCE

1. The 1958 Constitution further emphasised a general tendancy to grant to the Government extensive regulatory power with regard to agriculture. However, even under the 1958 Constitution, the Government does not have full power in regard to agriculture. Therefore, for the implementation of Community legislation the Government found it necessary to ask Parliament to delegate power pursuant to Article 38 of the Constitution.

This power was delegated to it by the law of 8 August 1962 (the 'supplementary agricultural guidance law'), Article 24 of which reads as follows:

'To ensure and permit the application by the European Economic Community of provisions for the implementation of the Common Agricultural Policy, the Government shall be empowered to make all the necessary provisions normally falling within the domain of the law, by statute, after consulting the appropriate committees of the Assemblies, under the conditions stipulated in Article 38 of the Constitution.

The Government may not introduce taxes or levies which do not arise directly from Community decisions.

The statutes may be enacted up to 30 June 1963 and will be submitted to Parliament for ratification not later than three months after their promulgation.'

The Government went further and asked for even wider power, which was delegated to it by the same law in very broad terms (Article 25):

'Insofar as this is necessitated by the implementation of the Community's agricultural policy the Government may, after consultation with the appropriate professional organisations, issue a decree, with the agreement of the Council of State, laying down the standards of quality and hygiene to be met by the production and installations of all undertakings, whatever their legal form, engaged in processing or marketing agricultural and food products'.

Thus Parliament relinquished its prerogatives to the Government. There were, however, very precise limits: Parliament had to ratify all measures taken under the law delegating this power (Article 24(3)). The same article stipulated prior consultation with the appropriate committees of the National Assembly during preparation of the statutes. This requirement, representing a concession by the Government, had been forced through by Parliament during discussion of the law of 8 August 1962 (debates of 18 and 19 July 1962). Members of Parliament, aware that Articles 24 and 25 sanctioned a loss of their power, had adopted the amendment providing for prior consultation of the appropriate committees of the Assembly.

In addition, the National Assembly, with the agreement of Mr Pisani, the Minister of Agriculture, had brought forward the date for submission of the drafts for ratification of the statutes from 30 December (as originally proposed) to 30 June 1963. In these circumstances, it may be felt that the parliamentary prerogatives were safeguarded.

In fact, only one statute was enacted by the Government within the given time limit*. The Government soon realized that it could ensure the implementation of Community directives through decrees and orders under the 'regulatory power' conferred upon it by Article 37 of the Constitution.

The Government has not asked Parliament for a further enabling law in respect of agriculture since that time. Thus there has been no loss of power by the Parliament, to the extent that it had already relinquished its power.

2. In any case, it will be noted that Parliament can regain some control over agricultural prices through taxation - still one of the privileged areas of legislative power (Article 34 of the Constitution). Thus, for example, the French Parliament recently** delivered an opinion on the abolition of VAT on beef and veal, which affects the price of this product.

3. It often happens that, after particularly difficult negotiations in the Agricultural Council of the Community, Parliament asks the Minister of Agriculture to give an account of the Council's proceedings. This is, of course, merely an information debate, with no vote, organised by the Bureau of the Assembly and the Senate at their discretion.

4. Ultimately it is only in the matter of agricultural structures that Parliament retains its right of control, to the extent that only basic directives have so far been laid down, allowing a certain freedom of action to Member States. The Government also has the power under common law to enact the necessary provisions within the framework of these basic directives.

5. Conclusion

The role of the French Parliament in the sphere of agriculture is being increasingly reduced to the right to be informed of developments in the now very wide areas for which the Community is responsible. It will not be revived until the Common Agricultural Policy involves financial and fiscal implications requiring parliamentary intervention pursuant to Article 34 of the Constitution.

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* L'ordonnance de 1963 portant modification des règles de fonctionnement de l'office nationale d'intervention pour les céreales (ONEC)

** French Nationale Assembly - debates of 27 June 1973

V. IRELAND

1. Common organisation of the market

(a) Most of the principal agricultural products are subject to common organisation of the market and Irish farm prices are being progressively brought into line with the common price levels of the Community. Market intervention is an essential part of the EEC price support arrangements and market purchases of the main agricultural products are made by an official national agency acting on behalf of the Community. In Ireland this agency is the Department of Agriculture and Fisheries and its activities in regard to market intervention are regulated by the Community.

(b) Before accession the marketing of many agricultural products was managed by marketing boards which were autonomous but which received grants from the Exchequer to assist them in their operations. The prices of principal agricultural products were fixed by agreement between producers and manufacturers (i.e. sugar), by Ministerial Order following consultation with interested parties or by the free interplay of the market. These prices will now be fixed by the Community and appropriate regulations will govern the marketing of each product. Thus Article 88 of the Accession Treaty provides for the phasing out of the national subsidy on butter. Parliamentary freedom in this regard is consequently limited.

(c) Quantitative restrictions on inter-Community trade have been abolished in respect of certain products and will be gradually abolished during the transition period in respect of others. The removal of these restrictions is governed by Chapters I and II of the Treaty of Accession which provides for the phasing out of customs duties by 1 July 1977 and measures having equivalent effect to quantitative restrictions by 1 January 1973.

The implementation of provisions designed to liberalise trade would, before accession, have required the amendment of a number of laws relating to agricultural products. The following examples illustrate the position:

(i) The Agricultural Produce (Cereals) Acts, 1933-1969 provide for the issue of licences to Irish-owned firms only, and deal with the fixing of quotas and restrictions on imports;

(ii) The Agricultural Products (Regulation of Export) Act, 1947, provides for the imposition of restrictions by Order on export of certain products;

(iii) The Agricultural and Fishery Products (Regulation of Export) Act, 1947, provides for the imposition of restrictions by Order on export of certain products;

(iv) The Seed Production Act, 1955, contains restrictive conditions applicable to the issue of licences.

Where Community regulations deal with matters in respect of which, before accession, an amendment of the law would have been necessary to achieve the same end, there is a loss of power to Parliament.

Pending the full operation of the 'own resources' system of Community financing, the budget is financed by direct contributions from Member States and from the progressive attribution of certain 'own resources' which include levies on imports of agricultural products from non-member countries. Article II of the Irish Constitution provides that: 'All revenues of the State from whatever source arising, shall, subject to such exception as may be provided by law, form one fund, and shall be appropriated for the purposes and in the manner and subject to the charges and liabilities determined and imposed by law.'

Before accession the payment of State revenues to an international organisation would have required authorising legislation. EEC Regulations, which impose a charge on the Exchequer or which require State monies to be paid over to the Community, are not subject to Parliamentary control. Consequently, there is a loss of power in this regard.

(d) A number of local regulations relating to agricultural products have been made under Section 3 of the European Communities Act, 1972. In a number of cases these regulations amend legislation but Parliament has power in certain circumstances to annul them within one year after they are made.

2. Structural Reform

Schemes, in respect of which directives were issued - modernisation of farms, encouragement to retire from farming, reallocation of the land for structural reform, an information service and vocational training - are financed jointly by the Community Agricultural Fund and the National Exchequer. In the normal course Parliamentary authority would be required for the allocation of funds from the Exchequer and steps taken to this end do not take away any power from Parliament. It is, however, precluded from taking any action which runs counter to Community Directives.

Before accession matters subsequently covered by Community regulations, which related mainly to agricultural statistics and to the creation of a system for the examination of farm accounts, could have been dealt with at Ministerial level by means of delegated legislation and administration action and amendment of the law would not have been necessary. Consequently, there is no loss of power to Parliament.

EEC schemes for the improvement of the structural efficiency of agricultural production and marketing can be implemented by the Minister for Agriculture and Fisheries by means of delegated legislation and administrative action. Parliamentary approval is required, for the grant of money from the Exchequer to finance such schemes.

3. Conclusion

(a) Community regulations on structural reform and on the common organisation of the market largely deal with day-to-day details which would be dealt with at Ministerial level by way of delegated legislation or administrative action.

(b) Where Community regulations involve expenditure from the National Exchequer the appropriation of such monies must be sanctioned by Parliament and there is no loss of power. It could be argued, however, that Parliament has lost the power to refuse appropriation in such cases.

(c) Liberalisation of imports or exports of agricultural products would, before accession, have required amending legislation. Such liberalisation by means of Community regulations involves a loss of power to Parliament.

(d) Regulations governing the payment to the Community of levies on agricultural imports from non-member countries automatically have the force of law under the European Communities Act, 1972. Before accession, such payment would have required special legislation and in this regard there is a loss of power to Parliament.

VI. ITALY

1. The Italian Parliament has, in the past and present, played little effective part in choosing the type of market organisations adopted by the Community for the various agricultural products. The most the Chambers can do is to use the instruments granted them ex ante by their respective Rules of Procedure (Articles 126, 127, 23, 143 and 144 of the Rules of Procedure of the Chamber and the Senate) in an endeavour to influence the actions of the Government in the Council of Ministers.

They can also try to tie the Government down to specific mandates adopted as motions. There are many examples of this line of action. In addition, Italian legislation did not control the organisation of the market in detail even before the Communities were established. It is therefore more appropriate to talk of exclusion from a new sphere of responsibility opened by the Community system than of a loss of power.

2. Parliament's influence in the field of structural intervention has by contrast, been considerably altered. The Community, particularly in the April 1970 directives, has laid down a general legislative framework which Parliament will have to respect once the implementing provisions are issued. There have, however, been many cases in which proposals for structural intervention have emerged from the Community worked out in so much detail that there was little left for the Italian Parliament to do or say about them that would have any practical significance, e.g. Council Regulation No. 353/73 of 15 May 1973 on the premiums for re-converting to cattle herds.

3. Nor did the Italian Parliament have any opportunity to play a part in laying down the legislative framework for the financial aspects of market organisations and structural intervention. It did exert some influence in practice over the ratification of the Treaty of 22 April 1970 and the decision on own resources of 21 April of that year (Law No. 1185 of 23 December 1970), though such action suffers from the limitations of this type of procedure.

4. Obviously, Parliament could not lose power over general management when it did not previously have any. It should, however, be pointed out that the Italian Parliament is more or less excluded from effective decision-making, given that it has no institutional opportunity directly to influence the decisions on prices. They are established in accordance with well-known basic principles, strictly linked to the concept of common prices, single markets, and Community preference and financial responsibility.

The Italian Parliament does, however, retain one prerogative which might, at least in theory, be of practical importance: it can rule on the financial implications of certain management activities. The running of the common agricultural policy also requires fairly extensive involvement on the part of the bodies of the Italian public administration. In this field, the Italian Parliament has made the weight of its influence felt by creating, through its own law (No. 303 of 13 May 1966) the intervention body AIMA (Agricultural Market Intervention Agency), which, as from 1 June 1966 took over the responsibilities laid down in the Community Regulation No. 19 of 4 April 1962, hitherto exercised by a non-public body such as the

Federconsorzi (Federation of Agricultural Cooperatives). AIMA's action, even in fields strictly connected with the management of common policy, is often based on laws adopted by Parliament (e.g. Conversion Law No. 1027 of 10 November 1967 on support for Parmesan cheese).

5. Parliament therefore has little power which enables it to affect the legislative lines which govern market organisations; structural intervention and means of implementing the principle of Community financial responsibility. Its practical influence on the national extensions of management activity is, instead, rather greater, even though the two Chambers rarely intervene through their own legislation. They more usually use the instrument of ministerial or presidential decrees. Things, however, become more complicated when one passes from the practical aspects to consider the forms and procedures used by the Italian Parliament in applying Community law.

6. The legislature felt the need to give formal sanction even to those rules of the Community system which, according to the Treaty, are directly applicable. This has led to certain powers being continually delegated to the Government - Law ratifying the EEC Treaty No. 1203 of 14 October 1957, Law No. 871 of 13 July 1965 on the passing from the first to the second stage, Law No. 279 of 13 October 1969 on the passing from the second to the third stage and Law No. 1185 of 23 December 1970 ratifying own resources. Such delegation of responsibilities, at least in the agricultural sector, involves, in practice at least, losing power to the Government, since it will then issue a closely-knit series of delegated decrees which have the force of ordinary laws.

7. But Parliament's formal prerogatives have not only resulted in this delegation of responsibilities. There have been many patterns of behaviour. The Government has often issued laws relating to Community agriculture in the form of decrees which Parliament has then had to rubber-stamp (there are many examples, the principle being the Conversion Law No. 8 of 12 December 1971 on the single market price for olive oil). In many other cases, however, the Government avoided using formal laws at all and issued decrees of the President of the Republic or, even, ministerial decrees and circulars.

In other cases, it has been proposed that special new powers, even the right to issue ordinary laws, should be delegated to the Government. It remains necessary to resort to the instrument of legislation in some form whenever expenditure covered by the Italian budget needs to be authorised. A recent verdict of the Constitutional Court (No. 183 of December 1973) is quite explicit on this point. This also explains the length of time involved in deciding on many of EAGGF's structural

interventions that require financial contributions by the Member States and must, therefore, pass through the complex stages of legislative procedure (e.g. Law No. 507 of 7 August 1973 on the fruit and vegetable sector). The requirement that expenditure imposed on the Italian budget by a Community act be authorised by legislation, even though the power exists more on paper than in practice, is certainly orthodox and founded in classical theory. On the other hand, even the purely formal significance of legislation authorising expenditure financed entirely from the Community's own resources, within the meaning of the Treaty and the decision of 1 April 1970, which were fully ratified by the Italian Parliament, is less clear, particularly when after 1 January 1975, 'own resources' become the Community's only source of finance.

8. It is still too soon to assess the possible effects on the degree of the Italian Parliament's participation in the legislative development of the common agricultural policy of transferring certain agricultural powers to the regions.

VII. LUXEMBOURG

1. The Agricultural Guidance Law of 29 April 1965 provided a detailed framework for Luxembourg's agricultural policy. The purpose of the law was to place agriculture on a par with other economic activities. The measures provided for are as follows: subsidised interest rates, state guarantee, financial support, fiscal aid in the form of tax allowances, assistance in the social field and state financial aid charged to the Agricultural, Economic, Social, and Guidance Funds.

   The criteria and conditions governing financial aid are to be laid down in State regulations.

   On the occasion of budgetary debates the Government has to report to Parliament on the situation in agriculture and viticulture, specifying the measures taken and proposing the necessary appropriations. The Government must also ensure that the law is applied with due regard to the provisions of the EEC Treaty and Community implementing rules.

   This law, which may be termed the framework law, thus clearly defines the role of the legislature (which decides policy) and the Executive (which acts on the basis of regulations issued within the framework of the law).

2. The situation is different as regards the fixing of prices. According to the Law of 30 June 1961, measures relating to price fixing are taken

in the form of State decrees, under the supervision of the Prices Bureau acting on the authority of the Minister for Economic Affairs. The legislature thus gives the Executive the power to fix all prices, apart from a few exceptions.

3. The provisions of the EEC Treaty make due allowance for the special position of Luxembourg agriculture in the Protocol on the Grand Duchy of Luxembourg. Under Article 1(1) of this protocol the Grand Duchy is authorised to maintain quantitative restrictions on the imports of some products.

   The Grand Duchy must, however, take all measures of a structural, technical or economic nature that will make possible the progressive integration of its agriculture in the Common Market. The Commission may make recommendations to the Grand Duchy to this effect*.

4. The measures taken by the Luxembourg authorities paved the way for the proposed regulation on Luxembourg agriculture forwarded by the Commission to the Council on 26 December 1969. This proposal contained three separate provisions:

   - withdrawal of the authorisation given to Luxembourg to maintain quantitative restrictions on imports;

   - extension of the system of exemption from excise duty accorded to Luxembourg wines until 31 December 1974;

   - payment to the Grand Duchy of a lump sum of 7.5m u.a. This sum was granted to finance measures designed to complete the integration of Luxembourg agriculture.

   On 20 March 1970, the Council adopted the Regulation (EEC) No. 541/70 on Luxembourg agriculture. By the law of 6 September 1971**, the Luxembourg legislature authorised the Executive to take the measures (public administrative regulations) required for the implementation and ratification of decisions and directives and the ratification of Community regulations on economic, technical, agricultural, forestry, social and transport affairs. Questions constitutionally subject to the legislature are exempt from this regulation, which may take precedence over existing laws.

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* It did so in connection with the Agricultural Guidance Law of 1965

** 'Mémorial' 1971, p.1670

5. Conclusion

The Luxembourg legislature has laid down the guidelines and structure of the nation's agricultural policy in broad outline. It supervises the measures taken by the Executive in implementing the law, particularly during budgetary debates.

VIII. NETHERLANDS

1. Situation before 1958

Before the introduction of the various European Market regulations in 1958, the Minister of Agriculture regulated the market by a price policy based on guaranteed prices and fixed prices.

In accordance with the constitutional provisions of 1953, in 1954 the States-General delegated the power of making regulations in agriculture to the 'Landbouwschap' and the 'Produktschappen'. The 'Landbouwschap', a central body established under public law, is entitled by statute to make and implement regulations and can impose levies on agricultural undertakings.

The 'Produktschappen' are also bodies established under public law and include all enterprises involved in the production, processing and marketing of a particular product. These public bodies organise the various Dutch markets. The 'Landbouwschap' and the 'Produktschappen' were designated as the bodies responsible for implementing the Common Agricultural Policy.

2. Present situation

A series of laws regulates the delegation of power to the Crown for the implementation of the Common Agricultural Policy. On the basis of this delegation of power the Crown issued in 1963 a general administrative regulation, the 'Decision on the import and export of agricultural products'. This in turn empowered a Minister to delegate his power to the administrative committees of the 'Produktschappen'. In 1968, after the creation of the common agricultural market, the Minister of Agriculture issued a decree regulating the implementation of the Common Agricultural Policy on the basis of the 'Decision on the import and export of agricultural products'. As a result the 'Produktschappen' lost much of their powers, and are now restricted to an executive role and to making supplementary regulations.

In the view of the uniform nature of the Common Agricultural Policy, the Minister of Agriculture must approve these regulations; he may however transfer the power to approve regulations made by the 'Produktschappen' to the Director-General of the Directorate-General for food supplies. The measures adopted under the intervention system of the Common Agricultural Policy are implemented by the Food Purchasing and Marketing Board (VIB) in accordance with the Agricultural Act.

The 1966 Agricultural Act on the delegation of power regulates the power of the 'Produktschappen' with regard to implementation of the Common Agricultural Policy. Other examples of delegation of power are the 'Cattle Act' (1965), the 'Sowing-seed Act' (1966) and the 'Agricultural Quality Act' (1965) which empower the Minister of Agriculture to translate the guidelines of the Council and Commission of the European Communities into national legislation by decree.

The market and price policy regulations issued within the framework of the Common Agricultural Policy are implemented mainly under the power vested in the Minister of Agriculture by the 'Decision on the import and export of agricultural products'. This power seemed to fit the purpose; firstly, because one of their objectives is the implementation of international agreements and decisions by international organisations; secondly, because the system of certificates, levies and subsidies contained in most of the relevant EEC regulations ties up with the system of licences, levies and subsidies provided for in the Act and the Decision.

The 1938 Agricultural Export Act was also enforced with a view to the gradual creation of a common organisation of the market in fruit and vegetables. The system of quality control for exports which the Act contains again ties up with the objectives and implementing instruments of the above Act.

The Agriculture Act and the Import and Export Act are necessarily complementary in respect of the implementation of the Common Market and price policy. The Import and Export Act gives the legislation a basis for making regulations on trans-frontier traffic. Moreover, the Agriculture Law serves as a basis for Community regulations to be implemented within the country.

Existing national authorities are also empowered by ministerial decree to carry out the tasks laid down in the Community guidelines on structural measures. Since these guidelines are not exhaustive, the States-General still have some scope for changing the various laws on structural measures in agriculture insofar as this does not conflict with obligations under the Treaties.

This freedom of action no longer exists in respect of products which already come under Community market arrangements. For others there is still some scope for autonomous legislation, within the limits of the CCT and Articles 92-94 of the EEC Treaty concerning aid granted by Member States.

The common structural policy is implemented by the Agricultural Development and Improvement Fund created in 1958. Control by the Minister of Agriculture ensures that EEC legislation is fully observed, and indeed the 1954 Consolidation Act delegated implementing power to local committees.

3. Conclusion

The States-General delegated the right to lay down market regulations to a Minister and subordinate public authorities by statute even before the entry into force of the Treaty of Rome. Existing instruments for implementing market regulations by law, General Administrative Orders or Ministerial Acts were adjusted to the requirements of the Common Agricultural Policy after this policy was introduced. Similarly the States-General had delegated the implementation of structural policy through the Government to the decentralised Agricultural Funds.

IX. UNITED KINGDOM

1. The agricultural industry in the United Kingdom has since the Agricultural Act 1947 been closely controlled by the Government. The Act established a system of grants and subsidies together with guaranteed prices for cereals, livestock, etc. The level of these grants and payments was fixed each spring by negotiations between the Government and the farmers' unions, in which Parliament played no part. Certain aspects of this annual price review were subsequently brought before Parliament in a group of Orders in the form of delegated legislation which were debated and voted upon, but not open to amendment, in both Houses. In addition the House of Commons held a general debate on agriculture in most sessions, usually after the Price Review.

2. Marketing of specific agricultural products has been regulated since before 1939 by marketing boards, e.g. for milk, bacon, eggs, potatoes, set up by statute under the general direction of the Minister of Agriculture but autonomous as regards finance. Their operations were open to question and debate in Parliament.

3. The Treaty of Accession applies transitional provisions to agriculture in the United Kingdom. These essentially involve a progressive alignment of prices fixed by the Council (Articles 52(2) and (3)), determination of compensatory amounts designed to make good price differences (Article 55)and, until 31 January 1974, the possibility of measures to meet special cases. This period may be extended until 31 January 1975 (Article 63).

   By Article 54 of the Accession Treaty so long as there is a difference between prices in the United Kingdom fixed under the guaranteed price system and prices fixed under the Common Agricultural Policy (CAP), production subsidies may be retained. But the United Kingdom must try to abolish these subsidies as soon as possible during the transitional period. Article 55 makes provision for compensation payments to be made in respect of such differences in prices.

4. During the transitional period, therefore, the Annual Price Review will continue and the Orders carrying it into effect will be debated by Parliament just as before accession to the Community. Until the end of 1977, there will be loss of power to the House of Commons in respect of prices only to the extent that if it rejects an Order which makes provisions in conformity with Community law it will be in contravention of the EEC Treaty. From 1978 onwards the CAP will operate fully in the United Kingdom in terms of Articles 38-47 of the EEC Treaty and the Community will receive direct payments to its 'own resources' which will be subject to no control by Parliament. This represents a loss of power.

5. The marketing machinery in the United Kingdom has been adapted to accession by Section 6 of the European Communities Act 1972. An Intervention Board for Agricultural Produce was established, appointed by and responsible to Ministers, with the function of carrying out the obligations of the United Kingdom under CAP. The Government is empowered to regulate, through the Intervention Board, the operations of the produce marketing boards referred to in paragraph 2 above by means of Orders and Regulations debatable in Parliament.

   There will be no loss of parliamentary control of the machinery of marketing even after the end of 1977, but at times even before that date, and in every case thereafter, the House of Commons will have no power to alter the price determinations made by the Board to secure conformity with the CAP. This will involve a loss of power to Parliament.

6. Structural measures in regard to agriculture were until accession regulated by statute; Parliament was thus able to exercise full

legislative control. It would appear that in future such measures will in general be made in conformity with the CAP, leaving little scope for national variation and Parliamentary intervention. In addition, the United Kingdom legislation necessary to secure conformity with the CAP will be delegated, thus inhibiting the power of Parliament to amend it.

7. Conclusion

Parliament has lost power in regard to the resources arising under the CAP to the Community from Member States (the 'own resources'). These will be charged directly to the Consolidated Fund and debatable during the debate on the Public Expenditure White Paper in general terms only, without a vote, once a year, instead of being levied subject to statute or delegated legislation. Parliament has, however, not lost power in regard to the machinery for marketing. It will lose power to a considerable extent over structural measures and the fixing of agricultural prices.

C. SUMMARY AND CONCLUSIONS

The section of the EEC Treaty dealing with agriculture (Articles 38-47) is more in the nature of an 'outline law' than the other titles of the Treaty. The Treaty only lays down general objectives. The Council gradually supplemented this framework by regulations and the Commission by provisions on implementation. This means that the main encroachment on the power of Member States' parliaments comes from secondary Community legislation.

Article 40(2) and (3) of the EEC Treaty stipulates that the common organisation established in accordance with paragraph 2 may take all measures required to attain the objectives set out in Article 39. Every measure actually adopted transfers powers of individual Member States to the Community. The Council may depart from the provisions on competition to allow aid for the protection of enterprises (Article 42). The power of Member States' parliaments is thus reduced insofar as the Council takes decisions. Beside Articles 38-47, Articles 12, 31 and 34* of the Treaty also apply to agriculture.

With the transition to the stage of a single agricultural market, the governments and the parliaments of the Member States will retain, at the most, the power of decision in respect of acts supplementing Community measures.

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* No new customs duties or quantitative restrictions

Most agricultural products are now covered by Community regulations. Member States still have full powers in respect of market organisation for the few remaining products, although here too the provisions on granting aid to enterprises (Articles 92-94) and Articles 12, 31 and 34 impose restrictions on them. Some products are to be integrated gradually into common market organisations (cf. especially alcohol, potatoes, mutton).

The national parliaments are obliged to make the necessary resources available to the Community budget - in which agriculture is the major item - insofar as 'own resources' are inadequate.

It is thus mainly in the sphere of structural policy that the individual national parliaments still retain some power. Although they are bound by the guidelines established by the Mansholt Plan (modernisation of enterprises, aims of agricultural activity, vocational retraining, etc.) - where, incidentally, Member States retain some scope for action - they still have some limited power. But even here they are bound by the obligations laid down in the Treaty, e.g. concerning the granting of aid.

CHAPTER VI. TRANSPORT POLICY (Articles 74-84)

A. GENERAL
   I. Introduction
   II. State of Implementation of Secondary Community Legislation in the Transport Sector

B. THE INDIVIDUAL MEMBER STATES
   I. Belgium
   II. Denmark
   III. Federal Republic of Germany
   IV. France
   V. Ireland
   VI. Italy
   VII. Luxembourg
   VIII. Netherlands
   IX. United Kingdom

A. GENERAL

I. Introduction

1. Historically speaking, from the outset every country has worked out its own transport policy on a strictly national basis - and therefore in accordance with national interests and for the benefit of domestic transport. The terms of international cooperation have mainly been covered by agreements for each form of transport.

2. Under the EEC Treaty transport has become part of a common policy, the salient feature of which is that it is drawn up at Community level; since this policy is being established in stages, this process - as in the case of other policies provided for in the Treaty - takes place through piecemeal legislation in a political sector for which the national legislature is already responsible.

3. For implementation of the specific provisions of the EEC Treaty the Council - which here again holds the main role-making power - enjoys fairly wide power, being able for this purpose to lay down 'any other appropriate provisions' (Articles 75(1)(c) and 79(2)) and to extend the field of application from road, rail and inland waterways to sea and air transport (Article 84(2)), i.e. to 'decide whether, to what extent and by what procedure appropriate provisions may be laid down' in this area.

4. The areas in which actual measures for the implementation of this common transport policy have already been adopted or prepared in accordance with the aims of the Treaty, are: harmonisation of conditions of competition, harmonisation of social provisions (road), access to market, harmonisation of the accounts of transport undertakings, tariffs and transport conditions, rules of competition, coordination of capital investment, infrastructure - both from the point of view of their cost and the rates to be charged for their use - and technical provisions for vehicles.

5. Such being the scope and driving force of the development of a common transport policy, the question is what the consequences of these regulations will be with respect to the activities of the national bodies:

   (a) As regards the general definition of a policy to be carried out in a sector as important as transport, one of the traditional tasks of representative assemblies is to debate and define the main lines of a policy. As the Community level this function is undertaken by the Council to which the Treaty entrusts the task.

   (b) Since relations between Member States are governed by the Treaty, it will no longer be necessary to resort to international agreements; the national parliaments will therefore have no opportunity of intervening through acts of ratification (if previously they did so).

   Similarly, as regards agreements with third states, as the Community progressively regulates this matter by legislation the power to provide for international agreements will be automatically acquired by the Community. This general rule derives from the judgement of the Court of Justice of 31 November 1971 in Case No. 22/70 ERTA (Recueil de la jurisprudence de la Court 1971). These agreements are not subject to ratification because they are concluded by the Council.

II. STATE OF IMPLEMENTATION OF SECONDARY COMMUNITY LEGISLATION IN THE TRANSPORT SECTOR

(Situation in July 1973)

Subject	Nature of Council Act*	Implementing Regulations of the Commission**	Legal Basis	O.J. Ref.
(a) ACCESS TO MARKET				
1. Carriage of goods by road				
Common rules for international transport (for hire or reward)	- Directive (1st) of 23.7.1962 amended by - Directive 426/72 of 19.12.1972		Art.75(1)	No.70 of 6.8.62
Rules relating to permits for transport between Member States	- Directive 269/65 of 13.5.1965 amended by - Directive 169/73 of 25.6.1973		Art.75	No.88 of 24.5.65
Community quota for transport between Member States	- Regulation 1018/68 of 19.7.68 and 2829/72 of 28.12.1972	Reg.1224/68	Art.75	No.L 175 of 23.7.68
Community transit	- Regulation 542/69 of 18.3.69 amended by Regulations 2719/72 and 2720/72 of 19.12.72	Reg.2588/69	Art.235	No.L 77 of 29.3.1969
2. Carriage of passengers by road				
Common rules for international transport	- Regulation 117/66 of 28.7.1966	Regs.212/66 and 1016/68	Art.75	No.147 of 9.8.1966
Common rules for shuttle services	- Regulation 516/72 of 28.2.1972 amended by - Regulation 2442/72 of 21.11.1972	Reg.1172/72 amended by Reg.2778/72	Art.75	No.L 67 of 20.3.72
Common rules for specialised regular services	- Regulation 517/72 of 28.2.1972 amended by - Regulation 2442/72 of 21.11.1972	Reg.1172/72 amended by Reg.2778/72	Art.75	No.L 67 of 20.3.1972

(b) ORGANISATION OF THE MARKET AND TARIFF ARRANGEMENTS

Abolition of discrimination on transport rates and conditions	- Regulation 11/60 of 27.6.1960	Art.79(3)	No.52 of 16.8.1960
Introduction of a system of bracket tariffs	- Regulation 1174/68 of 30.7.68 amended by - Regulations 293/70 of 16.2.70 and 2826/72 of 28.12.1972	Art.75	No.L 194 of 6.8.68

(c) HARMONISATION OF CONDITIONS OF COMPETITION

1. Taxation

Duty-free admission of fuel contained in fuel tanks of commercial motor vehicles	- Directive 297/68 of 19.7.1968	Art.75 & 99	No.L 175 of 23.7.68
Turnover tax and excise duty applicable to international passenger traffic	- Directive 169/69 of 28.5.1969	Art.99	No.L 133 of 4.6.69
	- 2nd Directive 230/72 of 12.6.1972	Art.99	No.L 139 of 17.6.1972

2. Public Intervention

Obligations inherent in the concept of a public service	- Regulation 1191/69 of 26.6.1969	Art.75 77 & 94	No.L 156 of 28.6.69
Harmonisation of the accounts of railway undertakings	- Regulation 1192/70 of 26.6.1969	Art.75 & 94	No.L 156 of 28.6.69
Aids granted for transport by rail, road and inland waterway	- Regulation 1107/70 of 4.6.1970	Art.75 77 & 94	No.L 130 of 15.6.70
Introduction of an accounting system for expenditure on transport infrastructures	- Regulation 1108/70 of 4.6.1970	Art.75	No.L 130 of 15.6.70

3. Social sphere

Harmonisation of social provisions (road transport)	- Regulation 543/69 of 25.3.1969 amended by Regulations 514/72 and 515/72 of 28.2.1972	Art.75 Art. 75	No.L 77 of 29.3.69 No.L 67 of 20.3.72

(d) HARMONISATION OF TECHNICAL PROVISIONS AND TRAFFIC REGULATIONS

Approval of motor vehicles	- Directive 156/70 of 6.2.1970	Art.100	No.L 42 of 23.2.70
Sound level and exhaust system	- Directive 157/70 of 6.2.1970	Art.100	No.L 42 of 23.2.70
Fuel tanks and rear protective devices for motor vehicles	- Directive 221/70 of 20.3.1970	Art.100	No.L 76 of 6.4.70
Rear registration plates	- Directive 122/70 of 20.3.1970	Art.100	No.L 76 of 6.4.1970
Recording equipment in road transport	- Regulation 1463/70 of 20.7.1970 amended by - Regulation 1787/73 of 25.6.1973	Art.75 Art.75	No.L 164 27.7.70
Radio interference produced by motor vehicles	- Directive 245/72 of 20.6.1972	Art.100	No.L 152 of 6.7.72
Steering equipment	- Directive 311/70 of 8.6.1970	Art.100	No.L 133 of 8.6.70
Doors of motor vehicles	- Directive 387/70 of 27.7.1970	Art.100	No.L 176 of 10.8.70
Audible warning devices	- Directive 388/70 of 27.7.1970	Art.100	No.L 176 of 10.8.70
Emission of pollutants from positive-ignition engines	- Directive 220/70 of 20.3.1970	Art.100	No.L 76 of 6.4.70
Braking devices	- Directive 320/71 of 26.7.1971	Art.100	No.L 202 of 6.9.71

Civil liability	- Directive 166/72 of 24.4.1972 amended by - Directive 430/72 of 19.12.1972		Art.100	No.L 103 of 2.5.72
(e) APPLICATION OF THE RULES OF COMPETITION TO TRANSPORT				
Application of the rules of competition to transport	- Regulation 1017/68 of 19.7.1968	Regulations 1629/69 and 1630/69	Art.75 & 87	No.L 175 of 23.7.68
(f) EEC AGREEMENTS WITH THIRD COUNTRIES				
Agreement with Switzerland	- Regulation 2812/72 of 21.11.1972		Art.113	No.L 294 of 29.12.72
Agreement with Austria	- Regulation 2813/72 of 21.11.1972		Art.113	No.L 294 of 29.12.72
(g) GENERAL MEASURES				
Regional statistics in respect of international carriage of goods by road	- Directive 467/69 of 8.12.1969		Art.213	No.L 323 of 24.12.69

B. THE INDIVIDUAL MEMBER STATES

I. BELGIUM

Transport in General

The law of 18 February 1969 ('Moniteur' of 4 April 1969) states:
'In regard to transport by road, rail or waterway, the King may, by a decree adopted in the Council of Ministers, take any measure needed to ensure the fulfilment of the obligations resulting from international treaties and international acts adopted in pursuance thereof; such measures may comprise the repeal or amendment of legal provisions'.

This law on the delegation of power:
- confirms that the Belgian Parliament still held non-delegated power;
- shows that, on the basis of arguments founded more on facts than on law, the Belgian Parliament has delegated power to the Executive.

Transport: Special Aspects

1. In the law of 1 August 1960 the Belgian legislature defined broad principles for the transport of goods for gain by motor vehicles*. This law delegated to the King the power to establish by a general regulation the rules for its application (General Regulation of 9 September 1967).

   The King is responsible, in particular, for concluding agreements relating to the granting of transport licences. For Community quotas and transit, it is necessary to refer to the law of 11 September 1962 relating to the import, export and transport of goods**. This law delegates power to the King to collect special duties and establish licensing arrangements.

2. The transport of passengers by road is governed by the decree of 30 December 1946 revising and coordinating the legislature on transport of persons for gain by motor vehicle.

   The decree of 30 December 1946 provides that the King shall fix the general conditions imposed on the operators of public bus and coach services.

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* 'Moniteur belge' of 12 August 1960

** 'Moniteur belge' of 27 October 1962

3. In Belgium the organisation of the transport market and the regulation of charges come under the law of 1 August 1960* which delegates to the King the power to fix transport rates and conditions. It should be emphasised that Community measures designed to abolish discrimination (Regulation 11/1960) constitute a limitation of parliamentary power.

4. The law of 1 August 1960 authorises the King to take measures affecting social conditions in the transport sector.

5. The Société Nationale des Chemins de Fer Belge was created by the law of 23 July 1962, which defines its task and hence its obligations as a public service. Harmonisation of the accounts is the responsibility of the Board of the S.N.C.B., under the control of the Minister of Communications. Grants are entered in the budget voted by the Chambers.

6. With regard to the harmonisation of technical and traffic rules the law of 1 August 1960 and that of 1 August 1899 on traffic control authorise the King to take implementing measures through general regulations. A similar authorisation is provided for in the decree of 30 December 1946 laying down the technical and insurance conditions to be met by the rolling stock of bus and coach services.

7. With regard to statistics on international road transport the law of 4 July 1962 authorises the Government to undertake statistical and other surveys on the demographic, economic and social situation of the country**.

8. Conclusion

Most matters dealt with under Article 75 of the EEC Treaty were the responsibility of the Government, by delegation, at the time when the Community acts came into force. The general principles, which in Belgium were the subject of laws submitted to the Parliament, were not dealt with in a formal act at Community level. The result is that the Council regulations and directives correspond, in Belgian law, to matters delegated to the Government. Moreover, under the law of 18 February 1969 all matters referred to by Community acts automatically become the responsibility of the Government. The Belgian Parliament has not suffered a great loss of power as a result of Community legislation.

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* 'Moniteur belge' of 12 August 1960

** 'Moniteur belge' of 20 July 1962

II. DENMARK

1. Transport of goods and passengers by road: Regulations Nos. 1018/68 and 2829/72 introducing a system of authorisations for international carriers only entail a limitation of power by the Folketing, as such authorisations were given by the Minister of Public Works based on a delegation in the Law on international carrier transport*. Furthermore such authorisations were given on the basis of international, bilateral administrative agreements between Denmark and the other Member States. Regulation No. 117/66 on international bus transport does to a certain extent limit the power of the Folketing**.

2. Organisation of the market and tariff arrangements: In Denmark international goods transport by road is regulated by the Minister of Transport under a delegation by Parliament*. The EEC Regulation on abolition of discriminatory treatment as regards transport prices and transport conditions and the EEC Regulation concerning the implementation of a bracket tariff system for international carriers have not necessitated changes in the existing legislation**. The legislation conferred the necessary power on the Minister of Transport to establish tariffs, etc. for the transport concerned. Consequently there is only a limited loss of power for the Folketing which is obliged in future to respect the EEC regulations.

3. Public intervention: Regulation No. 1192/69 on the harmonisation of accounting systems in the national railway organisations and Regulation No. 1107/70 on state aid to railway transport impose restrictions on the Folketing.

4. Social matters: Regulation No. 543/69 governs the minimum age, driving and rest periods for the drivers and crew of road transport vehicles. The terms of a so-called AETR Agreement are very similar to this regulation, but this agreement has not yet been ratified by Denmark, after which it is only the EEC Regulation which is binding in this field. Thus the Folketing has suffered a limitation of power.

5. Harmonisation of technical provisions and traffic regulations: A number of directives concerning dimensions and weight, etc. of road transport vehicles only lead to a limitation of power for the Folketing because such technical matters have in the past been regulated by way of Ministerial Orders according to the Law on Traffic.

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* Cf. Act No. 232 of 25 May 1951 with later amendments

** Cf. Act No. 131 of 23 March 1948 with later amendments

6. Harmonisation of conditions of competition: In the field of competition, Regulation No. 1017/68 applies the Treaty rules on competition to the transport sector. This will result in a loss of power to the Folketing.

7. Transport by sea and air: Since no common sea or air transport policy of the EEC has yet been introduced (cf. Article 84) the Folketing has suffered no loss of power in this respect.

8. Conclusion

The Folketing has not so far suffered any substantial loss of power due to the common transport policy. Formally there has been a noticeable loss of power, but in practice the loss is far less noticeable because the Folketing had already before Accession delegated wide power to the Government.

III. FEDERAL REPUBLIC OF GERMANY

1. Under Article 73(6) of the Basic Law the Bundestag has exclusive responsibility for legislation concerning the Federal Railways and air transport. Under Article 74 it is also responsible, alongside the Länder, for legislation on:
   - ocean, coastal and inland navigation,
   - road traffic, motor vehicles and the construction and maintenance of long distance highways.

   In the exercise of these responsibilities, the Bundestag has adopted the following laws:
   General Railways Law of 1951
   Federal Railways Law of 1951
   Air Transport Law of 1959
   Law of 1950 on the functions of the Government in the field of ocean shipping
   Law on Coastal Shipping of 1957
   Road Traffic Law of 1952
   Passenger Conveyance Law of 1961
   Road Haulage Industry Law of 1952
   Federal Long Distance Highways Law of 1961

2. The legislative activity of the Bundestag has therefore extended over the whole field of traffic policy falling within the competence of the Community. Community legislation has impinged as follows on the area of responsibility previously covered by the Bundestag:

Under paragraph 103, section II of the Road Haulage Industry Law, special regulations could be laid down for road haulage across frontiers by order of the Federal Minister of Transport. Council Regulations on tariffs and quotas mainly affect this area, which in Germany is the responsibility of the Executive. To this extent there has been no reduction so far in the power of the Bundestag.

Under paragraphs 52 and 53, passenger transport across frontiers and through countries is governed by the Passenger Conveyance Law. Community directives issued so far, however, concern matters, the regulation of which by means of orders is the responsibility, under this law, of the Executive. As yet the Bundestag has not had to accept any reduction in its legislative power.

3. In Germany freight and transport conditions are laid down without involving the legislature. Intervention by the European Communities in the establishment of tariffs therefore involves no loss of power for the Bundestag.

4. Intervention by the European Communities in the tax on transport, on the other hand, does mean a loss of power for the Bundestag. Thus, motor vehicle taxation is subject to regulation by law (Motor vehicle tax law of 1 December 1972).

   The German road freight traffic tax, with its differential rates for interworks long distance traffic and commercial road freight traffic, had to be abolished, because there is no equivalent tax system in the other EEC Member States. The tax preferences for goods traffic to and from the German seaports and other selective tax privileges for certain traffic also had to be abolished, because they conflicted with the regulations on aid contained in Article 92 et seq. of the EEC Treaty.

5. Insofar as the Communities have taken measures affecting the legal status of public transport undertakings, this again involves a loss of power for the Bundestag. The latter defined the legal and economic position of the state railways in the Federal Railway Law. The obligation to introduce common rules for the standardisation of accounts only means slight changes in the relationship between the Federal Railway and the Government, but the Bundestag is no longer able to control this relationship as it wishes.

6. The rules on road transport employment conditions (driving hours, etc.) so far adopted by the Community affect the area previously covered in the Federal Republic by the Executive. To this extent there is no loss of power by the Bundestag.

7. The standardisation of technical criteria on the design and equipment of road vehicles does not involve any loss of power by the Bundestag as this area is regulated in the Federal Republic by the Road Transport Licensing Order of the Minister of Transport.

8. Conclusion

Although the principles of traffic law in the Federal Republic are regulated by law - i.e. with the participation of the Bundestag - the exercise of Community responsibilities in the traffic sector has, as a whole, meant only a relatively slight reduction so far in the power of the Bundestag.

IV. FRANCE

1. The 1958 Constitution does not make transport one of the sectors falling within the ambit of the law (Article 34), i.e. belonging to Parliament's sphere of responsibility. Transport is therefore a matter which is controlled in principle by the executive, i.e. the Government and the public establishments or concerns under its supervision (S.N.C.F., etc.).

2. For this reason the Government has never considered asking Parliament for delegation of powers for the implementation of Community directives and regulations in the transport sector.

The Government merely adopts, by virtue of its regulatory power, the orders and decrees necessary for the implementation of Community directives. The Government already had fairly wide regulatory power in transport matters under the previous constitutional systems (3rd and 4th Republics) by virtue of the 'décrets-lois' (orders-in-council) (for example, that of 12 November 1938 to coordinate rail and inland navigation), which are themselves adopted under special powers granted to the Government, or under 'lois' (laws) adopted by authoritarian regimes (Vichy Government, law of 22 March 1941, likewise to coordinate rail and inland navigation). The regulations introduced by the Government under these two laws are adopted solely on the strength of a favourable opinion from the 'Conseil supérieur des transports' (Transport Board), and therefore do not involve any action by Parliament (nor even by the Council of State).

3. Similarly, the law of 11 June 1842 and that of 15 July 1845 on railway regulations give the Government almost unlimited power, inasmuch as the Council of State, in a well-known judgment (that on Large Companies, 6 December 1907), interpreted these laws as giving the

Government the right to intervene in the actual operation of the railways.

As regards the harmonisation of technical provisions and traffic regulations, the application of Community legislation is effected through regulations, i.e. it is a Government matter. The power of the French Parliament is not therefore limited by the application of the Community legal system.

4. The only case where there is some doubt whether Community directives and regulations may have encroached on the ambit of the law concerns the question of access to the market (Article 75 EEC), when Community legislation impinges on sectors governed by international agreements on common rules for international transport, or on authorisations for carriage of goods by road between Member States. In fact, these international agreements are considered to be of a technical nature and, as they do not commit State finances, do not have to be submitted to Parliament (Article 53 of the Constitution). Here again, then, there is no loss of power by Parliament as a result of Community legislation.

V. IRELAND

1. Road Haulage: Community enactments can be complied with by action at government level as the Road Traffic Act 1971, enabled the Irish authorities to recognise Community quota authorisations. Consequently, there was no loss of power to Parliament.

2. Occasional passenger services: These cover services such as coach tours. Before accession, licences for entry of tour coaches into Ireland were granted by the Minister for Transport and Power on certain conditions. Now pursuant to Community Regulations, particularly No. 117/66 and No. 1016/68, there is a minimum of formality. Before accession the Road Transport Act 1932 would have had to be amended to achieve the present situation. Consequently, there is a loss to Parliament in this regard.

3. Shuttle services and regular services: These are engaged in carrying passengers between the Republic of Ireland and Northern Ireland. The operation of such services is governed by EEC Regulations No. 117/66, No. 516/72 and No. 517/72 but implementation of the standardised procedure laid down by these regulations did not require any amendment of legislation in force before accession. The operation of these passenger services is governed by agreement at government level.

4. Organisation of the Market and Regulation of Charges: Road and rail traffic are largely in the hands of a national transport company called Córas Iompair Eireann. Under the Transport Act 1958, the Board of CIE have full freedom to fix charges and conditions of transport and the Government has no direct responsibility in the matter. Charges by private road hauliers are not controlled by statute. Any increases in transport charges are, however, subject to prices legislation.

5. Harmonisation of Conditions of Competition - Fiscal matters: Before accession the imposition of excise duties and turnover tax on international passenger traffic or any upward change in the rate thereof required legislation, and provisions to this effect were generally contained in the Finance Acts. Directives on turnover tax and excise duty applicable to international passenger traffic (No. 169/69 of 19.7.68 and No. 230/72 of 12.6.72) limit parliamentary power as Parliament is precluded from taking action which is contrary to these directives.

6. Public Intervention: The subsidy for Córas Iompair Eireann was provided for many years by the Transport Act, 1964. Future subvention payments to CIE, however, will have to comply with the provisions of EEC Regulations Nos. 1192/69 and 1191/69 which are to be implemented in Ireland on 1 October 1973 and 1 January 1974 respectively. These regulations, which are binding in their entirety and are directly applicable, will supersede any law relating to CIE. Consequently, there is a loss of power to Parliament in this regard.

8. Changes in CIE's accountancy procedure: Certain changes will be necessary if the company's accounts are to meet the provisions of EEC Regulation No. 1192/69. These changes will not, however, deprive the Minister for Transport and Power of the right, as specified in section 34 of the Transport Act 1950 to direct the form in which the company's accounts are to be kept.

9. Social matters and technical regulations: Conditions of work, age and training of transport vehicle crews and the technical condition of vehicles are matters which are governed by regulations made by a member of the Government. Harmonisation of these matters does not require parliamentary approval. Council Regulation No. 543/69 supersedes the provisions of section 114 of the Road Traffic Act, 1961, which laid down maximum safe periods for driving vehicles. In this regard there is a loss of power to Parliament.

10. Application to Transport of Rules of Competition: Regulation No. 1017/68 is designed to prohibit restrictive practices and to prevent abuse of a dominant position on the transport market. While CIE holds a special

position in the transport market its position is not affected by this Regulation.

11. Conclusions

(a) Parliament has lost power in regard to the operation of occasional road transport services such as coach tours, because provisions of the Road Transport Act 1932 have been superseded by EEC Regulations.

(b) Provisions of the Transport Acts have been superseded by Community Regulations in regard to the making of subvention payments to CIE. There is a loss of power to Parliament in this regard.

(c) The directives on turnover tax and excise duty limit parliamentary power as Parliament is precluded from taking any action contrary to them.

(d) Provisions of the Road Traffic Act, 1961 have been superseded by Community Regulations in regard to hours of driving. There is a loss of power to Parliament here.

VI. ITALY

1. Access to Market: In the case of intra-Community and international transport, the Minister of Transport is the national authority able to conclude bilateral agreements with other States in respect of the procedure for exchange of permits and the granting of quotas.

   As this matter is the responsibility of the executive, Community legislation does not entail any loss of power by the national Parliament.

2. Organisation of the Market and Tariff Arrangements: Italian legislation provides basic tariffs only for regular passenger transport services. These tariffs are harmonised by the licensed transport companies and the railway authorities; they must also comply with the opinion of the interdepartmental price committee and be approved by the authorities responsible for granting concessions, on the basis of general administrative directives laid down by the Minister of Transport.

   In this field too, the Council's regulations do not affect the scope of the national Parliament's power.

3. Harmonisation of Conditions of Competition: In the field of taxation, the Council directive* placing a ceiling on the duty-free admission

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* OJ L 175, 23 July 1968

of fuel from one Member State to another, constitutes only a partial exemption measure which falls within the province of the Minister of Finance.

4. Public Intervention: In the field of public intervention, the main purpose of the Council's acts was to cancel out the effects of certain State interventions, in order to guarantee equal conditions of competition for the State railways and gradually to achieve the same freedom of administration that is enjoyed by undertakings in other forms of transport*. Another Council regulation** lays down the criteria for aid for coordination and aid connected with the refund of charges arising from public service obligations.

   At present, this regulation contains only a few administrative innovations, principally within the province of the Minister of Transport.

5. Social matters: In the social sphere, a Council regulation*** lays down certain provisions on the age and working conditions of drivers of goods vehicles. Similar provisions, particularly relating to rest periods appear in Presidential Decree No. 393 of 15 June 1959 (Article 124). Although Community legislation is much more detailed on this point than national legislation, the latter nevertheless consists of regulations; this indicates that the Community provisions themselves fall within the province of this legislative or statutory power.

6. Harmonisation of Technical Provisions and Traffic Regulations: In this area the Council has adopted various directives whose legal basis is mainly Article 100 of the Treaty (harmonisation). In Italian legislation the majority of the harmonised provisions on this subject appear in D.P.R. No. 771, 28 June 1965 and D.P.R. No. 393, 16 June 1959 and are thus covered by regulations.

7. Conclusions

   The secondary legislation so far enacted by the Community has not led to a substantial transfer of power as far as the competent national authorities are concerned, and, in particular, has not reduced the Parliament's power.

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* See OJ L 156, 28 June 1969; L 130, 15 June 1970

** See OJ L 130, 15 June 1970

*** See OJ L 77, 29 March 1969

However given the extent of the Council's statutory power in the field of transport, it is likely that the above arrangements will be modified by more radical legislation, with a greater effect on the scope of the national Parliament's power.

VII. LUXEMBOURG

1. Carriage of goods by road: The law of 12 June 1965* on road transport repealed various laws and decrees enacted in the 19th century. It applied to the transport of passengers and goods by road for reward. This law conferred upon the Grand Duke the responsibility for drawing up regulations on the conditions of enforcement (e.g. Grand Ducal Regulation of 13 January 1966 on transport by road of goods for reward). It also constituted the legal basis for measures necessitated in Luxembourg by European policy.

2. The law of 9 August 1971 concerned the application of Community decisions, directives and regulations in the economic sphere and in the fields of technology, agriculture, forestry, social affairs and transport. It stipulated that the enforcement acts shall be applied by administrative regulation, after consultation with the appropriate Professional Chambers and subject to the agreement of the working committee of the Chamber; consultation with the Council of State is mandatory.

3. Permits for transport between Member States may be issued by the Minister of Transport.

4. Quotas and Community transit are covered by the law of 5 August 1963 regarding the import, export and transit of goods. This law delegated responsibility to the Grand Duke, particularly for the collection of special duties and the drawing up of licensing arrangements.

5. Carriage of passengers by road: The common rules for international transport, shuttle services and specialised regular services are regulated by the above law of 12 June 1965. The regulations are published in the 'Memorial' (Official Gazette).

6. Organisation of the Market and Tariff Arrangements: The abolition of discrimination in regard to prices and transport conditions was also regulated by the law of 12 June 1965, which confers responsibility

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* 'Memorial' 1965, p.600

in this area on the Grand Duke. Various grand ducal decrees have been issued fixing tariffs, e.g. between Luxembourg and France, Luxembourg and Germany, and Luxembourg and Benelux. The enabling law of 30 June 1961 on price fixing also related to this question.

7. Harmonisation of Conditions of Competition - Public Intervention: The law of 16 June 1947 approved the Convention between Belgium, France and Luxembourg on railways, and set up the Chemins de Fer Luxembourgeois (C.F.L.). As regards the harmonisation of railway accounts, the administrative board of the C.F.L. is responsible to the Minister of Transport, i.e. the Government.

   The Chamber remains the authority responsible for aid to rail, road and waterway transport; the Finance Act lays down the aid granted every year.

8. Social matters: The Chamber and the Government share the responsibility for the harmonisation of social provisions on road transport. The law of 17 July 1960* approves the agreement on social security for transport workers and makes the Government responsible for enforcing the provisions, the law of 12 June 1965 (see (1) above) is also applicable.

9. Harmonisation of Technical Provisions: With regard to the provisions on the technical components of vehicles (e.g. brakes, vehicle doors) and on traffic, the law of 14 February 1955 on the regulation of traffic on the public highway was amended and supplemented by the law of 2 March 1963**. These laws, together with those of 17 April 1970 and 1 August 1971, authorised the executive to enact regulations and take measures to enforce them. There is thus no loss of power for the Chamber.

10. Conclusion

    Before the entry into force of the Community acts most of the questions discussed were the responsibility, by delegation, of the Luxembourg executive. The law of 9 August 1971 endorsed the executive's responsibility for the implementation of Community acts, with particular reference to transport. It must therefore be concluded that the Luxembourg legislature has lost very little power.

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* 'Memorial' 1960, p.1176

** 'Memorial' 1963, p.179

VIII. THE NETHERLANDS

Situation before 1958

1. The basic acts relating to rail, road and inland water transport contain detailed provisions regulating the market in these branches of transport and the policy to be pursued, and furthermore authorise the Crown to establish further provisions for implementing that policy. The acts in question are:
   - the Road Transport (Goods) Act*;
   - the Rail Services and Utilization Act**;
   - the Inland Water Transport (Goods) Act***;
   - the Road Transport (Passengers) Act****;

   These acts provide for further rules to be made by or in virtue of general administrative orders. In many cases authority is delegated to the relevant Minister to take the necessary implementing measures.

2. As regards international transport, Article 60 of the Constitution, dating from 1953, is important since it provides that all bilateral agreements (tacit or otherwise) require parliamentary approval. It can in fact be stated that Parliament had full power in transport matters, this being expressed in concrete terms in the basic acts.

3. Bilateral agreements were concluded by the Government in accordance with the broad lines of national legislation.

Situation after 1958

4. The common transport policy is implemented on the basis of the four existing basic acts on transport by means of Royal Decrees or other implementing orders. If the necessary implementing regulations of the EEC legislation cannot be fitted into the framework of the basic acts, the legislature is required to amend the national law accordingly. In these circumstances the freedom of action and thus the power of Parliament is limited by the extent to which the regulation to be implemented permits independent national assessment and elaboration.

5. Under Regulation (EEC) No. 1191/69 Member States' railway undertakings may request exemption from public service obligations (transport, operation and tariff obligations) if they entail economic disadvantages.

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* Act of 4 August 1951, Staatsblad No. 342

** Act of 9 April 1875, Staatsblad No. 67

*** Act of 1 November 1951, Staatsblad No. 472

**** Act of 24 June 1939, Staatsblad No. 527

If such requests for exemption are turned down, Member States are required to compensate the railway undertakings for the losses incurred in consequence of those obligations. This regulation is implemented by Ministerial Orders. Approval of the budget (i.e. the provision of funds) and the extent of the obligations to be maintained - and thus the adequacy of transport facilities - are in this way reduced to a single decision. Any change in the budgetary amount will in future mean a limitation of the obligations that may be imposed unless it is possible to increase efficiency. Extension of the obligations means increasing the funds to be provided. Parliament's influence in deciding the extent of transport facilities has been changed insofar as the moment the latter is determined the consequences in budgetary terms follow automatically.

6. Council Regulation No.117/66 and Commission Regulation No.1016/68 on international bus transport have been implemented within the framework of the Road Transport (Passengers) Act, the basic act from which the Implementing Decision on Road Transport (Passengers)* derives its authority. The existing statutory framework afforded the opportunity in these cases of implementing the above-mentioned Community rules. The decision in question also constituted implementation of the relevant order issued by the Benelux Committee of Ministers. Council Regulation No. 1018/68 and Commission Implementing Regulation No. 1224/68 on quota restrictions in respect of goods transport between Member States could also be applied within the framework of the existing Road Transport (Goods) Act, the implementing decision relative to this act being amended for the purpose.

7. Lastly, Council Regulation No. 1174/68 on marginal tariffs and Commission Regulation No. 358/69 likewise fell within the scope of the Road Transport (Goods) Act. The necessary measures were taken through Ministerial Orders, for which the implementing decision provided the legal basis. In fact, marginal tariffs had already been applied in the Netherlands pursuant to the Order on Tariffs for Cross-frontier Road Freight Transport (1954).

8. Conclusions

Before the EEC Treaty entered into force, the States General had full powers in respect of Transport matters, which may be seen from the adoption of the four basic transport laws (paragraph 1 above). The States General have relinquished the exercise of power within clearly defined and specified limits to the Government. Parliament has

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* Decision of 8 February 1972, Staatsblad No. 48

experienced no real loss of power as a result of Community legislation, because European transport policy is in fact closely parallel to that for which Netherlands legislation provides.

9. The Government, by systematically providing information, enables the States General to exercise its power of control. Thorough consideration is of course given to transport policy when the estimates of the Ministry of Transport, Water Control and Public Works come up for approval.

IX. UNITED KINGDOM

1. Apart from two special methods of transport regulation - international agreements and the operation of nationalised industries - Parliament before 1 January 1973 exercised fairly general powers of legislation in regard to transport matters. Many were exercised by delegated legislation and, while a large number of instruments of minor delegated legislation were not presented to Parliament and were thus not readily open to debate, many important instruments were presented to Parliament and were debated.

2. Transport of goods and passengers by road: Regulations and Directives made by the Community have covered common rules for international and intra-Community transport (on hire). These matters are still governed also by bilateral agreements between the Community and Member States, and between the latter and third countries. Such agreements were not subject to ratification (or normally to debate) in the United Kingdom Parliament before accession. There is therefore no formal loss of power in this regard.

3. Organisation of the Market and Regulation of Charges: The abolition of discrimination in the rates and conditions of carriage of goods and the system of bracket tariffs are also matters which before accession would have been the subject of international agreements, and the same remarks apply.

4. Harmonisation of Conditions of Competition - Fiscal matters: United Kingdom transport policy is in part executed by fiscal measures, such as taxation of vehicles, of driving licences and of fuel oils. Such measures are implemented by taxing Acts in Parliament, and the application of Articles 75 (relating to legislation by the Council of Ministers laying down common rules for transport) and 99 (relating to harmonisation of taxation) will involve a loss of power to the United Kingdom Parliament, although in practice no loss has so far been suffered.

5. Public Intervention: Governments in the United Kingdom have accepted in varying degree the need to reimburse transport industries 'for the discharge of certain obligations inherent in the concept of a public service' (Article 77) in the past 25 years. This has been provided for in legislation governing the structure and power of the nationalised industries and their relations with the Government, being a matter of substantial political and economic importance. It seems likely at present that aids to nationalised industries in the United Kingdom will not contravene the EEC Treaty provisions; but the future freedom of action of the United Kingdom Parliament is obviously limited to some extent, and a loss of power is possible.

6. The harmonisation of railway accounts (Regulation No. 1192/69) and of methods of accounting for the expenses of transport infrastructure (Regulation No. 1108/70) are matters of administration within a nationalised industry. Parliament has the right to regulate such matters by legislation, but the industry is responsible only in general terms to the appropriate Minister rather than to Parliament.

7. Social matters: As regards the harmonisation of certain legislation relating to conditions, hours of work, age and training of road vehicle crews, a loss of power will result for the British Parliament, as these matters were regulated nationally before accession by Acts and delegated legislation. This loss will be limited to the extent that provision had already been made in British legislation before accession. For example, the Transport Act 1968 and Road Traffic Act 1972 covered certain social provisions made by the Community; they were adapted to meet Community legislation by Schedule 4 of the European Communities Act 1972.

8. Harmonisation of Technical Rules and Traffic Regulations: In almost all the cases where the Community has legislated in this field under Articles 75 or 100 (e.g. rear number-plates, brakes) the matters would be the subject of instruments of delegated legislation in the United Kingdom Parliament. Parliament has therefore lost power to the extent that, although it may reject the instrument seeking to ensure compliance with Community law, the final decision as to whether or not Community law has been complied with rests with the British courts and the European Court of Justice.

9. Application to Transport of Rules on Competition: Legislation in the United Kingdom Parliament regulating the operation of a free market in any field has always been regarded as being of major political and economic importance, e.g. the Resale Price Maintenance Act of 1964. The effect of Community legislation on the United Kingdom Parliament will therefore be substantial. Although at first United Kingdom law may in most respects conform with Community law, there is an inherent loss of power for the United Kingdom Parliament of some importance.

CHAPTER VII. COMPETITION POLICY (Articles 85-94 EEC)

A. GENERAL

I. Introduction: Treaty Provisions

1. Rules applicable to undertakings (Article 85-90)

Articles 85 and 86 contain the substantive law on competition applicable to undertakings. Legal Rules directly applicable in every Member State are laid down, where 'agreements between undertakings, decisions by associations of undertakings and concerted practices' affect trade within the Community. Restrictive practices outside this category, on the other hand, fall exclusively under the domestic laws of the Member States concerned (Article 85(3)). The freedom of the national legislature to act in the field of agreements, concentrations and aid, insofar as they affect trade within the state, is not, therefore, restricted. Article 86 prohibits the 'abuse ... of a dominant position within the common market'.

Article 87 empowers the Council to adopt appropriate measures to give effect to the principles set out in Articles 85 and 86.

Article 88 contains transitional provisions, and Article 89 stipulates that the Commission shall supervise compliance with the prohibitions and, where necessary, take steps to bring infringements to an end.

Article 90: In general this article defines the scope of Article 7* and 85-94 as regards public undertakings in Member States. The states of the Community may not enact or maintain in force any measures (laws, decrees, etc.) contrary to these provisions. This is a formal prohibition and, as such, has direct implications for legislation governing relations between Member States and persons subject to their jurisdiction.

'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly' (Article 90(2) EEC Treaty) are only subject to the rules on competition in the Treaty insofar as the application of these rules 'does not obstruct the performance, in law or in fact, of the particular tasks assigned to them'. On the other hand, the development of trade must not be affected to such an extent as would be contrary to the interests of the Community**.

The Commission does not restrict its activity merely to establishing infringements against the Treaty in accordance with Article 169, but can make directly applicable decisions or issue directives compelling the Member State to comply with its obligations.

Article 91 (Dumping) will not be considered here, since rules on dumping within the Community were only relevant during the transitional period.

2. Aids granted by States (Articles 92-94)

Although State aid is not expressly forbidden, it is subject to continuous multilateral control by the Member States. New aid and changes to existing arrangements for aid are subject to prior examination by the Commission. It can decide whether particular forms of aid should be abolished and may refer the matter direct to the Court of Justice if a Member State does not comply with this decision. The Council may only make limited use of its right to allow aid in exceptional cases (Article 93(2)).

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* Article 7: Discrimination on grounds of nationality

** See also European Court of Justice, Case No. 10/71, Vol.XVII, p.723,730

The obligation arising under Article 93(3) (informing the Commission of plans to grant or alter aid) applies both to direct state subsidies and to other aid from state funds: the obligation to inform the Commission is binding on individual Member States.

In addition, there is also a system of 'constant review' by the Commission itself, which is referred to expressly in Article 93(1).

If the Commission finds that any aid is not compatible with the Treaty or is being misused, the aid must be abolished or altered in accordance with the Commission's instructions.

In conclusion, it should be noted that the provisions of Article 85 concerning agreements relating to trade within the Community do not themselves limit a national parliament's power to act in relation to its own country.

However, as a result of the free movement of goods, persons and to some extent capital, it is no longer possible to distinguish so clearly between the market of a Member State and the common market. The consequence is that, with the development of a single market, national legislation is losing a great deal of importance in the field of agreements, concentrations and dumping practices.

The national rules on aid, on the contrary, are still an important problem. Article 92(2 and 3) enables national legislatures to intervene in a number of specified circumstances.

II. State of secondary Community legislation concerning Competition Policy

Rules applicable to undertakings (Articles 85-87)

1. Council regulations

   - Regulation No. 17/62 of 6.2.1962 (OJ No. 13, 13.2.62), as amended by Regulations Nos. 59/62, 118/63, 2822/71 and Annex I referred to in Article 29 of the Act of Accession.

Subject: The rules of sub-paragraphs (a), (b) and (d) of Article 87(2) are put into effect. The responsibilities entrusted to the Commission extend to the establishment of infringements, negative clearance and exemption of individual undertakings.

Legal basis: Articles 85-86.

Commission implementing regulations: No. 27/62 of 3.5.1962 (OJ No. 35, 10.5.62) as amended by Regulation No. 1133/68 (conditions relating to applications and notifications).

No. 99/63 of 25.7.1963 (OJ No. 127, 29.8.63) (hearings of persons concerned and third parties).

2. Council regulations:

- Regulation No. 19/65 of 2.3.1965 (OJ No. 36, 6.3.1965)

Subject: The Council empowers the Commission to declare that Article 85(3) shall not apply to categories of agreements to which only two undertakings are party and which include either exclusive purchase and sale obligations or restrictions in relation to the acquisition or use of industrial property rights.

Legal basis: Article 85(3)

Commission implementing regulations: No. 67/67 of 22.3.1967 (OJ No. 57, 25.3.67) (categories of exclusive agreements);
No. 2779/72 of 21.12.1972 (OJ No. 292 of December 1972) (specialisation agreements).

3. Council regulation:

- Regulation No. 2821/71 of 20.12.1971 (OJ No. L 285, 29.12.71) as subsequently amended by Regulation No. 2743/72.

Subject: The scope of the exemptions is extended to new categories of agreements.

B. INDIVIDUAL MEMBER STATES

I. BELGIUM

1. Rules applying to undertakings

The law on protection against the abuse of economic power of 27 May 1960 relates to abuse prejudicial to the general public as a result of activity carried out within the territory of the Kingdom. This law can exist alongside the Community provisions. Where an activity is covered by both the national and Community rules, the two laws can be applied simultaneously.

A report on the implementation of the law has to be submitted to the Chambers every year by the Government.

2. Aids granted by the State

Aid has always been governed by legislation, which establishes the general arrangements therefor.

Systems of aid have been laid down in various laws. These laws, establishing or amending the arrangements for aid, delegate to the Government the choice of the particular means of intervention.

It is therefore the Government, and not the Parliament, whose activity is or is not limited by Commission action.

3. Conclusions

(a) In matters of agreements and concentrations the power of the national legislature is not reduced insofar as internal competition policy is concerned.

(b) Article 90 relating to public undertakings prohibits the national legislature from enacting or maintaining in force any measure contrary to the rules of the Treaty. This is a limited loss of power.

(c) In matters of aid, government action is limited by Article 93(1), and may be limited by the Commission, which would give permission subject to certain conditions (Article 92(2 and 3).

II. DENMARK

1. Rules applying to undertakings

(a) Private enterprises

The Danish Law on Monopolies and Restrictive Business Practices regulates only conditions of competition within the national market. Exports fall outside the framework of monopoly legislation. Consequently the rules of competition of the EEC Treaty create a set of rules complementary to those enacted by the national legislature, with the result that Danish legislation on monopolies has not had to be amended. In cases where the two systems overlap Community legislation prevails over national legislation*.

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* See e.g.: Preliminary ruling of the EEC Court of Justice, 13 February 1969, requested by the German Kammergericht of Berlin in a case between the Bundeskartellamt and certain German dye manufacturers

Article 87, 2(e) of the EEC Treaty calls for further regulation of the relationship between national and Community rules. Consequently the national agencies must respect Community legislation; as a result the scope of Danish monopoly legislation is somewhat diminished, and the Folketing loses power to a similar extent.

(b) Public enterprises

The EEC Treaty introduces a new element into legislation valid in Denmark affecting monopolies, etc., which does not extend to public undertakings, whose activities have mainly been regulated through special legislation. However, Article 90 contains certain exceptions (see paragraph I(1) of this chapter). Apart from those in the transport sector very few public undertakings, subject to a degree of public control, will be influenced by this article, and they will normally be able to invoke the exceptions of Article 90(2).

Article 37 of the EEC Treaty concerning state monopolies of a commercial character and its 'stand-still' clause (37(2)) entail a restriction of the power of the Folketing. In practice, this is not a major loss of power, since such monopolies did not play a very conspicuous role in Denmark and the establishment of EFTA had already, before membership of the EEC, led to the abolition of certain restrictive practices in state monopolies and similar bodies (cf. EFTA Convention, Article 14). Furthermore, according to Article 44(1 and 2) of the Treaty of Accession, new Member States are only required to undertake a gradual adaptation of state monopolies of a commercial character.

In addition, the Folketing has to respect certain Council directives that prohibit national discrimination and provide for free competition as regards public construction works (e.g. participation in tenders), state concessions, etc., within the whole of the common market; furthermore, national discrimination is prohibited within the field of purchasing by public authorities and institutions. Consequently, there is a restriction of the power of the Folketing.

2. Aids granted by the State

Traditionally Denmark does not employ state aid on a large scale; as a member of EFTA and as a result of participation in GATT, OECD, etc., before membership of the EEC, Denmark had accepted certain limitations in this field.

The Law on Regional Development (Law No. 219, 7 June 1972) is an important example of national state aid, within Article 92(3)(a) of the Treaty. But the Folketing is not free to introduce such new forms of development aid as it may think fit, and there has, therefore, been a loss of power. Similarly the Folketing is not free to introduce new forms of aid to smaller industries, etc.* as new measures will have to be approved by the Commission of the EC, under Article 92(3)(c). The Folketing is also obliged to respect EEC rules on common EEC export credit arrangements. As regards aid to ship-building, it cannot introduce state subventions above a certain level in this sector provide special low-interest export credits to promote export of Danish ships. Some forms of aid, e.g. customs rebates have been abolished after accession to the EEC and cannot be reintroduced by the Folketing which has lost power accordingly.

3. Conclusions

(a) The EEC rules on competition (Articles 85 and 86) in principle constitute a set of rules supplementary to national rules on competition. In cases where the two sets of rules overlap, the EEC rules enjoy primacy. In general, however, the Folketing retains practically all its previous power to regulate national competition policy (restrictive business practices and abuse of a dominant market position).

(b) In the field of state aid the practical effects of accession to the EEC have been negligible**. But the EEC rules limit the future possibilities of the Folketing introducing new kinds of aid or developing existing types of aid.

(c) As to public undertakings (Article 90) the practical impact of the EEC membership is limited, but there is a loss of power by the Folketing.

III. FEDERAL REPUBLIC OF GERMANY

1. Under Article 74(11 and 16) of the Basic Law the Government (Bund) and the Länder have the right to legislate in the areas of industrial law and the prevention of abuse of a dominant economic position.

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* In Danish,'lov om lan til handvaerk og mindre industri' (loans to independent craftsmen and smaller industries)

** Note however an important exception: for Aids to Agriculture see Chapter V.

The Bundestag used this power to enact the Law Prohibiting Restraints of Competition (GWB) of 27 July 1957*. The law was last amended by the introduction of preventive control of mergers on 14 June 1973.

In principle Community and national rules on competition exist independently of one another. Community law is not designed to exclude purely regional or national restraints on competition. The national power of legislation which exists in this area is therefore not affected.

Nevertheless, conflicts may arise between Community and national law on monopolies and in individual cases rule out the application of national law, thus in effect reducing the influence of the national legislature.

Paragraph 98(2) of GWB restricts its application to 'restraints on competition operating on the territory of the Federal Republic of Germany'. In fact, certain monopolistic agreements, the abuse of market power and concentration in other EEC states may have repercussions in the Federal Republic. On the other hand, important cartels, dominant market positions, concentrations and even vertical restrictions within the Federal Republic frequently affect trade between states within the meaning of Articles 85 and 86 of the EEC Treaty.

A cartel agreement may therefore be accepted by the Commission in the interests of European integration under Article 85(3), but opposed by the Federal Cartels Office under paragraph 1, 38 GWB. On the other hand, the Federal Cartels Office or the Federal Minister for Economic Affairs may allow cartels under paragraph 22 et seq. GWB and paragraph 8 GWB respectively, but the Commission may consider them damaging to trade between states. Conflicts between national and Community laws on competition fall into three categories:

(a) If the German regulations allow procedures which are prohibited under Article 85(1) or Article 86 of the EEC Treaty, Community law takes precedence in that the national courts must take account of the legal position established by the EEC Treaty.

(b) The problem which arises if Community law allows procedures prohibited under national law has not yet been resolved. Community law would probably prevail if the matter has a real bearing on integration, even if it produces serious repercussions at national level.

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* BGB1. I, p.1081

(c) Where there is any conflict between measures taken to control abuses (e.g. under Article 86 of the EEC Treaty and paragraph 22 GWB), Community law will also take precedence, although Community law will only come into play if the matter may have serious repercussions on trade between states.

Therefore, insofar as the law against restraints of competition applying in Germany covers circumstances extending beyond national level, application of the law may be restricted by the EEC Treaty. To this extent, therefore, the Bundestag has lost certain power.

2. Public undertakings

Paragraphs 98(1) and 99-103 of the above-mentioned GWB provide arrangements similar to the Community provisions in Article 90 (1 and 2) of the EEC Treaty and stipulate that in the Federal Republic the national regulations on competition must also be observed in the case of state-controlled economic activities. The GWB does make important exceptions for certain listed sectors or undertakings (power, transport, communications, banking and insurance) which probably correspond to those in Article 90(2) of the EEC Treaty.

Therefore, insofar as control of the national economy involving intervention in the area of competition is affected by Bundestag legislation, limits are already contained in the GWB. In respect of trade between states, the basically unrestricted power of the Bundestag to select the means of state participation in the economy has been reduced by Article 90 of the EEC Treaty in a manner corresponding to the restrictions on the range of action arising from the GWB. The loss of power resulting from Article 90 of the EEC Treaty is therefore only of practical importance in the area not covered by the GWB.

There is also a restriction of power in the case of the spirits monopoly in the Federal Republic. Because of its function as an instrument of policy on small businesses and agriculture, this monopoly - unlike the match monopoly - does not fall within the exception contained in Article 90(2) of the EEC Treaty*.

Under Article 105 of the Basic Law, the power of legislation in respect of revenue-producing monopolies lies with the Bundestag.

3. State aids

The power of the Bundestag to enact laws on subsidies is derived from Article 74 or Article 75 of the Basic Law.

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* See law of 23 December 1970, BGB1. I, p.1878

There are a number of important federal laws giving wide-ranging power to grant subsidies:

- Law on the provision of security and guarantees to promote the German economy of 1951 and 1954;
- Farming Law (1955);
- Mineral oil law (1951);
- Law on the administration of European Recovery Programme funds (1953);
- Law on loans for the construction and purchase of merchant ships (1950);
- Milk and fats law (1952).

The granting of subsidies is subject to certain restrictions in the Federal Republic, mainly as a result of the constitutional precept of equality of treatment (Article 2(I), Article 3 of the Basic Law).

Article 92 et seq. of the EEC Treaty provides a further limitation on the authority of the Bundestag.

4. Conclusion

The power of the German Bundestag has been reduced over the whole area covered by the rules on competition in the Treaty. However, the only practical importance of this loss seems to lie in the area of subsidies.

IV. FRANCE

1. Rules applying to undertakings

(a) Agreements

In France, Articles 85 to 87 supplement the national legislation on 'agreements and undertakings in a dominant position'. This legislation is partly the responsibility of the government* and partly that of parliament**. A 'Technical committee on agreements and undertakings in a dominant position' has been set up to investigate unfair competition, but the role of this body is purely consultative and is limited to advising the Minister of Finance, who is empowered to take legal action against offending undertakings. This legislation therefore falls far short of the Community legislation.

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* General de Gaulle's provisional government, 1945, Order on prices of 30.6.1945 as amended by the Order of 28.9.1967

** 'Laniel' decree of 1953, law of 2 July 1963, set out in ministerial decrees

Two sets of legislation apply in parallel: Community regulations (17/62, 19/62), contained in decrees issued by the Prime Minister (decree of 18 February 1972, for example); and the national legislation.

There has been no conflict between the two legal systems, since, on the contrary, the successive amendments made to the national legislation have been designed to bring it into line with Community provisions (Order of 1967 in particular), and especially because the French legislation has so far scarcely been applied.

(b) Public undertakings and revenue-producing monopolies

In France a number of 'public' undertakings became established as a result of nationalisation (1945-46), and certain 'revenue-producing monopolies' (tobacco, matches, etc.) came under state ownership much earlier (19th century).

Under the 1958 Constitution, these undertakings were brought under the jurisdiction of Parliament (Article 34), but are generally run by Boards of Directors under the direct supervision of the Government.

The application of Article 90 (EEC) to the French monopolies in matches, basic slag and alcohol met with major difficulties, as the Government refused to amend French legislation to open the country to the products of other Member States. The Commission therefore instituted proceedings for infringement in the Court of Justice as a result of which the French Government introduced the law of 4 December 1972, which abolished the match monopoly. Legislative action has been started to amend the situation as regards the other two monopolies. This is therefore a case of loss of parliamentary power as a consequence of Community decisions.

2. Aids granted by the State

These can be decided either by Parliament in the Finance Act (budget), or by the Government under its powers to issue regulations (Article 37 of the Constitution). There is therefore a loss and limitation of power both for Parliament and the Government, since Articles 92-94 give the Commission the power to compel a Member State to abolish certain aid to undertakings that is considered to be incompatible with free competition.

Thus, to take only a few examples, in a decision of July 1969 the Commission called upon France to abolish or modify a charge which was

in the nature of a tax for the benefit of the textile industry. The Court of Justice rejected the French Government's appeal against this decision in June 1970 (Case 47/69) and this charge had to be modified. Since this type of tax charge is instituted in France by the Government, but has to be adopted by Parliament every year in the Finance Act (budget), it may be concluded that both the Government and Parliament have suffered a loss of power.

Similarly, on 30 June 1972 the Commission initiated the procedure under Article 93(2) of the EEC Treaty in respect of a new French system of regional aid (regional development grants and grants for location of tertiary activities). (The Commission claimed that the economic and social information needed to determine the areas of application had not been submitted and that, moreover, apart from these areas, the French authorities were reserving the right to grant aid in any part of the country). In this case again the Government and Parliament (the latter in the Finance Act) will have to reverse their decision, thus suffering a loss of power.

3. Conclusions

(a) No loss as regards agreements and concentrations (Article 85-87) as far as internal competition policy is concerned.

(b) On the other hand, limitation and loss of power both for the Government and Parliament insofar as there is supervision by the Community over any national decision on state aid which could conflict with the provisions of the Treaty (Articles 90 and 92-94).

V. IRELAND

1. Rules applying to undertakings

The Restrictive Trade Practices Act 1972, is directed against unfair trading within the State. The Minister for Industry and Commerce may prohibit by Order specified restrictive or unfair practices in a particular sector, but this Order does not acquire legal enforceability until it has been confirmed by Act of Parliament. These provisions of the law are not affected by Articles 85 and 86 of the Treaty and consequently there is no loss of power to Parliament in this regard.

Before accession Article 29.6 of the Constitution provided that 'no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas' (Parliament). Consequently power given to the Commission under Community regulations to investigate

restrictive practices, to rule on them and to impose penalties would, before accession, have required amending legislation. In these respects, there has been a loss of power to Parliament insofar as Community Regulations are directly applicable and do not require Parliamentary approval.

With regard to public undertakings and undertakings with exclusive rights it seems that their operations are not materially affected by the Treaty.

2. Aids granted by the State

Generally, Irish aid to industry takes the form of loans (on favourable terms), grants and exemptions from taxation, while aid to agriculture involves loans, grants and administrative schemes. The general terms for the disbursement of this aid are set out in legislation and the day-to-day decisions in any particular case are taken by various State agencies set up for the purpose. Insofar as the principles on which aid is granted or funds allocated for this purpose are to be changed to comply with the Treaty, a loss of power to Parliament is involved.

3. Conclusions

(a) Articles 85 and 86 as applied by Regulations 17/62, as amended, give the Commission power which, before accession, would have required legislation. In this regard there has been a loss of power to Parliament.

(b) It seems that Article 85(3) of the Treaty (production, subsidies etc.) as applied by subsequent regulations does not entail an actual loss of power to Parliament as this aspect is not covered by existing legislation.

(c) In regard to undertakings with exclusive rights (Article 90) there has been no loss of power to Parliament. On the other hand, this article imposes unconditional obligations on Member States and therefore limits Parliament's power to legislate freely in regard to public undertakings and undertakings with special or exclusive rights.

(d) The position is not clear in regard to aids granted by the State (Articles 92-94). At present they are being examined by the Commission, but a loss of power to Parliament could be involved here.

VI. ITALY

1. Rules applying to undertakings

(a) Agreements and concerted practices.

Italian law has no special regulations to protect competition as a part of the market in the sense of Articles 85 and 86, provisions on competition being embodied mainly in the Common Law (Code Civile). Article 2595 C.C. forbids unfair competition in business although contractual restrictions on competition are allowed (Article 2596 C.C.). Agreements between associations of undertakings ('consorzio') are also allowed for the purpose of coordinating production or trade (Article 2602 C.C.). The term 'consorzio' covers both horizontal agreements - between competing undertakings - and vertical ones - between associated undertakings.

There is thus no protection of the conditions of competition under Italian civil law; on the contrary, certain forms of agreements and certain contracts to exclude competition are even allowed by law. Therefore:

- the Italian legal system is completely open to the direct application of the basic and implementing regulations of the Community. Even though this means that there is a gap in Italian legislation, it makes it easier to apply Community regulations;
- certain permitted agreements become inadmissible insofar as they affect trade within the Community in the sense of Article 85. There are two Italian implementing regulations for the Community legislation in this area: the regulations by the President of the Republic, D.P.R. 22.9.1963 (No. 1884), in implementation of Council Regulation No. 17/72, and D.P.R. 29.12.1969 in implementation of Regulation No. 1017/68, which to some extent represents a parallel to Regulation No. 17/72 in the specific sector of transport. Under these two regulations the officials of the supervisory authority for industry, are specifically responsible for obtaining technical and economic information on the agreements and undertakings with a dominant position existing in Italy.

(b) Public undertakings and revenue-producing monopolies

Under Italian law, any companies that are state-controlled by direct investment are considered in principle to be public undertakings (i.e. all those undertakings referred to in the annual report submitted to parliament by the Ministry for State Holdings) as well

as the state electricity authority ENEL (Ente Nazionale per l'Energia Elettrica).

There are a great many laws granting public undertakings tax privileges or subsidies.

Most of the implementing regulations apply to monopolies; some of them involve dissolution of the monopoly, others involve only liberalisation to a greater or lesser degree. The banana monopoly, for example, was abolished by Law No. 986 of 9.10.1064. Law No. 536 of 1.7.1966 greatly reduced the quinine monopoly. Law No. 137 of 11.4.1959 and Law No. 825 of 13.7.1965 made it easier to import manufactured tobacco into Italy. In Article 45 of Law No. 907 of 17.7.1942 this activity had been reserved to the independent monopoly administration.

For unmanufactured tobacco, on the other hand, the monopoly in cultivation, processing and sale has been abolished by regulation. The first reductions in the monopoly in the import of salt, cigarette paper and wrappers were brought into effect by the regulation of the President of the Republic, D.P.R. of 9.3.1961, which allowed these products to be imported into Italy, albeit on a quota basis.

2. Aids granted by the State

Aids granted by the state or by public bodies under national law fall within the category of 'aid granted by a Member State or by means of State resources' forbidden by Article 92. The forms which such aids can assume are very varied and are left open; generally they consist of subsidies, grants, easier credit and guarantee arrangements.

3. Conclusions

Re 1(a): Even though in the absence of national legislation the original and secondary Community legal rules in this sphere represent the only existing laws on agreements and concerted practices, they do not involve any loss of legislative power but only a restriction. Parliament is bound by the outline provisions of Articles 85-86 and the associated secondary legislation in the exercise of its legislative function.

Re 1(b): The prohibition of the enactment or maintenance in force in Member States of measures relating to public undertakings contrary to Articles 7 and 85-94 of the EEC Treaty is reflected, as regards Parliament, in a corresponding restriction of its legislative power;

the same applies to the revenue-producing monopolies. This restriction, however, is subject to the Commission's interpretation of the condition in Article 90(2), under which the application of the rules of the Treaty may not obstruct the performance of the particular tasks assigned to these monopolies.

Re 2: Insofar as the aids concerned are granted in ordinary law, there is a restriction on the power of the Parliament under the rule calling for abolition or alteration of such aid.

VII. LUXEMBOURG

1. Rules applying to undertakings

The reference texts for Luxembourg are as follows:

(a) Grand-Ducal decree of 31 May 1935 on unlawful speculation in foodstuffs and goods, papers and government stocks, which was adopted under the law of 10 May 1935 laying down the power of the executive in economic matters. This decree was adopted during a crisis and has in fact scarcely been applied.

(b) Grand-Ducal regulation of 9 December 1965 concerning fixed prices and refusal to sell, based on the enabling law of 9 January 1965.

(c) The law of 30 June 1961 empowering the Grand Duke to make rules regarding certain matters, and repealing and replacing the Grand-Ducal decree of 8 November 1944 setting up a Prices Office.

(d) The law of 17 June 1970 on restrictive commercial practices coordinates earlier legislation. It combines the provisions contained in the French decree of 9 August 1953 and the Belgian law of 17 May 1960.

2. Aids granted by the State

The following examples indicate the type of legislation passed by Parliament on this subject:

(a) Law of 2 June 1962 instituting and coordinating measures for improving the general structure and regional balance in the national economy and stimulating expansion. Article 13 of this law provides for an annual report to the Chamber on the application of this law;

(b) Law of 5 August 1967 renews and amends the law of 1962;

(c) Law of 28 July 1973.

The conditions under which aid is granted are determined by public service regulations and therefore by the executive. It may be noted, however, that in application of Articles 92 and 93 of the EEC Treaty, consultations took place between government departments and Commission officials before the bill of 28 July 1973 was passed. Following these discussions, an amendment was introduced stipulating that administrative regulations would determine the conditions under which aid was granted for regional purposes. Pending the introduction of these regulations, aid will be granted on a sectoral basis.

3. Conclusion

As regards the rules applying to undertakings, it cannot be said that the power of the national legislature is reduced in law; similarly, in regard to aid it is rather a matter of limitation of the power of the Government (and not of the Chamber) which normally determines the conditions under which aid is granted.

VIII. NETHERLANDS

The situation before 1958

Where national restrictive practices are concerned, competition in the Netherlands is governed by the 1956 'Economic Competition Act'. This Act, which is based mainly on the criterion of abuse and is therefore intended to prevent the abuse of practices restricting competition, gives the Crown, and through it the Minister for Economic Affairs, the authority to pursue a competition policy within the framework of the Act. The Minister for Economic Affairs can intervene directly by declaring agreements between undertakings to be void, after consulting the Committee on Economic Competition.

The Prices Act gives the Minister for Economic Affairs the power to draw up price regulations. The Minister is entitled to transfer to a public industrial body, e.g. a production board, the authority to tie the import of commodities to licence concessions or to subject them to levies.

Agreements and dominant positions fall under the 1941 Cartel Order.

1. Rules applying to undertakings

(a) Agreements and monopoly situations

The Economic Competition Act was amended in 1958 and forms the basis of the present policy on agreements and monopoly situations. It empowers the Minister to adopt specific measures, both in the sense of exemption from specific legal obligations and in the sense of declaring agreements to be void. Arrangements promoting collective resale price maintenance must be declared void by the Minister. On the other hand, arrangements for individual resale price maintenance may be declared void. The legislation is based on the assumption that agreements may have a regulative function. Provision is therefore made for the possibility that an agreement may be declared binding on third parties, and at the same time declared void for the parties primarily concerned, in both cases with an eye to the public interest. The legal obligation to declare agreements void creates the necessary conditions for the pursuance of a competition policy.

The policy based on the Economic Competition Act is becoming more stringent as regards agreements and dominant positions, and a bill is being drafted to introduce legislation embodying sanctions. The existing system of maintaining secrecy on agreements would then be replaced by a scheme involving public registration of agreements and regulations governing resale price maintenance would be introduced.

Inasmuch as mergers and concentrations that strengthen a dominant position, and that might have an adverse effect on trade between Member States fall under the provisions of Article 86 of the EEC Treaty, the States-General no longer have authority in the matter. No national legal power yet exists to provide for intervention by the authorities in mergers. The Government is preparing a legal regulation on mergers. The States-General retain their power in this area.

(b) Public undertakings and monopolies

The directives covering public works contracts, which came into force on 30 July 1972 and which have as their object the prevention of discrimination in the activities of government departments, are implemented in the Netherlands by an Order in Council. This Order applies to all government departments giving out contracts. The Government is responsible for ensuring that the provisions of these directives are also observed at lower levels.

Monopolies in the narrow sense of the word do not exist in the Netherlands. Existing revenue-producing monopolies (mineral oils, alcohol, tobacco) are not prohibited per se.

2. Aids granted by the State

On the basis of Articles 92-94 of the EEC Treaty, new forms of aid may not be introduced, nor existing aid measures amended, without prior approval from the Commission. A number of aid measures established by law, e.g. amendment of the Industrial Premium Regulation (to encourage industrial settlement in specific regions and subsidies for undertakings, which move from urban agglomerations to specific areas), only came into force after prior endorsement by the European Commission.

3. Conclusions

The Government is responsible to the States-General for policy concerned with national practices restricting competition. It has to report annually to the States-General on the application of the Economic Competition Act.

Insofar as the exercise of power in the economic sphere in general is concerned, the States-General had, even before the coming into force of the EEC Treaty, delegated their power to the Economic and Social Committee and to the Commission for Public Law in Economic Matters (Publiekrechtelijke Bedrijfsorganisatie).

Although the European Commission has competence with regard to the policy concerning practices of this kind which might adversely affect trade between Member States, the Government remains responsible to the States-General for applying the implementing provisions of the rules in Article 85 (prohibition of agreements) and Article 86 (prohibition of abuse of dominant position) of the EEC Treaty.

Intervention in agriculture, where free competition is practically eliminated, has been transferred to the EEC; and the same is happening gradually in transport. Residential building is so far unaffected, and in the retail trade (conditions of establishment) power is being gradually transferred to the Community wherever EEC regulations and directives make this imperative.

With regard to public undertakings, the States-General may not practise any discrimination based on nationality, nor introduce any new forms of aid, without prior approval by the Commission. Here the limitation of power is self-evident.

In relation to practices restricting competition which might adversely affect intra-Community trade (including certain mergers) - other than policy in connection with the application of the implementing provisions relating to Articles 85 and 86 - the Dutch Parliament has no further power.

In regional aid, the States-General are restricted in their choice of instruments, as coordination in this field advances in the Community.

IX. UNITED KINGDOM

1. Rules applying to undertakings

(a) Private enterprises

In 1948 the Monopolies and Restrictive Practices (Inquiry and Control) Act imposed coordinated restrictions on the freedom of action of private enterprises. A Monopolies Commission was set up, to which Governments have since referred certain firms for enquiry as to whether they were exercising a monopoly to the detriment of their customers and 'in restraint of trade'. Under the same Act a Restrictive Practices Court was established, with most of the powers of a court of law, including those of imposing fines on offenders. This Act taken together with the Restrictive Trade Practices Acts of 1956 and 1968 and the Resale Prices Act 1964, in general apply the same type of restrictions to restraints of trade as do Articles 85 and 86 of the EEC Treaty, as applied by Regulation No. 17/62, as amended.

Taken in conjunction with the provisions of Article 85 of the EEC Treaty, limiting its effect to undertakings and practices affecting trade between Member States and which restrict competition within the common market, most of the arrangements made within the United Kingdom by enterprises in restraint of trade will not, at this stage of development of the common market, be affected by the EEC Treaty. The power given to the Commission and Court of Justice by Regulation No. 17/62 would have required legislation by the United Kingdom Parliament and in this respect, as in regard to restrictive practices affecting intra-Community trade, there is a limited loss of power by the United Kingdom Parliament.

(b) Public enterprises

Under Article 90 the Commission is charged with the duty of addressing directives to Member States applying the Rules on

Competition to public undertakings. Parliament has power to legislate for the general regulation of public undertakings ('nationalised industries') and will continue to be able to do so, but legislation will have to comply with Community Directives. There is thus a loss of power to the British Parliament in this regard.

2. Aids granted by the State

Article 92(1) prohibits Member States from granting forms of aid which distort or threaten to distort competition by favouring certain undertakings. This clearly involves a limitation of the power of the British Parliament which, up till the present time, has legislated to provide a wide variety of forms of aid to different areas and industries. However, the exceptions allowed in paragraphs (2) and (3) of Article 92 are fairly wide and may permit the continued exercise by the British Parliament of some legislative power in the future.

CHAPTER VIII. TAXATION POLICY (Articles 95-99 of the EEC Treaty)

A. GENERAL

I. INTRODUCTION

Articles 95-99 contain a number of provisions intended to facilitate, in two ways, the establishment of a market free from tax distortions. Hence, this chapter may be subdivided into two parts.

The first part (Articles 95-98) lays down a number of provisions for intra-Community trade in respect of imports and exports. The Member States have been required to adhere to these provisions since the day the Treaty entered into force*. They are directly applicable and, in principle, require no

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* with the exception of Article 95 paragraph 3

further legislative action by the Community institutions. The application of the provisions is supervised by the Commission pursuant to Articles 155 and 169.

The second part consists only of Article 99, which constitutes the legal basis for the harmonisation of indirect taxes and therefore requires additional legislative action by the Council.

By subdividing the chapter in this way a clearer impression will be obtained of the different scope of the two sets of measures. On the one hand the prohibitions imposed on the Member States limit internal legislative autonomy and, on the other, the harmonisation of indirect taxes by the Executive of the Communities (the Council and Commission) has implications:
(a) for national legislation, and
(b) at Community level, by the establishment of a new uniform law.

1. First Part

Articles 95 and 96 lay down maxima for countervailing charges in respect of imports and for refunds in respect of exports. In both cases the aim is to prevent the use of taxation as a means of applying varying and preferential treatment to national undertakings*.

According to the criteria accepted by the Court of Justice, these provisions form part 'of the internal legislative machinery of the Member States without the need for any national measures'**. Hence, 'the application of any incompatible internal measures' is out of the question***. The powers of the Community institutions - in this case the Commission - relate exclusively to legal action in the event of infringements of the Treaty.

In the context of the above provisions, Article 97 represents an implementing measure. 'Average rates' may be established in accordance with the principles of Articles 95 and 96 for countervailing charges and turnover tax refunds (cumulative multi-stage tax system).

All Member States are therefore free to establish 'average rates' in accordance with the principles laid down by Articles 95 and 96.

Once again, if a Member State contravenes Article 97 by failing to comply with Articles 95 and 96, the Commission must take action in pursuance of the second paragraph of Article 97 and address appropriate directives

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* Case No. 45/64, Court of Justice Collection, Volume XI, p.1126

** Case No. 28/67, Volume XIV, p.216

*** Case No. 34/67, Volume XIV, p.364

or decisions to the State concerned. Article 169 may be applied only if the Member States have failed to comply with the provisions within the time limits set.

Article 98 prohibits in a general manner the application, to imports and exports respectively, of countervailing charges, and remissions and repayments. Hence no Member State may take independent measures in this field without contravening either Article 95 or Article 96. On the other hand, Article 98 lays down that the Council may approve exceptions.

2. Second Part

Article 99 provides the legal basis for the harmonisation of turnover tax, excise duties and other forms of indirect taxation. It does not specify what legal instruments are to be used to achieve this end, nor does it make provision for consultation with the European Parliament or with the Economic and Social Committee. It simply states that the Council 'shall act unanimously without prejudice to the provisions of Articles 100 and 101'. This implies consultation of Parliament in accordance with the provisions of the second paragraph of Article 100 and the use of the legal instrument laid down in Article 100 ('directive'). In fact, the first directives on tax harmonisation are based both on Article 99 and on Article 100.

The major decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources lays down that, by 1 January 1975, the basis of assessment to Value Added Tax must, if possible, be determined in a uniform manner for Member States according to Community rules (Article 4, paragraph 1).

3. Commitments of the Member States as a result of other obligations

Article III(2) of GATT and the OEEC Council decisions of 14 January 1955 require signatory States to act in accordance with the principles set out in Articles 95 and 96 of the EEC Treaty. In view of this, any loss of power is not due to the EEC Treaty, since it had occurred before the latter came into force.

GATT and OEEC provisions had also previously imposed the same general prohibitions on other remissions and refunds as are contained in Article 98 (with the reservation that the Council may make exceptions), so that here again any loss of power was not due to the EEC Treaty.

II. STATE OF APPLICATION OF SECONDARY COMMUNITY LEGISLATION RELATING TO TAXATION

The directives described below relate to:

1. Turnover taxes, including VAT;
2. Indirect taxes on the raising of capital (with stipulation of the maximum and minimum rates);
3. Tax exemptions in international travel;
4. Excise duties on manufactured tobacco (with stipulation of the maximum and minimum rates).

The sections on the individual countries are subdivided on the basis of the above four headings although no further general reference is made to these directives.

1. Turnover taxes

(a) First Directive of 11 April 1967*
Legal Basis: Articles 99 and 100 of the EEC Treaty

This directive first defines the obligations of the Member States and sets a time limit. It also introduces the principle of value added tax and defines its range of application (Articles 1 and 2). Other major reasons for its importance, apart from the introduction of value added tax in the Member States, are as follows:

- it forbids the introduction of flat-rate countervailing measures in respect of turnover taxes on imports and exports (Article 1, paragraph 3;

- it sets the Community institutions' future objectives and time limits as regards the harmonisation of VAT provisions laid down by law, regulation or administrative action (Article 4).

(b) Second Directive of 11 April 1967*
Legal Basis: Articles 99 and 100 of the EEC Treaty

This directive contains precise rules concerning the value added tax system which the Member States must incorporate in their national laws, regulations and administrative provisions.

The implications of this directive for the Community are emphasised in Articles 18 and 19 of the directive itself.

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* OJ No. 71 of 14.4.1957

- Article 18 requires the Commission, after consulting the Member States, to submit to the Council, for the first time on 1 January 1972 and every two years thereafter, a report on the operation of the common system of value added tax in Member States.

- Article 19 requires the Council to adopt at the proper time, on a proposal from the Commission, directives to complete the common system of value added tax, and in particular to restrict or abolish measures adopted by Member States in derogation from this system, so that national systems of value added tax may be brought into alignment, thereby preparing the way for attainment of the objectives set out in Article 4 of the First Directive.

2. Indirect taxes on the raising of capital

Directive of 17 July 1969*

Legal Basis: Articles 99 and 100 of the EEC Treaty

This directive is designed to harmonise tax on contributed capital in order to avoid double taxation in the event of mergers and to harmonise taxation on the formation of companies in the Member States.

It abolishes, under the conditions listed in Article 11, indirect taxes on shares and bonds.

Finally, the Member States were placed under an obligation to adapt by 1 January 1972, their laws, regulations and administrative provisions to the requirements of this directive (Article 13). They must also forward to the Commission the text of the legal provisions they adopt in the field covered by this directive (Article 14).

3. Tax exemptions in international travel

(a) First directive of 28 May 1969**

(b) Second directive of 12 June 1972***

Legal Basis: Article 99 of the EEC Treaty

These directives, which complement each other, fix general exemptions from turnover taxes on the basis of the total value of the goods imported and from special excise duty, within set quantitative limits, on goods such as manufactured tobacco, alcoholic beverages, perfumes, etc.

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* OJ No. L 249 of 3.10.1969

** OJ No. L 133 of 4.6.1969

*** OJ No. L 139 of 17.6.1972

4. Excise duties on manufactured tobacco

Directive No. 464/72 of 19 December 1972*

Legal Basis: Articles 99 and 100 of the EEC Treaty

This directive provides for the harmonisation of the structures of excise duties in several stages.

Cigarettes will be subject to a proportional excise duty calculated on the maximum retail selling price and also to a specific excise duty calculated per unit of the product.

This directive forms part of the process of gradually harmonising the excise duty regulations in the Member States. It establishes the general criteria for the harmonisation of taxes other than turnover taxes affecting the consumption of manufactured tobacco and contains the provisions applicable during the first stage from 1 July 1973 to 1 July 1975. However, the Council must adopt, by 1974, a directive establishing the general criteria applicable during one or more subsequent stages.

B. THE INDIVIDUAL MEMBER STATES

I. BELGIUM

1. Turnover taxes

Before the law of 3 July 1969** was passed, Belgium applied a turnover tax (transmission tax) codified by Royal Decree of 29 September 1938 and classified as one of the taxes assimilated to stamp duties. This Royal Decree brings together Government administrative measures from which it appears that the introduction of a turnover tax system is a matter for the legislature.

The legislature has now fixed, also by the law of 3 July 1969 introducing value added tax, maximum rates of VAT and has given the King the power to establish the individual rates applicable to goods and services (Article 37). The Royal Decrees adopted in pursuance of this must be ratified immediately by the legislative authority.

It may be said that the Belgian Parliament's right to establish the principles and structures of turnover tax has been transferred to the Community institutions. The implementing measures are the responsiblity of the Government, to which the relevant powers were delegated.

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* OJ No. L 303 of 31.12.1972

** 'Moniteur belge' of 17 July 1969

2. Indirect taxes on the raising of capital

The provisions adopted by the Council of the Communities in respect of the raising of capital led in Belgium to the law of 3 July 1972* amending the legislation on registration, mortgage and chancery charges and the provisions relating to stamp duties. In this instance the Council directives apply to a field for which Parliament was plainly responsible.

3. Tax exemptions in international travel

On the basis of the 1958 and 1970 laws (see next paragraph) the Government passed the Royal Decree of 3 October 1969 on exemptions from import and excise duties in international travel. A further Royal Decree on this matter was adopted on 28 June 1972**. On 23 June 1972*** the Government also adopted a Royal Decree amending Royal Decree No. 7 of 12 March 1970 on the application of value added tax to imported goods.

4. Excise duties on manufactured tobacco

Under Belgian law, the legislative authority is empowered to fix excise duties. However, the law of 19 March 1951**** also delegated extensive power to the King. Article 39(1) states that 'the King may, acting on a decree adopted in the National Council of Ministers, avail himself of any measure, including the prepayment of taxes fixed by law, for the speedy implementation of urgently necessary modifications to excise duties. He shall bring before the Legislative Assemblies...a Bill implementing those modifications of excise duties relevant to the measures adopted in pursuance of paragraph 1.' Hence, there has been no great de facto loss of power to the Belgian Parliament, since it was obliged always to ratify the Royal Decrees decided by the Government.

Under the law of 2 May 1958*****, the Belgian legislature delegated further power to the King.

'1. The King may, acting on a decree adopted in the Council of Ministers, ...take any other measures in respect of customs and excise duties, including the abolition or modification of legal provisions, which are needed to ensure the smooth implementation of acts under international law.

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* 'Moniteur belge' of 1 August 1972

** 'Moniteur belge' of 4 October 1969 and 1 July 1972

*** 'Moniteur belge' of 1 July 1972

**** 'Moniteur belge' of 5 April 1951

***** 'Moniteur belge' of 16 and 17 May 1958

2. All decrees adopted in a given year pursuant to paragraph 1 shall be embodied in a single bill of ratification which shall be brought before the legislature in the following year.'

This law was ratified by the law of 20 February 1970*. This new transfer of power considerably reduced the actual scope of Parliament's influence.

As regards the directive on tobacco, it is not possible to ascertain with any certainty whether the Government has adopted implementing provisions. In all probability these provisions could be based on the above transfer of power**.

5. Conclusion

Loss of power has occurred in the following fields:

(a) Turnover tax - as regards the principles and structures of value added tax; in this matter the Belgian Parliament has lost all its power as regards rates, the basis of assessment*** and the use of the revenue. From the fiscal point of view this power previously fell partially within the Belgian Parliament's competence; from the budgetary point of view, it fell completely within its competence;

(b) Excise duties - as regards Parliament's theoretical power to ratify Royal Decrees;

(c) Registration charges and stamp duties - as regards the many modifications made to provisions in these two fields.

II. DENMARK

Articles 95 to 98 of the Treaty (see A.I.2.) are directly applicable in Denmark.

(a) Article 95 represents a loss of power by the Folketing, since the latter is obliged to ensure 'national' treatment for products from other Member States insofar as indirect taxation is concerned. However, in practice, the article does not change the situation in Denmark, since,

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* 'Moniteur belge' of 5 March 1970

** Law of 20 February 1970

*** The provisions regarding the assessment basis for value added tax still remain to be harmonised.

before entry into the Community, Parliament had already accepted similar obligations under the EFTA and GATT conventions. It is only in the field of agricultural products, which was not covered by the EFTA convention, that Article 95 represents an additional loss of power.

(b) Article 96 also represents a loss of power by the Folketing, but here again the Danish Parliament had already accepted similar restrictions under the EFTA convention and certain OECD rules.

(c) Article 97 is irrelevant in Denmark, as turnover taxes calculated on a cumulative multi-stage tax system have never existed.

(d) As regards remissions and repayments, the provisions of Article 98 already applied to Denmark as a result of the EFTA convention. Here Parliament has theoretically lost some of its power but in practice the situation has not changed as a result of entry into the Community. Article 98 has reduced the Folketing's power in the matter of countervailing charges on exports but the extent of this loss will depend on the position adopted by the Council, which may approve such charges for a limited period of time.

1. Turnover taxes

The two directives concerning value added tax reduce the power of Parliament, which is consequently obliged to maintain the system of value added tax and to apply it in accordance with the detailed provisions of the second directive. It should be added that for quite a few years prior to entry into the Community, Denmark had a form of value added tax very similar to the present Community system (Law No. 102, 31 March 1967). Thus in this respect membership of the EEC has not had any significant impact on Danish policies. However, the forthcoming introduction of a common rate of value added tax in Member States is a serious loss of fiscal power by Parliament, since setting the rate of value added tax is one of the most important instruments in Danish economic policy.

2. Indirect taxes on the raising of capital

The directive concerning capital amalgamation has made it necessary to change domestic law on stamp duties*. It reduces Parliament's power but from the fiscal point of view this is of little practical importance since the revenue from stamp duty in the field concerned will not in future be greatly different from what it is today.

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* Law No. 174 of 4 April 1969

3. Tax exemptions in international travel

Two directives deal with the harmonisation of legislation on excise duties and turnover taxes in respect of imports in international travel.

In Denmark regulations concerning imports in international travel have previously been made in the form of delegated legislation pursuant to the law on customs duties*. Parliament may not make any legal provisions in contravention of these directives, and has therefore lost some of its power. In practice, however, it was not responsible for specific provisions in this matter.

4. Excise duties on manufactured tobacco

The directive providing for the gradual harmonisation of excise duties on manufactured tobacco in accordance with special guidelines will have repercussions on the corresponding Danish system for taxing tobacco. Since tobacco taxation is fiscally very important, even small divergences between Community and Danish legislation could have serious effects in Denmark. Community rule-making in this field results in a major loss of power by Parliament.

5. Conclusion

The loss of power by the Danish Parliament in the field of fiscal policy is obviously great. While the systems adopted by the Community in the process of harmonisation are similar to Danish fiscal systems and it has not been necessary to make any major amendments to existing legislation, Parliament is no longer free to abolish certain kinds of taxation or to deviate from certain principles as regards the operation of such tax systems.

III. FEDERAL REPUBLIC OF GERMANY

(a) Article 105 of the Basic Law states that: 'the Federation has the exclusive right to legislate on customs duties and financial monopolies'. The Federal Government may exercise further legislative power in fields where the tax yield is allocated to it in the Constitution (e.g. consumer taxes, transaction taxes). The Bundestag is therefore responsible for legislation on the level of taxes and the arrangements and procedures for collecting them.

In general, therefore, binding acts of the Communities in respect of these taxes result in loss of power by the Bundestag.

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* Law No. 524 of 17 March 1970

(b) The Treaties and the provisions adopted in pursuance thereof limit the Bundestag's fiscal activities in the following manner:
- the free movement of individuals, services, goods and capital across internal frontiers may not be impeded by tax measures;
- differences in tax systems, specific regulations and tax levels may not distort competition;
- ecomomic management must, insofar as it is connected with taxation, conform to any economic objectives set by the Community.

In practical terms, the Bundestag's power has so far been limited in the following manner:

1. Turnover taxes

Articles 95 to 98 of the EEC Treaty limit the Bundestag's power to adopt taxation procedures which do not conform to these articles. However, the Federal Republic was already bound by GATT and the OEEC Council decision of 14 January 1955 to observe the principles of Articles 95 and 96.

The power to establish, pursuant to Article 97, average rates for taxes or repayments calculated on a cumulative multi-stage tax system has become meaningless as a result of the introduction of value added tax in the Federal Republic of Germany. Until value added tax was introduced the Bundestag fixed these average rates by means of amendments to the turnover tax law.

Articles 95 and 96 of the EEC Treaty defined the limits of the Bundestag's power as regards the fixing of these rates. Thus, although it had a certain amount of discretion*, the Bundestag was no longer free to determine the level of these taxes and therefore had to accept a loss of power.

Value added tax was introduced in the Federal Republic of Germany on 1 January 1968 in application of a Council directive (pursuant to Article 99 of the EEC Treaty). This amounts to a loss of power by the Bundestag since the national law (in this case the turnover tax system) passed in pursuance of the directive is no longer the sole responsibility of the Bundestag. Subsequent national legislative acts may not modify the new tax system in any way which would not comply with the directive on which it is based.

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* Cf. Case No. 4/69, Lutticke / Commission, European Court of Justice 28.4.1971, 1971 Collection

2. Other indirect taxes

The same applies to the provisions adopted in the Federal Republic of Germany pursuant to the directives on:
- indirect taxes on the raising of capital,
- tax exemptions in international travel,
- excise duties on manufactured tobacco.

3. Conclusion

The tax rules contained in the Treaties and provisions adopted in pursuance thereof affect the Bundestag's power.

In practice the loss of power in this field is limited to the restriction, by the directives hitherto adopted, of the scope for legislative action.

IV. FRANCE

1. Value added tax

Since value added tax was introduced in France and applied there from 1955 onwards, neither Article 97 nor the First Directive of 11 April 1967 was relevant to that country since they did not provide for the immediate harmonisation of tax rates. Hence, there is no question of a loss of power. On the other hand, when rates are harmonised (from 1 January 1975) the French Parliament, being responsible for matters of taxation under Article 34 of the Constitution, will lose some of its power.

In applying the Second Directive of 11 April 1967 the French Government and Parliament had to pass the decree of 4 February 1972 in pursuance of Article 7(1) of the 1972 Finance Act, thus experiencing a loss of power.

It should be noted that the loss of power by the French Parliament is facilitated by the fact that the 1958 Constitution compels it to adopt finance acts promptly. Hence, the Government can, without too much difficulty, have provisions approved conferring certain power on itself by delegation.

2. Indirect taxes on the raising of capital

In this field, Parliament retained its constitutional prerogatives vis-à-vis the Government but had to comply with the Community directive by adopting Law No. 650/72 of 11 July 1972 - not without reservations since the time limit for the application of the directive was 1 January

1972 and, in view of the fact that this deadline had been exceeded, the Commission had instituted proceedings in the Court of Justice against the French Government pursuant to Article 169.

3. Tax exemptions in international travel

Tax exemptions in international travel are covered by regulation: the Government adopted implementing measures as it is authorised to do under the Constitution.

4. Excise duties on manufactured tobacco

No implementing measures have yet been adopted in France as regards the Community directive of 31 December 1972 on excise duties on manufactured tobacco. However, it is Parliament which will have to take the decision (Article 34 of the Constitution).

Here again power has been lost to the Community.

5. Conclusion

Articles 95 to 98 of the EEC Treaty impose prohibitions as regards fiscal import and export duties which in France may involve both legislative and Government action. Properly speaking, there has been no transfer of power to the Community institutions (These provisions applying without supplementary acts by the Community). Instead, power has been restricted.

Under Article 99 there is a loss of power by both the Government and Parliament as regards the definition of taxation policy. This loss will be accentuated when VAT rates are harmonised.

V. IRELAND

(a) Articles 95 to 98 of the EEC Treaty limit parliamentary freedom to tax imports from or exports to other Member States. Moreover, Ministerial freedom to deal with taxation in respect of particular imports or repayments in respect of particular exports by way of delegated legislation is also limited.

(b) Action required to comply with directives may be taken by way of amending legislation in the normal course or on the basis of power given to a Member of the Government by legislation. Action may also be taken by way of Ministerial Regulations made under section 3 of the

European Communities Act, 1972. Such regulations have statutory effect but Parliament has power to annul them within one year after they are made if such annulment is recommended by a joint committee of both Houses which has been set up to examine enactments of the Communities. There is, however, a limitation of Parliamentary power insofar as it is precluded from taking any action which runs counter to Community directives.

1. Turnover Taxes

These directives relate to matters which, before accession, required legislation for their enactment. Indeed VAT was introduced on the basis of Parliamentary legislation, i.e. the Value Added Tax Act, 1972, partly in anticipation of Ireland's accession to the EEC. Under the Act of Accession differences, if any, between the existing system and that laid down by the Second Directive must be eliminated by 1 January 1974 (the date on which the Second Directive comes into effect for Ireland). This may necessitate legislation or changes might be effected by Ministerial Regulation under the European Communities Act.

Thereafter the power to amend VAT legislation will be constrained within the confines of the directives. In particular the power to legislate for certain reliefs under VAT (for example, a zero rate or a low rate which gives rise to refund of prior stage tax), which Parliament has now in unrestricted form, will in future be subject to the limitations prescribed in Article 17 of the Second Directive.

2. Indirect taxes on the raising of capital

These were formerly covered by sections 112 and 113 of the Stamp Act, 1891 and section 8 of the Finance Act, 1899. In fact these provisions were amended by the Finance Act 1973.

3. Tax exemptions in international travel

Before accession, these were dealt with by the executive.

4. Excise duty on manufactured tobacco

The harmonisation of the structure of excise duty on manufactured tobacco would have required legislation before accession.

5. Conclusion

Articles 95 to 99 lay down certain limitations which restrict Parliamentary freedom. Under Irish law, changes in domestic law on

the basis of these Articles formerly required parliamentary consideration (Article 29.6 of the Constitution). At present, changes in domestic law will be effected either (a) by amending legislation in the normal course, (b) under delegated powers which already exist, or (c) by Regulations under section 3 of the European Communities Act which may be annulled by Parliament in certain circumstances. In this respect it may be said that there is no loss of power to Parliament as all such changes will either come before Parliament for consideration or will be made under power delegated to a Member of the Government in legislation which has received Parliamentary approval.

It cannot be denied, however, that the freedom of Parliament to impose new taxes on products of other Member States is greatly restricted and such restrictions are bound to grow as action is taken by the Commission and the Council to harmonise legislation on turnover taxes, excise duties and other forms of indirect taxation. Moreover Parliament may not take any action which runs counter to Community directives.

VI. ITALY

1. Value added tax

By Law No. 825 of 9 October 1971 the Italian Parliament instructed the Government to implement a wide ranging programme of tax reform which included the introduction of value added tax. Article 5 of this law expressly stipulates that the value added tax system is to be based on the Community provisions. Article 18 empowers the Government to raise or lower the tax rates in the two years following the introduction of value added tax. Such changes are implemented by means of one or two decrees having legal force.

On this, D.P.R. (Decree of the President of the Republic) No. 633 of 26 October 1972 was issued introducing and stipulating the form of the value added tax system.

In conclusion, it can be said that Italian legislation formally follows the Community directives on the introduction of value added tax and that this legislation in effect represents an act of legislative power delegated by the Community.

The body having almost absolute fiscal power in Italy - Parliament - has suffered a real loss of power.

2. Indirect taxes on the raising of capital

The standards contained in the directive on indirect taxes on the raising of capital have been included in national legislation without a formal act of implementation. Article 4(d) of the D.P.R. of 26 October 1972, which governs registration tax, expressly refers to the text of the directive; similarly, Article 8 of Annex B of the D.P.R. of 26 October 1972 stipulates that the transactions enumerated in the directive shall be exempt from registration tax. The above-mentioned decrees were issued on the basis of the same delegation of legislative power as applied to the introduction of value added tax.

The loss of power in this sector is just as great as in the case of value added tax.

3. Tax exemptions in international travel

See the comments made on the transport sector.

4. Excise duties on manufactured tobaccos

In February 1967 the Commission announced its programme for the harmonisation of excise duties, which affects the various taxes on production, consumption and monopolies. To date no internal provisions on the implementation of the directive on excise duties on manufactured tobaccos have been enacted. In Italy manufactured tobaccos are subject to an excise duty at a rate specified by Law No. 825 of 13 July 1965. Any change in the duty rate thus involves the exercise of legislative power.

As we are concerned in this case with a directive, however, internal arrangements in this sector depend on a delegation of power to the Government. This means that although Parliament does not suffer a formal loss of power, it may well do so in practice because it has to enact a formal law or delegating law adjusting the internal duty rate to the rate prescribed by the directive.

5. Conclusion

The prohibitions laid down in Articles 95 to 98 result in a restriction of the autonomy of the Italian Parliament without a loss of power. On the other hand, the secondary legislation enacted on the basis of Article 99 limits the national Parliament's activities within the objective set by a directive while Parliament retains the right to enact legislation in accordance with the Community

concept contained in the legal instrument of the directive. In practical terms, this 'instrumentalisation' of the internal power to make rules results in a loss of power.

VII. LUXEMBOURG

1. Turnover taxes

Turnover tax was introduced as a general tax in the Grand Duchy by law of 21 July 1921. This law was amended and supplemented in particular in 1934, 1938 and 1964. The provisions governing the application and implementation of these laws are enacted in the form of Grand Ducal Orders.

Consequently, the Chamber has power in the tax sector (see also Chapter VIII of the Constitution: 'Finances'). The Chamber establishes the principles and structures while the Government is responsible for implementation.

Value added tax was introduced in Luxembourg on 1 January 1970, the legal basis being the law of 5 August 1969*, which repeals legal and statutory provisions relating to the turnover tax and transport tax system where these provisions contradict those contained in the new law and are not based on agreements concluded under international law. It is left to the executive to make certain special arrangements by Grand Ducal Order such as the postponement of tax liability, exemptions and special provisions, e.g. for agriculture and forestry.

Article 42 also allows tax rates to be raised or lowered within certain limits on the basis of a Grand Ducal Order after compulsory consultation of the Council of State and with the approval of the Chamber's Steering Committee.

2. Indirect taxes on the raising of capital

The law of 31 July 1929** (the basic law on holding companies) which governs the fiscal treatment of holding companies (legislative power) was the first designed to avoid double taxation.

The directive on indirect taxes on the raising of capital resulted in the Luxembourg law of 29 December 1971*** on tax on capital raised

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* 'Mémorial' 1969, p.954

** 'Mémorial' 1929, p.685

*** 'Mémorial' 1971, p.2733

by bodies recognised by civil law and by trading companies, a law which also amended certain statutory provisions on the collection of registration fees. It led to the repeal of a considerable number of important laws that had formerly applied.

Owing to its obligation to apply this Community directive the Luxembourg Chamber of Deputies has lost power.

3. Tax exemptions in international travel

Under the agreement establishing the Belgo-Luxembourg Economic Union (UEBL) of 1922 and the coordinated UEBL agreement of 1965, laws, regulations and other Belgian provisions must be published in the Luxembourg Memorial (Official Journal) to have legal effect in Luxembourg. The Government is responsible for ensuring that this is done. Since 24 April 1922, however, the minister responsible for customs and tax questions (at present the Finance Minister) has been given the task of ensuring publication.

The contents of the Royal Belgian decrees of 3 October 1969 and 28 June 1972 and the Belgian ministerial decree of 3 October 1969 are repeated in two Luxembourg ministerial decrees, one dated 20 October 1969* and the other 29 June 1972**, on exemption from import and excise duties in international travel. The Council's directives of 28 May 1969 and 12 June 1972 were implemented by means of two ministerial orders of 20 October 1969*** and 29 June 1972****.

The Community directives were implemented by the executive on the following grounds:

(a) The UEBL agreement requires the Luxembourg Government (at present the Finance Minister) to apply Belgian legislation in this sector.

(b) Delegated legislation has given the Government new power subject to certain conditions.

4. Conclusions

(a) Through the introduction of value added tax the Chamber of Deputies has lost power with regard to the basis and structure of the tax.

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* 'Mémorial' 1969, p.1255
** 'Mémorial' 1972, p.1131
*** 'Mémorial' 1969, p.1258
**** 'Mémorial' 1972, p.1135

(b) In the case of indirect taxes on the raising of capital a loss of power has also occurred.

(c) The tax exemptions in international travel.

(d) The directive on tobacco tax have not led to a loss of power.

VIII. NETHERLANDS

(a) Article 188 of the Constitution stipulates that a law must be enacted before taxes may be levied for the exchequer. The States-General therefore have exclusive power to introduce, change or abolish taxes, albeit in cooperation with the Crown. Any prohibitions included in the Treaty provisions limit the power of the States-General. There has, however, as yet been no delegation of power.

(b) Article 99 in conjunction with Articles 100 and 101 provides for a delegation of power inasmuch as it prescribes the issue of directives to govern the manner in which the States-General amend existing laws. This has therefore applied to directives so far issued and incorporated into the relevant regulations.

1. Value Added Tax

The change from a cumulative turnover tax to VAT was made in the Netherlands by the law of 28 June 1968 (Official Journal No. 329, 1968) on the implementation of the appropriate Council directives issued in 1967.

2. Indirect taxes on the raising of capital

The directives on indirect taxes on the raising of capital were implemented in 1970 under the Law on the Taxation of Legal Transactions.

3. Tax exemption in international travel

The General Customs and Excise Law of 1961 lays down that in the case of General Control Measures, provisions may be put into force enabling the Finance Minister to issue decrees implementing the law, particularly with regard to exemptions. The Council's directive of 28 May 1969 on the exemption from tax of luggage in international travel has been implemented by means of these statutory provisions in the form of a decree.

4. Excise duties on manufactured tobacco etc.

With regard to the harmonisation of excise duties, the Commission has issued five directives under which five different excise duties must be introduced. As all these excise duties already exist in the Netherlands, a change of legislation will not be needed to allow their introduction.

The Netherlands also has excise duties on sugar and non-alcoholic beverages which must now be abolished. In addition, there is a special excise duty on passenger cars, which can only be maintained under conditions to be fixed by the Commission. All other special excise duties must be abolished if they are likely to distort competition in the Common Market.

Under the relevant Council directive a proportional excise duty on manufactured tobaccos had to be introduced on 1 January 1973. However, this directive did not result in any change in the Dutch excise duty system that has applied since 1 January 1972.

5. Conclusions

(a) Tax harmonisation implemented with the aid of directives limits the legislative power of the States-General. It should be noted that the tax policy pursued under the Benelux agreement includes the harmonisation of excise duties. The Committee of Benelux Ministers concluded an agreement on this subject on 8 May 1972, which the States-General approved on behalf of the Netherlands on 29 November 1972 (Official Journal No. 696, 1972).

(b) Insofar as the power of the States-General to determine fiscal policy is concerned, there is a loss of power to parliament in regard to indirect taxes.

The requirement to contribute (from 1975) 1 per cent of the assessment basis of the VAT to the 'own resources' of the Community, represents a limitation of power which has been ratified by the States-General.

IX. UNITED KINGDOM

(a) The levying of taxation is one of the most important functions of the British Parliament, having its foundation in the principle insisted on since the 13th century that there should be 'no taxation without representation'. This implies that taxes and charges should be imposed by legislation agreed to by Parliament. Standing Order No. 89 of the House which dates from 1713, states that a 'charge upon the public revenue' can only be proceeded with if recommended by the Crown, i.e. only the Government may propose taxes; Standing Order No. 90 which dates from 1707, states that taxation must be authorised by a resolution of the House. Accordingly, accession to the Community will impinge even more seriously on a fundamental function of the House of Commons, as the Community exercises power of direct taxation which are not subject to amendment or detailed debate by the House.

(b) In regard to Articles 95, 96 and 98 of the EEC Treaty, there is therefore a formal loss of power by the British Parliament, but in practice accession to the Community has merely confirmed changes already enacted in British legislation. Articles 99 and 100 provide for the introduction of a turnover tax (VAT) in Member States and this was introduced in the Finance Act 1972 in view of the coming accession of the United Kingdom to the EEC. The operation of these Articles represents a further loss of power to Parliament, as VAT would have had to be accepted by the House of Commons at some time, in order to fulfil the terms of the EEC Treaty.

1. Value Added Tax

The provisions of Community directives on value added tax represent a formal loss of power to the British Parliament.

2. Indirect taxes on capital formation

Section 49 of the Finance Act 1973 embodied the provisions of the directive abolishing stamp duties on shares and bonds in United Kingdom law. This represents a loss of power to the United Kingdom Parliament.

3. Tax exemptions in international travel

As these matters were before accession subject only to the discretion of the Customs and Excise authorities, and not embodied in legislation, no loss of power has been experienced.

4. Excise duties on manufactured tobaccos

Excise duties on tobacco have been levied for many years in the United Kingdom and form a substantial item in the indirect taxes levied by successive Governments. Changes in such duties are customarily made in the annual Finance Bill and are (with the exception of 10 per cent changes made under the 'regulator' system (Finance Act 1961, section 9)) subject to full debate. The directive on manufactured tobacco therefore involves a loss of power by the United Kingdom Parliament.

5. Conclusion

The directives on VAT and tobacco represent a loss of power by the United Kingdom Parliament, in a field in which it has regularly exercised full legislative power for some centuries. Future directives implementing the provisions of the Treaty will further reduce the legislative power of Parliament to levy indirect taxes.

Articles 95 to 98 contain prohibitions and thus limit the legislative autonomy of the Member States in the tax sector. Strictly speaking, however, there has been a restriction of power rather than delegation to Community institutions since the Member States continue to exercise their power within the limits set by the Treaty.

Furthermore, the Commission - the only institution that takes action in this field - is now merely authorised to impose sanctions. The Council was formerly empowered to intervene, in connection with the establishment of a common method of calculating average rates (Article 97 of the EEC Treaty) but this no longer applies since the introduction of valued added tax.

Secondary tax law based on Article 99 on the other hand, results in a loss of power to the extent that all Member States are obliged to adapt their fiscal provisions to a Community arrangement which is binding with regard to the objectives pursued.

CHAPTER IX. CAPITAL MOVEMENTS (Articles 67-73)

A. GENERAL

I. Introduction

1. Provisions of the EEC Treaty

The process of liberalisation of capital movements can be summarised as follows:

(a) abolition of restrictions on the movement of capital and discrimination in treatment; non-discriminatory application of internal regulations (Article 67 and 68(2));

(b) progressive coordination of the policies of Member States towards third countries (Article 70(1));

(c) requirement for Member States to be 'as liberal as possible' in granting exchange authorisations and to go beyond the degree of

liberalisation provided for (Article 68(1) and Article 71 (2 and 3)) as far as possible.

2. The Treaty also provides for protective measures (Article 70(2) and Article 73) and a standstill clause on restrictions to movements of capital (Article 71, paragraph 1).

3. The abolition of barriers to capital movements 'to the extent necessary to ensure the proper functioning of the common market' (Article 67(1)), shall be effected by means of directives (Article 69). The same applies to measures for the coordination of the policies of Member States towards third countries (Article 70(1)).

4. On the other hand, Article 67(2) relating to current payments, and Article 68(2) on the non-discriminatory application of internal regulations, establish directly applicable obligations which do not require a directive for their implementation.

5. As regards exchange authorisations, since possible action is left to the discretion of Member States (Article 68(1) and Article 71, second paragraph), the Community in fact has no legal means of compulsion.

6. Of the directives adopted by the Council in the matter, two concern the implementation of Article 67 and are aimed at abolishing certain legislative and administrative obstacles to capital movements, and making certain existing exchange restrictions more flexible, while one directive - based on Articles 70 and 103 - is intended to create conditions for concerted action by Member States, with a view to discouraging exceptionally large capital movements, in particular to and from third countries.

7. Special Provisions relating to new Member States

Articles 120, 121, 125 and 126 of the Treaty of Accession provide for a transitional period in the field of capital liberalisation in the case of Denmark. Article 121 states that Denmark can defer the liberalisation of purchases by non-residents of bonds denominated in Danish kroner and dealt in on the stock exchange in Denmark, etc., for a period of two years after accession. Denmark can also defer for a period of five years after accession the liberalisation of purchases by persons resident in Denmark of foreign securities, etc.

8. In view of the freedom of capital movements between Ireland and the United Kingdom, Ireland's membership of the sterling area, and the close monetary links between the two countries, the same transitional arrangements under the Treaty of Accession apply to Ireland and the United Kingdom.

9. Article 124(2)(a) of the Treaty of Accession permitted the United Kingdom and Ireland to defer for two years after accession (subject to consultations with the Commission) the liberalisation of direct investments, and the liquidation of direct investments, in Member States by residents of the United Kingdom and Ireland. Nevertheless paragraph 2 of Article 124 enjoined the United Kingdom and Ireland to make a substantial relaxation in the rules relating to these operations. Article 124(1)(b) permitted a 30-month deferment in the liberalisation of certain personal movements of capital (e.g. gifts, succession duties etc.). The liberalisation of certain operations in securities, set out in List B of Annex 1 of the First Directive was by Article 124(1)(c) of the Treaty of Accession deferred for five years.

II. State of application of secondary Community legislation relating to Capital Movements

(a) Directives

1st Council directive of 11 May 1960 (OJ No. 43, 12.7.1960)	This directive is the çqin text on liberalisation of capital movements. Annexed to it are four lists of capital movements; the transactions in lists A and B are unconditionally liberalised, i.e. with no possibility of reversal outside the procedure provided for in the protection clauses of Articles 73, 108 and 109. List C indicates the transactions subject to conditional liberalisation, i.e. those for which exchange controls existing at the time of entry into force of the directive can be maintained or reintroduced by the Member States if these capital movements are an obstacle to the achievement of the economic policy objectives. Finally, list D includes the transactions for which no undertaking of liberalisation has been given, except that of notifying the Commission of the provisions relating to them.
Council directive No. 21/63 of 18.12.1962 adding to and amending the 1st directive (OJ No. 9, 22.1.1963)	This second directive makes slight amendments to the text of the first directive, certain lists annexed to it and the nomenclature of capital movements.

(b) Directive pursuant to Article 70

Council directive No. 156/72 of 21.3.1972 on regulating international capital flows and neutralising their undesirable effects on domestic liquidity (OJ No. L91, 18.4.1972)	This directive is designed to cope with serious disturbances in the monetary and short-term economic situation of the Member States caused by exceptionally large capital movements, particularly from and to Member States. To this end, it calls for the immediate adoption of the measures needed for the implementation of internal regulations relating in particular to investments on the monetary markets, payment of interest on deposits by non-residents and the regulation of loans and credits not related to commercial transactions or to provisions of services, and granted by non-residents.

I. BELGIUM-LUXEMBOURG INSTITUTE OF EXCHANGE

1. On the basis of the delegation of power from the legislature to the executive, capital movements to and from abroad come under the jurisdiction of the Belgium-Luxembourg Institute of Exchange (IBLC) in Belgium and Luxembourg. It was set up by decree in 1944 and the IBLC was made responsible for capital movement transactions in Luxembourg in 1945.

2. The institute is a public establishment with legal status, controlled by the Belgian Minister of Finance through a Government Commissioner. The IBLC prepares an annual report which is published in the 'Moniteur Belge'. The accounts of the IBLC are audited by the Audit Office, whose reports are submitted to the Chambers. At the administrative level, the IBLC has its seat at the Banque Nationale de Belgique which, under an agreement concluded between the two organisations, is responsible for the day-to-day management of the institute.

3. The IBLC has a dual function: control and regulation. The object of the regulations adopted by the Council of the Institute is to lay down detailed rules relating in particular to the disposal of goods abroad, the transport and holding of cash, payments to or from abroad, monetary transactions relating to imports and exports as well as the basic components and definitions in exchange control. The regulatory power of the IBLC falls outside the normal process of legislation. The regulations adopted are published both in the 'Moniteur Belge' and in

the 'Mémorial Grand-Ducal', are drawn up by the IBLC in consultation with the Belgian and Luxembourg Finance Ministers and are valid for the Belgian-Luxembourg Economic Union.

It should be pointed out, however, that most of the capital movements mentioned in the two directives based on Article 67 (EEC) come within the free market. The market regulated by the IBLC concerns movements for commercial transactions.

4. Conclusion

It is apparent that the power which the Council and the Commission have received in this sector was not formerly held by the Belgian and Luxembourg legislatures.

II. DENMARK

1. As a member of the OECD Denmark had before accession to the EEC been bound by certain of the rules within the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations. The liberalisation measures referred to in the Introduction above, which Denmark has been able to defer for some years, correspond to Danish exemptions from the rules contained in the lists of the OECD liberalisation code. This means that, in the first years of Danish membership of the EEC, changes in the field of capital liberalisation will not be great because important Danish capital restrictions can be maintained temporarily and also because certain Danish capital restrictions had already been liberalised within the OECD. The EEC rules do not offer the same possibility of exemptions from the liberalisation rules as do those of the OECD, but Articles 70 and 73 of the EEC Treaty do provide for certain temporary exemptions to be implemented in the case of serious disturbances of national capital markets.

2. The following principal capital movements must be liberalised or must remain liberalised: direct investments; transactions concerning real estate property for other than commercial use; certain short-term commercial credits directly connected with import and export of goods and services, etc.; and most personal capital movements. Certain other capital movements can be restricted or can remain restricted on certain conditions relating to national economic policy, whereas the liberalisation of some other capital movements remains voluntary.

3. In Denmark the Minister of Commerce, in cooperation with the Central Bank, is in charge of regulating capital movement. This follows from the 'lov om valutaforhold' (law on monetary matters)* with later amendments. Thus in practice the Government has lost power due to the EEC rules.

4. After gradual adaptation during the transitional period, capital flow between Denmark and the other Member States will be liberalised to an extent that will seriously reduce the effectiveness of traditional Danish monetary policy. Consequently the Folketing will probably be forced to rely on fiscal or budgetary policy instead of on monetary policy to a greater extent than hitherto. Thus, while not inflicting a direct loss of power on the Folketing, the EEC rules on capital movement do affect the role of the Folketing in controlling fiscal and budgetary policy.

5. Conclusion

Although Denmark has been bound by rules within the OECD there will be an additional loss of power within the field of capital movement, gradually increasing during the period of transition. However, this loss or limitation of power only directly affects the Government which has been and is in charge of such matters (based on parliamentary law). The scope of the Government and the central bank to conduct monetary policy will be limited as a consequence of the liberalisation of capital movements. Thus, fiscal policy in which the Folketing plays a dominant role will probably increase in importance.

III. FEDERAL REPUBLIC OF GERMANY

1. Under Article 73(4) and (5) of the Basic Law, the Federal Government has exclusive legislative power over monetary affairs and the free movement of goods and payments.

Article 74(11) of the Basic Law provides further legislative power (although in competition with the Länder) over banking and the stock exchange.

The Bundestag has exercised these powers in laws relating to:
- Foreign Trade and Payments** and
- the Deutsche Bundesbank***.

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* Law No. 372, 23 December 1964

** 28 April 1961

*** 26 July 1957

Before the Foreign Trade and Payments Law was enacted (i.e. when the EEC Treaty came into force), the exchange control laws enacted under occupation law applied, prohibiting all foreign exchange dealings that were not specifically authorised. This prohibition was, however, substantially alleviated by numerous official permits.

2. Henceforth Article 1 of the Foreign Trade and Payments Law lays down the principle of complete freedom of movement of capital. The law does, however, also give the Federal Government considerable power to restrict this freedom by regulation, subject to certain conditions.

Furthermore, the law limits its application to the sector not regulated by the 'Legal provisions of the organs set up under international agreements to which the FRG has transferred sovereign powers'.

In this way the Bundestag has liberalised the movement of capital to and from other countries far beyond the limits laid down under Community law. In this respect, the provisions of the EEC Treaty do not reduce the power of the Bundestag. Yet there is a reduction of power insofar as legislation by the executive (Federal Government, Federal Bank) gives the power to restrict capital transactions with other countries or with non-residents. The Bundestag could only transfer this power to the Federal Government, with effect on the movement of capital within the EEC, insofar as this remained within the limits of the protective measures laid down in Article 73(2) of the EEC Treaty.

3. Conclusion

There is therefore a loss of power in respect of movement of capital for the Bundestag, in that it may not apply to EEC nationals restrictions on freedom provided for by the law.

IV. FRANCE

1. Of the three directives so far adopted by the Council, only the first (11 May 1960) is important enough to involve changes in national legislation on the free movement of capital.

In France, this directive should have been implemented through legislative channels, because the existing provisions adopted under previous regimes (3rd and 4th Republics) had been implemented by the Parliament. The application of Community directives, however, gave rise to difficulties. French law No. 66-1008 voted by Parliament on 28 December 1966 'on financial relations with other countries' repealed or amended 14 earlier laws or orders, in order, as stated in the

preamble, to enable France to respect its 'international commitments'. Article 7 of the law entrusts the Government with the task of adopting the decrees necessary for its implementation before 31 December 1967. The implementing decree adopted on 27 January 1967 (decree No. 78/67), amended on 21 March 1969 (decree No. 264/69), further defined this law, notes on which were contained in the circular of 21 March 1969 concerning direct investments administered abroad by French residents or in France by non-residents.

2. The two decrees adopted in implementation of the law of 1966 proved to be contrary to the provisions of the EEC Treaty and the 1960 directive. As the French Government refused to amend them, the Commission took the Government to the Court of Justice on 10 November 1969. In its action, the Commission complained that the French Government had 'failed in the obligations incumbent upon it in pursuance of the provisions of Community law relating to the liberalisation of capital movements, namely Article 67 EEC and Article 1 (in conjunction with list A of Annex I) of the first directive of 11 May 1960 for the implementation of Article 67 EEC, amended by the second directive of 18 December 1962, in applying, or not providing for explicit exemption in the application of the right of postponement provided for in decree No. 78/67 (as amended by decree No. 264/69) to the investment transactions in France and in the other Member States covered by the said decree and involving movement of capital within the Community, in which natural or legal persons residing either in France or in another Member State are concerned'. Finally, following negotiations between France and the Commission, the latter's conditions were satisfied and the action was withdrawn on 25 March 1971.

3. Conclusion

Parliamentary rights have been preserved but only by failing to take account of the first directives of the Council on the free movement of capital. In the case of measures for the implementation of the law, the Government has wide powers of decision subject to the supervision of the Commission.

V. IRELAND

1. The financing of normal trade transactions is approved by the commercial banks and those above a certain limit require the approval of the Central Bank.

The Exchange Control Acts, 1954 to 1970, prohibit a wide range of capital transactions but the Minister for Finance has power under these

Acts to grant permission for such transactions. The Minister has in fact delegated the day-to-day operation of most of his power in this regard to the Central Bank. Power reserved to the Minister relates to such matters as the appointment of authorised dealers and prosecutions for non-compliance with the law.

2. Compliance with the Directives already issued does not require an amendment of Irish law. They are being complied with by changes in administrative arrangements. Consequently, there has been no loss of power to Parliament.

Compliance with any future directives in this field is unlikely to entail any loss of power to Parliament as it is likely that any amending legislation which might be required to this end will be brought before Parliament in the normal way. If statutory changes are effected by Regulations under section 3 of the European Communities Act 1972, Parliament has power to annul them within one year after they are made if such annulment is recommended by a joint committee of both Houses which has been set up to examine enactments of the Communities.

3. Conclusion

There has been no loss of parliamentary power in this field. Parliamentary power has been limited, however, insofar as it is precluded from taking any action which runs counter to the Directives already issued.

VI. ITALY

1. The basic regulations on movements of capital in Italy are:

- Law No. 43* entitled 'disposizioni in materia di investimenti di capitali esteri in Italia' (provisions on foreign capital investments in Italy);
- Presidential Decree No. 758** containing implementing regulations for the above law.

Essentially the bodies authorised to intervene in the financial sector are the 'Comitato Interministeriale per il Credito e il Risparmio' (Interministerial Credit and Savings Committee), the Ufficio Italiano del Cambio (Italian Exchange Office) and the Bank of Italy.

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* 8 March 1956

** 6 July 1956

2. Il Comitato Interministeriale per il Credito e il Risparmio (CICR), established by legislative decree of the provisional Head of State, No. 691 of 17 July 1947, consists of the Minister of the Treasury, who acts as its chairman, and the Ministers of Public Works, Agriculture and Forestry, Industry, Trade and Craft Trades, Foreign Trade, for Budgetary and Economic Planning and for State Holdings.

   The Governor of the Bank of Italy takes part ex officio in the deliberations of the CICR.

   The Committee's task is to maintain 'careful vigilance over the protection of savings and over credit operations and currency' (Article 1 of the above-mentioned decree).

   The Committee may adopt measures which are issued in the form of decrees; regulatory power concerning savings and credit is in the hands of the Minister of the Treasury who exercises it after consulting the CICR.

3. The 'Ufficio Italiano dei Cambi' (UIC), established by legislative decree No. 331 of 17 May 1945 is charged with the following duties:

   - surveillance of compliance with currency exchange regulations;
   - control of currency operations;
   - management of exchange reserves.

   The Government of the Bank of Italy is the chairman of the UIC which is attached to the Ministry of the Treasury. Regulations are issued by this body in the form of circulars on matters falling within its terms of reference.

4. The Bank of Italy comes under the control of the Minister of the Treasury and has broad discretionary power in connection with the application of ministerial directives in the banking sector including such activities as the distribution of credits and determination of maximum interest rates.

5. The obligations arising from Council directives on capital movements have been incorporated solely in Ministerial Decrees (of 22 February 1961, 4 December 1961, 14 November 1962 and 8 March 1963) and circulars issued by the UIC.

6. There are two reasons for believing that the Italian Parliament also suffers no loss of power as a consequence of the directives issued by the Council.

   The main reason is the fact that regulations in this sphere are the responsibility of the Government and its organs.

Moreover the free movement of capital requires the removal of administrative obstacles such as the authorisations required for certain operations, e.g. the issuing and placing of securities; medium and long-term loans and credits; the opening and funding of current and deposit accounts and other short-term capital placings. It is therefore the task of the administrative authority to arrange for the removal of such obstacles.

Secondly, as has already been noted, internal provisions for implementation of the directives are issued solely in the form of ministerial decrees and UIC circulars.

This underlines the administrative nature of the subject. In effect a law can only be amended by a subsequent law or a law by decree or legislative decree (however, the latter measures, even if issued by the executive, require intervention by Parliament, both for the law which delegates to the Government the right to issue legislative decrees and for the conversion of the law by decree into law.

7. Conclusion

The directives issued by the Council involve no loss of power by the national Parliament.

VII. THE NETHERLANDS

Before the EEC Treaty came into force, movement of capital was governed by the International Payments Act, 1934, and the Foreign Exchange Order 1945.

Under the latter, foreign exchange matters become the responsibility of the Ministers of Finance, Economic Affairs, Foreign Affairs and Agriculture. For the purpose of implementing the Order, they may delegate their power to a Committee of Representatives. The Netherlands Bank is assigned the task of applying, on behalf of the State, the regulations on foreign exchange dealings. The Ministers mentioned above and the Netherlands Bank may entrust to other bodies the implementation of certain aspects of the foreign exchange regulations.

The Ministers issue the necessary supplementary regulations and implementing rules. Where such is necessary, to achieve the objectives of the Foreign Exchange Order these rules and regulations may comprise restrictive provisions, obligations and prohibitions, as also exceptions to the restrictive provisions, obligations and prohibitions set out in the Order.

Since 1972, new regulations for 'Financial relations with foreign countries' have been in preparation; these move away from the restrictive legislation of 1945 towards a liberalisation of foreign exchange dealings with other countries*.

The Bill in question places primary responsibility for foreign exchange matters in the hands of the Minister of Finance. The power of the Crown and of the Netherlands Bank is reduced to the most essential, overall instruments of policy. The Bill provides in particular for implementation under Netherlands law of the EEC Council's directives of 11 May 1960 and 18 December 1962 on the liberalisation of the movement of capital. The fact that statutory provision for the implementation of these directives has taken so long does not mean there has been any infringement of the treaty, since the Member States - especially the Netherlands - had already liberalised capital transactions in dealings within the Community. The directives thus consolidated and codified a liberalisation that already existed.

The EEC Treaty, like the OECD Treaty, the agreement setting up the IMF and the treaty setting up the Benelux Economic Union, leaves some limited scope for national initiative in foreign exchange matters. The power retained is in the area of exemptions and safeguard measures; it is, however, delegated to the Crown.

To the extent that Parliament cannot amend foreign exchange policy as it thinks fit its power has been limited. The Bill before Parliament therefore has to take account of the relevant Council directives. Apart from this all regulation of capital movement is the Government's responsibility, and is delegated by the Government to other bodies. In material terms there is no question of a loss of power, since this had already been transferred to the Government.

VIII. UNITED KINGDOM

1. Since 1947 transfers of capital for many of the purposes set out in Annex 1 to the First Directive have been regulated by the Exchange Control Act 1947 and by delegated legislation made thereunder. The annual Finance Act implementing the Budget Statement had also normally been used by Government to regulate movements of capital in general. Delegated legislation has introduced an element of flexibility

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* 1971/72 session of Second Chamber, Doc. 11 907, Nos. 1,2,3
  1973/74 session of Second Chamber, Doc. 11 907, No. 5

in enabling the Government to respond rapidly to a new situation created by international monetary movements. Thus before accession the House of Commons exercised legislative scrutiny of the majority of capital movements.

2. Conclusion

Despite the deferment of the need to liberalise in certain fields which are covered by transitional arrangements, it is clear that the United Kingdom Parliament has suffered a limitation of power in a field largely governed by legislation, in particular by the annual Finance Act. The fact that the Council may proceed by directives and not by regulations makes it possible however for legislation to comply with such directives to be introduced in much the same way as at present.

CHAPTER X. SOCIAL POLICY (Articles 117-128 and 48-51)

A. GENERAL

I. Introduction

The scope of Community social law is fairly limited. Only free movement and social security for migrant workers, equal pay for men and women and the setting-up of a Social Fund are covered by mandatory provisions in the Treaty. These provisions are the constitutional 'corpus' of Community

social law, from which is derived all the basic legislation in this area (regulations, directives, decisions, recommendations). The social effects of the common agricultural and transport policies must also be mentioned, although they are not described here in detail.

The scope of the positive law as defined above is indeed narrow. However, other articles in the Treaty contain general aims for the approximation of provisions laid down by law, regulation or administrative action with a view to harmonising social systems, and also in regard to close cooperation between Member States in the field of social policy. These general rules form the basis for the general pattern of Community social policy, and are the framework for all Community acts in this field.

Clearly the question of possible loss of power by the national parliaments arises only in the areas in which mandatory provisions on positive Community social law are applicable. The objectives would not lead to such a loss of power, since binding provisions applicable within the Member States could be implemented only through national machinery. The fact that national parliaments may be excluded from the operation of this machinery is an internal constitutional matter and in no way constitutes a loss of power resulting from the existence of the Community.

II. Treaty Provisions

1. Freedom of movement of workers (Articles 48 and 49)

Pursuant to Article 3(c) of the Treaty, one effect of the EEC Treaty will be the abolition, as between Member States, of obstacles to the free movement of individuals. Freedom of movement of workers is covered by Articles 48 and 49 which provide that it shall be secured by the end of the transitional period at the latest, i.e. by 31 December 1969. The right of employment for workers from other Member States is not extended to employment in the public service. In fact the final arrangements came into effect in November 1968, as a result of the Council's decision to link the attainment of freedom of movement for workers to the achievement of a customs union, which was established on 1 July 1968.

Freedom of movement was implemented in three stages:

First stage (1 September 1961 - 30 April 1964)

- Council Regulation No. 15, 16.8.1961 (OJ No. 57, 26 August 1961), on first	Endorses the system of priority of the national employment market. The first part of this regulation contains a number

steps towards the attainment of freedom of movement for workers	of provisions on workers' rights, the extension of employment and equal treatment. The right of admission for the worker's family is confined to the wife and descendants under the age of 21. The second part relates to the establishment of contacts between those offering employment and applicants and the maintenance of a balance of supply and demand. The third part describes the bodies set up to ensure cooperation between Member States.
- Council directive of 16 August 1961 (OJ No. 57, 26 August 1961) on in respect of the immigration and residence of foreign workers	The main purpose of this directive is to render more flexible, speed up and harmonise procedures for issuing cards, stipulated for its implementation. The work permit has not yet been instituted at the time of transition to the second stage of implementation of the aims specified in Articles 48 and 49.

Second stage (1 May 1964 - 8 November 1968)

- Council regulation No. 384 of 25 March 1964 (OJ No. 62, 17 April 1964) on the free movement of workers	The main progress achieved by this regulation is in the areas of priority in the European employment market, equal treatment and the admission of families. Priority in the national market - limited to three weeks in Regulation No. 15 - is abolished. The worker may reply to any new offers of employment. The corollary of this rule is the automatic allocation of work permits (Article 22). The main step forward in regard to equal treatment is the right to stand for office in organs of representation in undertakings. The regulation also extends the right of admission to the parents and children of workers and to dependent spouses.
- Council directive No. 64/240 of 25 March 1964)OJ No. 62, 17 April 1964) on the abolition of restrictions on movement and residence of workers	This directive recognises in particular the right of entry and residence. The validity of the residence permit should be at least equivalent to that of the work permit. The principle of issuing and renewing documents free of charge

	is confirmed. Member States were allowed six months in which to comply with the directive.
- Council directive No. 221/64 of 25 February 1964 (OJ No. 56 of 4 April 1964) for the coordination of specific measures on the movement and residence of foreign nationals	Based on Article 56 of the Treaty which provides for this coordination and on Regulation No. 15 referred to above, the directive lays down the conditions in which restrictions on movement and residence are justified for reasons of public policy, security and public health (Article 48(3)).

Final arrangements

- Council regulation No. 1612/68 of 15 October 1968 (OJ No. L 257, 19 October 1968) on the free movement of workers	This regulation which entered into force on 8 November 1968 and replaces Regulation No. 38/64, removes the last obstacles to the free movement of workers apart from the exceptions provided for in the Treaty.
- Council directive No. 360/68 of 15 October 1968 (OJ No. L 257, 19 October 1968) on the abolition of restrictions on the movement and residence of workers and their families	Replaces the previous directive (No. 240/64). Member States must comply with it by the end of July 1969. Until this directive has been implemented however, they must comply with directve No. 240/64.

2. Social security for migrant workers (Articles 51 and 121)

Article 51 confers upon the Council the responsibility for adopting the necessary measures in the field of social security for the establishment of free movement of workers.

On the basis of Article 51, the Council has adopted the following regulations:

- Regulation No. 3
  (OJ No. 30, 16 December 1958)
  on social security for migrant workers; a number of amendments have been made to the regulation and its annexes since 1958.

- Regulation No. 4
  (OJ No. 30, 16 December 1958)
  laying down detailed rules for the application of Regulation No. 3 and supplementing its provisions. Amended by the same regulations as Regulation No. 3.

- Regulation No. 36
  (OJ No. 62, 20 April 1963)
  on social security for frontier workers concerning which Annexes have been drawn up by Commission Regulation No. 3/64 of 18 December 1963 (OJ No. 5, 17 January 1964) and 7/64 (OJ No. 18, 1 February 1964), amended by Regulation No. 94/66 (OJ No. 129, 16 July 1966).

Revision of regulations

The revision of these regulations was undertaken by the Commission in 1964 with the assistance of the EEC Administrative Committee on Social Security for Migrant Workers and the technical assistance of the ILO.

At the proposal of the Commission, the Council adopted two regulations - to replace the three preceding regulations - which entered into force on 1.10.1972:

- Regulation No. 1408/71 of 14 June 1971
  (OJ No. L 149, 5 July 1971)
  on the application of social security schemes to employed persons and their families. This regulation was modified by the act of accession of 22 January 1972 (OJ No. L 74, 23 March 1972) and later by the Council decision of 1 January 1973 (OJ No. L 2, 1 January 1973). These modifications entered into force on 1 January 1973, but apply to Denmark, Ireland and the United Kingdom only with effect from 1 April 1973.

- Regulation No. 574/72 of 21 March 1972
  laying down the detailed rules for applying Regulation No. 1408/71. This regulation, adopted since the signature of the acts of accession, has also been amended to take account of the enlargement.

3. Equal pay for men and women (Article 119)

Article 119 of the Treaty lays down the principle of equal pay for men and women. The interpretation of this article has always been somewhat controversial as far as its practical implementation is concerned. On the other hand, the essential importance of the principle has never been questioned. The Commission's latest report on the state of implementation of this principle is extremely clear and explicit on this point (Doc. SEC (73) 3000 fin. - 18 July 1973, pp.4-5).

The basic legislation derived from this article is fairly limited:

- Recommendation from the Commission to the Member States, 20 July 1960;
- Resolution by the Conference of Member States, 30 December 1961 (specific legal act);
- Proposal for a Council directive on the approximation of legislation in this field, submitted by the Commission on 14 November 1973 (Doc. COM(73) 1927 fin.).

Finally, the provisions of ILO Convention No. 100 now ratified by all the Member States.

4. European Social Fund (Articles 123-127)

For the accomplishment of the task assigned to the Community by Article 3(c) of the Treaty, Article 123 provides for the establishment of a European Social Fund. According to Article 123 of the Treaty, the aim of the Social Fund is to render the employment of workers easier and to increase their geographical and occupational mobility.

Article 124 stipulates that the Fund shall be administered by the Commission, assisted by a Committee, the composition of which is outlined.

Article 125 indicates the general principles governing the Fund and its responsibilities during the transitional period. Further responsibilities may be conferred upon it at the end of this period, pursuant to Article 126(b).

(i) Implementing texts relating to the first Social Fund

On the basis of Article 127 of the Treaty the Council has adopted the implementing regulations of Articles 124 and 125. Council Regulation No. 9 of 25 August 1960 (OJ No. 56, 31 August 1960) lays down the basic provisions. It has been amended by Regulations Nos. 47/63, 31 May 1963 (OJ No. 86, 10 June 1963) and 37/63, 21 February 1967 (OJ No. 33, 24 December 1967). The Commission has adopted the following regulations:

- Regulation No. 113/63
  (OJ No. 153, 24 October 1963)
  on the procedures for examining and checking applications for aid submitted to the European Social Fund.

- Regulation No. 12/64
  (OJ No. 32, 22 February 1964)
  laying down the criteria which characterise a clear situation of prolonged under-employment within the meaning of Article 2(3)(a) of Regulation No. 9.

(ii) Implementing texts relating to the new Social Fund

Pursuant to Article 126 of the Treaty, the Council has adopted Decision No. 66/71 of 1 February 1971 (OJ No. L 28, 4 February 1971) on the reform of the Fund. It has abolished the aid provided for by Article 125 of the Treaty, and defined the new tasks to be entrusted to the Fund.

On 8 November 1971 it completed the reform of the Fund by adopting the following regulations:

- Regulation No. 2396/71 based on Article 127 of the Treaty and implementing the Council decision of 1 February 1971 on the reform of the European Social Fund (OJ No. L 249, 10 November 1971);

- Regulation No. 2397/71 based on Regulation (EEC) No. 2396/71 and relating to aid which may qualify for assistance from the European Social Fund (OJ No. L 249, 10 November 1971);

- Regulation No. 2398/71 based on Article 127 of the Treaty and concerning assistance from the European Social Fund for persons who are to pursue activities in a self-employed capacity (OJ No. L 249, 10 November 1971).

The Council is to reconsider Decision No. 71/66 by 31 December 1976 at the latest. If necessary it will be amended in accordance with a further Commission opinion based on Article 126 of the Treaty.

5. Harmonisation of social systems

Under Article 117 the harmonisation of Member States' social systems falls within the framework of the harmonisation of provisions laid down by law, regulation or administrative action.

6. Cooperation in the social field

Article 118 stipulates that close cooperation between Member States shall be promoted in the fields of:

- employment,
- labour law and working conditions,
- basic and advanced vocational training,
- social security,
- prevention of occupational accidents and diseases,
- occupational hygiene,
- the right of association, and collective bargaining between employers and workers.

It is provided that 'the Commission shall act in close contact with Member States to this end, by making studies, delivering opinions and arranging consultations'.

Article 120 stipulates that 'Member States shall endeavour to maintain the existing equivalence between paid holiday schemes'.

7. Common vocational training policy

Article 128 of the Treaty provides for the implementation of general principles for a common vocational training policy.

Social aspects of the common transport policy
(see Chapter VI, Transport Policy)

Social aspects of the common agricultural policy
(see Chapter V, Agriculture - particularly structural policy)

B. INDIVIDUAL MEMBER STATES

I. BELGIUM

1. Free movement of workers

(a) Residence of foreign nationals

The residence of foreign nationals is governed by the law of 28 March 1952 on the surveillance of foreign nationals (Moniteur belge, 30-31 March 1952)*.

Article 2: 'Entry into Belgium or residence in the country by foreign nationals is conditional upon authorisation by the Minister of Justice, according to procedures laid down by royal decree, or

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* See Chapter XI.

compliance with certain conditions determined by international agreement, regulations enacted in pursuance of such an agreement, the law or royal decree.'

Article 5: 'A deportation order may not be served on a foreign national in any of the situations specified below, without a prior opinion from the Consultative Committee provided for in Article 10 of this law, and where appropriate compliance with the provisions of Article 4 B' (political activity):

' A foreign national from a Member State of the European Economic Community and any foreign national who is a member of his family and lives in the same household or under the same roof.'

(b) Employment of foreign nationals

In this field, the Government has enacted regulations on the basis of power delegated to it by the legislature notably:

- royal decree No. 34, 20 July 1967, on the employment of workers of foreign nationality. This decree is based on the law of 31 March 1967 delegating certain power to the Government with the object of achieving economic expansion, an increase of regional growth and the stability of the budget.

- royal decree of 6 November 1967 on conditions for granting and withdrawing work permits and employment permits for workers of foreign nationality. Section II of this royal decree deals with 'the employment of nationals of a Member State of the European Economic Community'.

2. Social security for workers and their families moving within the Community

Social security is covered by the law of 28 December 1944 on social security for workers.

Special arrangements for occupational accidents and diseases are established by separate laws.

Social security for foreign workers has been covered by various conventions, both multilateral and bilateral (conventions, agreements or even administrative arrangements) since 1945. At the present time social security is governed by the law of 29 June 1969.

Regulation No. 3 of 25 September 1958, and the other Community texts, replace in principle previous conventions; some have, however, remained in force.

3. The European Social Fund

The activities of the Social Fund are comparable to those described under the heading 'Employment and unemployment' in connection with social security.

This subject falls within the provisions of the law of 14 February 1961 on economic expansion, social progress and financial recovery. On this basis the Government enacted the royal decree of 20 December 1963 on employment and unemployment.

Other laws also relate to this field - the law of 28 June 1966 on the compensation of redundant workers in the event of closure of an undertaking, the law of 30 June 1967 extending the responsibilities of the Fund for compensation of redundant workers in the event of closure of an undertaking and the law of 20 July 1968 on the granting of interim compensation to workers affected by the closure of undertakings.

4. Conclusions

(a) The Belgian Parliament has lost power within the area covered by the reputation in connection with the free movement of nationals of Member States of the Community since the regulation takes priority over national legislation. Measures have been taken by the Belgian executive in regard to the directives on movement and residence of workers; there is thus no practical loss of power by the Belgian Parliament. On the other hand, certain rules have been imposed on the Belgian legislature concerning the residence of foreign nationals, thus limiting national power.

(b) In regard to social security for foreign workers, the power of the Belgian legislature has always been dominant to the extent that the ratification of social security agreements with third countries has been necessary. The introduction of Community regulations constitutes a restriction on its right of assent to conventions.

(c) The activities of the European Social Fund represent a circumscription of the power of the Belgian Parliament rather than a loss of power, in that public funds are collected and spent in parallel with social assistance from public bodies in Belgium.

II. DENMARK

1. Freedom of movement of workers

Freedom of movement of foreign workers and their right to work and settle in Denmark is generally regulated by law (Lov om undlaendinges adgang til landet - Law No. 224, 7 June 1952). During recent years the Government has on some occasions limited the number of work permits issued to foreigners in order to regulate supply and demand in the employment market. This is still possible with regard to workers from third countries. Under Regulation No. 1612/68 and directive No. 630/68 it is not possible to restrict the entrance into and the employment in Denmark of wage-earners from other Member States, and once they have entered the country they enjoy practically the same rights as Danish wage-earners. Directive No. 360/68 provides, however, for certain exceptions to the general rule of free admission, for example, in those cases where it is in the public interest to prevent the entrance into the country of certain wage-earners.

Danish law has had to be changed to comply with the EEC rules, and consequently there has been a loss of power or a restriction of power of the Folketing. But because restrictions on immigration of salary-earners have generally been imposed under the authority of the Government according to the law above-mentioned, it is in practice the Government that has lost power in this field. Scandinavian countries have since 1954 had a common employment market (Det nordiske Arbejdsmarked) in which work permits and residence permits have been abolished. There had then already been a certain restriction of the power of the Folketing to regulate the access to and employment of foreign wage-earners in Denmark.

2. Social security

After accession it was necessary to amend Danish social security legislation to extend to migrant workers the benefits of the Danish social security system in compliance with the EEC rules. The principal changes were designed to fulfil the requirements of the principle of national treatment, of the 'addition' principle (benefits being paid according to the combined period of eligibility (in separate national social security schemes) and of the 'pro rata temporis' principle (the individual Member States pay as much to the wage-earner as corresponds with the length of his period of eligibility in that Member State). This has meant a limitation of the power of the Folketing, which has been obliged to pass the necessary amendments to Danish legislation and cannot make any new legislation contrary to the EEC rules, cf. laws Nos. 257, 258 and 259 of 7 June 1972. It should be noted that the regulation referred to above not

only coordinates the social security systems of the Member States, but also supplements them with common regulations. While in general the changes in the Danish social security system in order to comply with the EEC rules have meant that Denmark has had to extend certain rights to migrant workers from other Member States, the principles laid down in the relevant EEC regulation are not new. Denmark had previous entered into agreements on a bilateral basis with several of the present Member States (The Federal Republic of Germany, France and the United Kingdom) and with other Scandinavian countries (Nordisk Overenskomst om Social Tryghed 1967) that were quite similar to the EEC regulation. Also within the Council of Europe (1953) agreements of a like character had been made among the Member States of that organisation. Consequently although the EEC regulation contains further obligations to be respected by the Folketing there had already in fact been a considerable limitation of the freedom of the Folketing in this area.

3. Equal pay for men and women

Articles 117-122 set the social policy objectives for the EEC; improved working conditions and an improved standard of living for workers. Only Article 119 on equal pay for men and women is directly applicable to the Folketing. The loss of power of the Folketing in this respect is theoretical, because equal pay for men and women had largely been introduced recently following negotiations between employers and workers' unions in Denmark. Also it should be mentioned that Denmark had previously been bound by rules under the ILO (International Labour Organisation) to implement equal pay for equal work to men and women.

4. The European Social Fund (Articles 123-128)

The operation of the European Social Fund is based on national financial contributions according to an agreed code of cost-sharing. This must be respected by the Folketing. Other than that there is no limitation or loss of power by the Folketing in this respect.

5. Conclusion

Generally speaking there is no loss of power by the Folketing as regards its possibilities of maintaining and further developing national social policy. Nor is it an explicit objective of the EEC Treaty to create a common social policy of the EEC. A certain degree of harmonisation may be introduced, however, so as to permit comparisons of the national social policies and to facilitate cooperation of Member States in the field of social policy concerning migrant workers. There has been a

limitation of power of the Folketing with regard to Danish treatment of migrant workers in social policy as well as in employment policy. In the field of social policy and employment policy the loss of power by the Folketing is small (cf. mainly the principle of national treatment of workers from other Member States). Generally these policies remain within the power of the Folketing.

III. FEDERAL REPUBLIC OF GERMANY

Both the Government and the Länder have legislative power in this sector. Article 74(4) and (12) of the Basic Law extends this power to:

- 'the right of residence and establishment of foreign nationals';
- 'the right of employment including employees' representation, protection of employment and of arrangement of employment by intermediaries, social security including unemployment insurance .

The Bundestag has implemented this power by the following laws:

1. Freedom of movement

(a) Right of residence and establishment

Aliens Law of 28 April 1965:
This law regulates the conditions of entry and residence of foreign nationals in the Federal Republic of Germany.

The law is also applicable to nationals of Member States of the Community, for such persons, too, require a residence permit if they wish to work (for more than three months). While the Aliens Law gives the authorities considerable scope in granting residence permits to foreign nationals from third countries, the Bundestag has, however, enacted a special law for EEC nationals which stipulates when they are to be granted a residence permit (Law on the entry and residence of nationals of Member States of the EEC of 22 July 1969).

The Bundestag has thus fulfilled an obligation incumbent on Member States under Community law. In future, the rights of EEC nationals can only be restricted in exceptional cases. In that respect the Bundestag has lost power.

(b) Labour law of 25 June 1969

This law regulates the conditions under which one may obtain work in the Federal Republic. Pursuant to Article 19 of the law, foreign nationals require a work permit. The Bundestag has, however,

formally exempted EEC nationals from this legal requirement and given Community legal provisions precedence in respect of such persons (Article 19(II)). As a result, the Bundestag has lost power. Yet even in the sector remaining under the jurisdiction of the Bundestag, some loss of power had occurred before the EEC Treaty entered into force, as a result of the following international agreements:

- OECD Council decision of 30 October 1953, as amended on 20.12.1956, under which every member country of the OECD is required to grant work permits to nationals of other member countries under certain conditions;

- Under Article 10 of the European Establishment Agreement of 13 December 1955 signed in the Council of Europe, foreign nationals may exercise activities as self-employed persons in the same manner as nationals (exceptions possible);

- Finally, Convention No. 97 of the International Labour Organisation of 1 September 1949 on migrant workers prohibits discrimination against foreign nationals in respect of wages, working conditions and social security.

Furthermore, bilateral agreements were signed between the Federal Republic and France (establishment and shipping agreement of 27 October 1957) and between the Federal Republic and Italy (e.g. friendship, trade and shipping agreement of 21 November 1957) on preferential treatment of workers from these states.

These agreements do not, however, eliminate the differences between the legal status of nationals and non-nationals as comprehensively as does the EEC Treaty. The loss of power to the Bundestag derives mainly from the EEC Treaty.

2. Social Security

This sector is regulated in the main by the following laws:
- Labour Law, 25 June 1969,
- Reich Insurance Code, 15 December 1924,
- Law to regulate rights with regard to legal insurance against accident, 30 April 1963,
- Federal Social Assistance Law.

These laws provide for social measures in respect of unemployment, illness, accident and other cases where employees require assistance. In each case the executive is empowered to make special rulings for

foreign workers (e.g. Article 109, Labour Law). Insofar as Community law stipulates the applicability of national regulations to employees from EEC states, the legislative power hitherto vested in the legislature is not therefore, affected.

Apart from this, before the EEC Treaty entered into force, numerous bilateral social agreements stipulated equal treatment of nationals and non-nationals (e.g. Franco-German Agreement of 10 July 1950; German-Dutch agreement of 29 March 1951; German-Italian Agreement of 5 May 1953).

3. Equal pay for men and women

The principle of equal pay for men and women applies by law in the Federal Republic independently of the EEC Treaty provisions. It follows from Article 3 of the Basic Law and the validity in the Federal Republic of Convention No. 100 of the International Labour Organisation of 29 June 1951.

4. Conclusion

The Bundestag has lost power in respect of the legal status of employees, primarily in the field of the right of residence and the right to work.

IV. FRANCE

1. Freedom of movement of workers (Articles 48-51)

The Community directives and regulations have been implemented without prejudice to parliamentary prerogatives as, under the 1958 Constitution, this matter falls within the province of the Government. Thus Decree No. 29/70 of 5 January 1970 laid down the internal measures enabling the Community directives of 25 February 1964 and 15 October 1968 to be implemented in France.

2. Social security

An agreement drawn up by the ECSC in conjunction with the International Labour Organisation was signed by the Six in Rome on 9 December 1957. It was to be ratified by the six national Parliaments, when the content of this international agreement was incorporated into Community regulations at the inception of the EEC (Council Regulation No. 3, 25 October 1958 and subsequent regulations). This is an example of loss of power by a national Parliament.

3. Equal pay for men and women

With regard to the setting up of committees with responsibilities in the field of social policy (the Standing Committee on Employment for example), equal pay for men and women (Article 119) and vocational training for adults and young people, the Community has enacted few regulations but has mainly used recommendations and resolutions. Consequently, neither the French Government nor the Parliament have been deprived of their prerogatives. The only potential limitation of power lies in the fact that the Parliament could not adopt internal measures which, for example, were opposed to the equalisation of pay for men and women.

4. European Social Fund

Since Community legislation has been superimposed on national social policy without replacing the provisions of national law, there has been no loss of power by the French Parliament, except insofar as the latter has to adopt the amount of France's annual contribution to the Fund in its budget, and does not have the right to reject it.

5. Conclusions

With regard to:

- Freedom of movement; there has been a loss of power by the Government;

- Social Fund: there has been no loss of power by Parliament;

- Social policy: there is a potential limitation of the power of both Government and Parliament;

- European Social Security: power transferred from Parliament to the Council of the Community.

V. IRELAND

1. Before accession the free movement of persons and services was restricted under the Aliens Act 1935, and Ministerial Orders made thereunder. Ireland may keep these controls until the end of 1977. This means in effect that a national of any Member State may not enter Ireland to take up employment unless the Minister for Labour has issued a work permit to the prospective employer. After the expiry of the transitional period these controls must be abolished. In the meantime the European Communities (Aliens) Regulations 1972, have been made under

Section 3 of the European Communities Act 1972. These regulations are based on Directive EEC 220/64, 221/64 and EEC 360/68 and confer rights of entry and residence on certain categories of persons who are nationals of Member States. These Regulations received parliamentary confirmation in the European Communities (Confirmation of Regulations) Act 1973.

After 31 December 1977 Parliament will have lost its freedom to enact legislation restricting the entry into Ireland of nationals of Member States. Moreover, existing restrictions will have to be removed to comply with the Treaty. In this respect Parliament has lost power.

2. Social security of migrant workers

Community regulations on this matter became applicable in Ireland on 1 April 1973. The enactment of provisions in these regulations relating to the application of social security systems to migrant workers and their families would, before accession, have been carried out by regulations under the Social Welfare Acts, 1952 to 1972, and the Health Acts 1947 to 1970. The Social Welfare (Children's allowances) Acts, 1944 to 1970 would have had to be amended and in this respect there has been a loss of power to Parliament.

3. Equal pay for men and women

This matter has arisen for Ireland independently of membership of the Community. The Commission on the Status of Women recommended in October 1971 that a policy of equal pay should be followed where men and women were doing work of equal value. The Government accepted this recommendation and steps are being taken to implement it at present.

4. European Social Fund

The new fund is financed from the Community Budget. Under the European Communities (State Financial Transactions) Regulations 1972, payments to the EEC Budget are paid from the Central Fund and are not voted annually in Parliament. Payment is an obligation arising out of Ireland's membership and as such is not appropriate for annual discussion by Parliament. It will be seen, therefore, that Parliament has lost little control in relation to contributions to the Fund. Assistance from the Fund depends on fulfilment of the conditions laid down by the Commission for the grant of assistance to a project (specification of its aims, duration, estimated cost and type of expenditure involved): these are generally matters for decision at Ministerial level rather than at Parliamentary level. Assistance granted by the Commission may be 50 per cent of expenditure on projects

carried out by public authorities, bodies under public law and by joint social bodies commissioned to carry out a task in the public interest. The other 50 per cent of expenditure may come directly from the Exchequer for which parliamentary approval is required or it may come from public funds at the disposal of public authorities which they may use at their discretion to pursue the aims for which they were set up. In this regard there is no loss of power to Parliament.

5. Conclusions

- The Treaty provisions regarding the free circulation of workers will apply fully to Ireland from the beginning of 1978. This will involve a loss of power to Parliament.

- There is a loss of power to Parliament arising from Community regulations on the social security of migrant workers.

- No loss on equal pay.

- There is little loss of power insofar as contributions to the Social Fund are concerned.

- There may be a limitation of power arising from the harmonisation of social security.

VI. ITALY

1. Movement of workers

(a) The Italian Constitution provides that the legal position of foreigners shall be regulated by the law in accordance with international practice and treaties (Article 10, para. 2).

As far as civil rights are concerned - particularly those connected with employment - the law (codice civile Article 16 of the provisions on the law in general) accords foreigners the same rights as citizens, on condition of reciprocity and with the exception of provisions laid down in special laws.

Provisions restricting the right of foreigners to work - leaving aside the condition of reciprocity - include Article 133 of the Codice della navigazione (law on shipping), according to which 'Italian citizens only may be entered in the register of personnel'

and Article 26 of the D.P.R. of 28 June 1949, No. 631, (Regulation on internal navigation) which similarly stipulates Italian nationality for harbour employees.

As regards civil rights or entitlement to the services of public authorities - particularly in the field of social security - foreigners generally enjoy the same rights as citizens.

Foreigners also benefit from all laws relating to social matters.

(b) As regards obtaining employment, the progressive three-stage implementation of the Treaty provisions relating to the movement and establishment of workers (Regulations 15/61, 38/64 and 1612/68) has required an adjustment of internal legislation through the following provisions:

- D.P.R. No. 1656 of 30 December 1965

Article 2 of this decree, relating to the position of the employee, was amended at the start of the third stage of implementation so as to bring it into line with Directive No. 860/68, issued together with Regulation 1612/68.

- D.P.R. No. 1225 of 29 December 1969

The main effect of this decree was the abolition of the need for a preliminary permit, previously required because the worker had to obtain an Italian residence permit.

The right of residence is now automatically granted on taking up employment on Italian territory.

In fact, police authorities are now required to grant a residence permit to any citizen of an EEC Member State on simple production of the document used by the worker to enter Italy (passport, identity card) and a declaration of recruitment by the employer or a certificate of employment.

The right of residence is extended to spouse and children under 21 as well as to dependent parents and children. The residence permit, valid in all parts of the country, is issued for five years and is automatically renewable.

(c) The effect of these provisions is therefore to make existing jobs available on a basis of equality - in other words, to open up the so-called common market in employment to citizens of the Member States.

Given this particular emphasis - more economic than socio-political or structural - the Community rules in question restrict and regulate, but do not destroy, the power of the state in this field.

Thus, the state is required to grant authorisations only if the employee has been assured of a definite job, even though he is now entitled to the full assistance of the department of employment in seeking work (Article 5, Regulation 1612/68).

The 'aliens police' consequently retain their traditional responsibilities for residence permits, refusal of entry and expulsion, even if these are now limited to particular cases.

2. Social security for migrant workers

On the date on which the EEC Treaty became effective Italy had already concluded bilateral agreements on social security with the nine Member States of the Community and multi-lateral agreements with France and Belgium. These agreements had been submitted for ratification by Parliament.

The principles on which these conventions were based were incorporated in Article 51 of the Treaty, since developed and elaborated by the Council in various implementing regulations.

3. Conclusions

Community rules with regard to the free movement of workers do not substantially interfere with internal legislation. The prohibition of discrimination on the grounds of workers' nationality in matters of employment or residence should be seen rather as a general restriction not affecting the possible application of Parliament's legislative power.

The fact that Community law has in principle replaced international conventions on social security implies a limited loss of Parliament's power in this field.

VII. LUXEMBOURG

1. Free movement of workers

The principle of freedom of movement of workers within the Community and of non-discrimination in employment, remuneration and other working conditions was already established by the Belgium-Luxembourg Economic

Union Convention, the Benelux Treaty and the related legal texts (authorisation law of 5 August 1960, p.1215, Preamble and Article 2: Basic Provisions). Generally, the competent national authority is the Government - in this case the Committee of Benelux Ministers responsible for implementing the Treaty. There are however provisions for exceptions which are mainly concerned with restrictions justified by public policy, security and public health. Article 65 of the Benelux Treaty lays down that these restrictions are governed by special agreements between the contracting parties. All these agreements are approved by the legislature.

2. Social security for migrant workers

Social security for migrant workers is the subject of a number of international agreements and conventions. These are approved by the legislature as, for example, in the law of 15 December 1962 implementing the agreement between Luxembourg and Belgium.

3. Equal pay for men and women

This is covered by the law of 15 June 1965 on collective labour agreements (Article 4(2), sub-section III). Every collective labour agreement must necessarily provide for the application of the principle of equal pay for equal work.

4. Social Fund

Social assistance in Luxembourg was limited to subsidies (voted annually in the budget) or costs related to improving the standard of living of workers and management training for the standard national economic structure. Subsidies were also granted for the creation of new posts or the maintenance of existing posts, for vocational training and retraining in branches of the economy with inadequate labour forces (see 1957 Finance Act, Memorial 1957, page 698), and Finance Acts of 1958 to 1962 (also subsidies for the conversion of undertakings), 1963 (also subsidies for the readaptation and vocational training of workers), and 1964 to 1967.

From 1968 onwards, the budget also includes aid and subsidies for retraining pursuant to the provisions of Title III, Chapter II (Social Fund) of the EEC Treaty.

5. Other social provisions

The majority of provisions in the social sector are within the competence of the legislature. Provision is, however, made for certain exceptions

as well as for cases where the Government has delegated legislative power:

(a) Employment: The National Labour Office, set up by Grand Ducal Decree on 30 June 1945, includes employment amongs its responsibilities; the 1945 enabling law, has been amended by various laws and decrees,

(b) Right to work: Article 11(c) of the Constitution; the law guarantees the right to work,

(c) Social security, right to Trade Union membership: Article 5(5) of the Constitution; the law regulates social security, health protection and workers' rest periods, and guarantees freedom of association. (See in this connection the laws on social insurance code.)

(d) Occupational accidents and diseases: Law of 21 June 1946 against accidents and law of 30 March 1966 on social insurance; certain powers have been conferred on the executive,

(e) Occupational hygiene: pursuant to the law of 28 August 1924, the necessary provisions can be enacted by Grand-Ducal regulation to govern safety and hygiene in industrial and commercial establishments, and construction work. Several regulations have already been enacted,

(f) Paid leave: Law of 22 April 1966. Note that the Government is entitled to authorise additional paid leave for employees whose work does not permit an uninterrupted rest period of 44 hours per week. (See Articles 4 and 6 of the law of 22 April 1966.)

6. Conclusions

Freedom of movement of workers: there is a loss of power by the Government and, in certain cases, the Chamber.

Social provisions: there is a potential limitation of power since the legislature may not take any internal measures which conflict with the measures provided for in the Treaty. It should be borne in mind that by law of 9 August 1971 relating to the execution and performance of decisions, directives and regulations of the European Communities, the legislature has given power to the Executive to take administrative action after having obtained the opinion of the relative professional bodies and after having received the consent of the Steering Committee of the Chamber of Deputies. The Council of State is equally called upon to give an opinion.

Social security: there has been a loss of power of the Chamber as a result of Community regulations.

Social Fund: the legislature was previously responsible for social measures and had freedom of action in this field, whereas now Community policy must be followed, particularly in regard to contributions to the Fund.

VIII. NETHERLANDS

1. Situation before 1958

Until 1958, the principle basis for social policy, in particular security of employment, was the 'Labour Act of 1919'. Although extensively amended and in part revised (e.g. 'Labour Decree (juvenile workers)' (Staatsblad No. 652, 1972)), the Act still applies. Industrial safety was governed by the 'Safety Act of 1934' and social policy in the transport sector by the 'Driving Periods Act' of 1936. The 'Special Decree on Conditions of Employment of 1945' laid down rules in respect of conditions of dismissal. This Act was implemented by the Directors of the Regional Employment Exchanges.

2. Free movement of workers

The free movement of workers is ensured in the Netherlands under the 'Aliens Work Permits Act' of 1964*. This Act already made provision for the free movement of certain categories of workers within the framework of the Benelux and the EEC.

Article 10 of this Act stipulates:

'In cases where, as a result of provisions laid down by or in virtue of agreements with ... international organisations, a permit is not required, the ... prohibition does not apply.' (performing work in employment without a permit)

Following the adoption of Regulation No. 1612/68 on the removal of the last obstacles to the free movement of workers, the Minister of Social Affairs issued a proclamation** to the effect that the working prohibition referred to in the Act did not apply to EEC Citizens.

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* Act of 20 February 1964, Staatsblad No. 72

** Staatscourant 1969, No. 43

The 'Aliens Act' of 13 January 1965 (Staatsblad No. 40, 1965) provides the legal basis for agreements concerning the residence of aliens. It is on the basis of this Act and of the Council Directive of 25 February 1964 that the 'Aliens Decree' was issued in 1966 (a Royal Decree, Staatsblad No. 387, 1966), which had to be amended in 1972 (Staatsblad No. 615, 1972) following the extension of the scope of the third directive and the conclusion of other agreements such as the European Establishment Treaty.

The preamble of the decrees gives the grounds on which the decree is based. This 'Aliens Decree' constitutes in its turn the basis of implementing regulations to be issued by the Minister of Justice in the form of regulations.

3. Equal pay for men and women

To implement the demand for equal pay for men and women a bill is at present being drawn up in the Netherlands. In certain sectors, however, equality has already been established by collective labour agreements, in others the disparity is being phased out (e.g. the textile industry).

The directives for the harmonisation of the conditions governing corporate redundancies are being laid down in a bill currently in preparation.

4. Conclusions

The States-General had already given the Government statutory power to lay down rules governing the free movement of workers. This power has been consolidated within the Benelux framework. The Crown and the Minister of Justice determine which categories are subject to the statutory rules laid down for the free movement of workers.

Parliament and Government are bound by certain rules, which they must respect, as regards the regulations governing the residence of aliens who are citizens of other Member States. To this extent the power of Parliament can be said to have been limited.

Parliament's power is also restricted by the regulations governing the social security of migrant workers, since they limit its freedom to ratify social security conventions.

With regard to the Social Fund, Parliament is bound to respect Community regulations by payment of the required contributions to this Fund. However, there can be no question of a complete loss of power since payment from the Fund can be considered as an extension of national payments, over which Parliament does still have control. The States-General have remitted part of their power, as far as conditions of work are

concerned, to the Economic and Social Committee; they have therefore only experienced a limited loss of power under Community legislation.

IX. UNITED KINGDOM

1. Freedom of movement of workers

Freedom of movement to and from the United Kingdom has always been closely controlled by the Government exercising power derived from Acts of Parliament and dependent delegated legislation. In the last 20 years in particular, these matters have been the subject of political controversy in Parliament, particularly in regard to immigration from the Commonwealth. In order to comply with the terms of the Treaty and the Community legislation the Government introduced an Immigration Bill which was enacted in 1972. The Act empowered the Government to make regulations to secure compliance in the United Kingdom with EEC legislation. The Government subsequently introduced such regulations, but was obliged to withdraw them after opposition was expressed to those regulating Commonwealth immigration (those regulating immigrants from Member States not being amendable save as to form and methods in terms of Directive 360/68). The regulations were later re-introduced in a different form and agreed to. Loss of power has been suffered therefore, in regard to Articles 48-51, by the House of Commons, in that it is bound by the Directive as to the results to be achieved in this field.

2. Social security of migrant workers

Regulation (EEC) 1408/71 applies social security schemes to migrant workers and their families and Regulation No. 574/72 fixed the procedure for its implementation. After accession, it was necessary to amend United Kingdom social security legislation to extend to EEC migrant workers the benefits of the British social security system in accordance with the Community Regulations. This was done by the Social Security Act 1972 and by delegated legislation. As the British social security system is comprehensive and inclusive, only minor amendment of it was necessary. A limitation of power only was suffered by the United Kingdom Parliament, which would have been unable to amend or reject those provisions which implemented Community legislation.

3. Equal pay for men and women

The Articles set objectives for the EEC of improved working conditions and an improved standard of living for workers; the duty of applying the principle of equality of pay for equal work

had been implemented in the United Kingdom by the Equal Pay Act (1970). As a result Parliament has not experienced a loss of power.

4. Road transport drivers

Sections 95-103 of the Transport Act 1968 dealt with manning, work and rest periods and record-keeping in relation to road vehicles, but not to transport by rail or waterway. Section 100 empowered the Minister by delegated legislation to amend the provisions of the Act in order to give effect to international agreements on these matters. Schedule 4 (paragraph 9) of the European Communities Act 1972 amended this part of the Transport Act 1968 to give effect to the provisions of Community legislation. Thus in 1968 and 1972 the United Kingdom Parliament had an opportunity to consider legislation regulating road transport in regard to drivers' hours, etc., before accession, and authorised the Government by delegated legislation to amend British law to comply with EEC law. No loss of power has, therefore, occurred to date in regard to this aspect of Community social policy.

5. Agriculture

The Communities agricultural policy of structural change is in certain respects as much a part of its social as of its agricultural policy. It has only limited application to British farms, except to hill and upland farms in North England, North and West Scotland and mid-Wales. Certain aspects of Community legislation were applied by the Agriculture (Miscellaneous Provisions) Act 1972 and other provisions will be implemented by delegated legislation. To date the United Kingdom Parliament has suffered only a limitation of power in this sphere, but loss of power is to be expected if the structural agricultural policy is developed.

6. The European Social Fund

(a) Article 123 establishes a Social Fund with the aims of rendering the employment of workers easier and of increasing their mobility in the Community. Assistance is to be given to Member States from the Fund on certain conditions: Regulations Nos. 2396/71 and 2397/71, added to the social policies which could attract assistance from the Fund those dealing with problems arising from technological change and industrial reorganisation, such as training and rehabilitation.

(b) These social matters are frequently regulated by legislation in the House of Commons and are a matter within its legislative

competence. While there is no compulsion upon the United Kingdom Government to order its social policy so as to attract 50 per cent assistance from the Social Fund under Decision 71/66, it would seem unlikely that it would do otherwise, given that Member States are obliged to contribute to the Fund, through payments to the 'own resources' of the EEC. In these circumstances, the United Kingdom Parliament would appear to have suffered a limitation of power, though only from the operation of the Fund.

C. GENERAL CONCLUSIONS

The loss of power by national Parliaments as regards social policy is not great. At the present stage of Community development the losses are mainly in the areas of migration of workers, the determination of certain general principles and the financial cover of specific social intervention measures. On closer examination, the following main points emerge:

(a) Loss of power at legislative level is not to be confused with loss at administrative level. Freedom of movement and social security for migrant workers usually involve transfers of power at administrative level.

(b) At purely legislative level the loss of power takes the form of compliance with a European 'outline' social law rather than actual deprivation of legislative power. The national Parliaments have not lost the power to legislate on social affairs; but they are compelled to implement the programme objectives of European social law, and are unable to legislate against 'positive' European social law.

(c) Community budgetary technique (see relevant chapter) is also reflected in a loss of power corresponding to the appropriations allocated to the Social Fund, provided from resources over which the national Parliaments no longer have any direct control.

CHAPTER XI. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES
(Articles 52-58 and 59-66 EEC)

A. GENERAL

I. Treaty Provisions

The aim of Community law on establishment and services is to ensure, in stages, that nationals of other Member States are given the same treatment as indigenous nationals. This also means access to professional occupations and the exercise thereof in any Member State.

The aims are to be achieved by:

(a) a ban on the introduction of new restrictions ('Standstill')(Articles 53-62);

(b) the abolition of existing restrictions (first paragraph of Article 52, Article 54(1 & 3(f)), Article 59, first paragraph of Article 63);

(c) the coordination of legislation (Articles 54(3)(g), Article 56(2), Article 57(2));

(d) the mutual recognition of diplomas, certificates and other evidence of formal qualifications (Article 57(1)).

The Treaty indicates limits and specifies the means; it therefore contains only general provisions. The implementation of secondary legislation is primarily a matter for the Council under the procedures specified in Articles 54, 57 and 63.

II. State of Secondary Community Legislation concerning the Right of Establishment and the Freedom to Provide Services

1. Directives of general application

(a) Abolition of all prohibitions on or obstacles to payments for services where the only restrictions on exchange of services are those governing such payments (Directive 340/63; OJ No. 86, 10 June 1963).

(b) Freedom of movement and residence within the Community for nationals of Member States (Directive 220/64; OJ No.56, 4 April 1964; abolition of restrictions);

(c) Coordination of special measures on grounds of public policy, public security or public health (Directive 221/64; OJ No. 56, 4 April 1964).

2. Trade, industry and agriculture

(a) Trade

- Wholesale trade
  (Directive 223/64; OJ No. 56, 4.4.1964; abolition of restrictions);
- Intermediaries in commerce, industry and small craft industries
  (Directive 224/64; OJ No. 56. 4.4.1964: abolition of restrictions);

The above two directives are supplemented by a directive on the terms of transitional measures (Directive 222/64; OJ No. 56, 4.4.1964).

- Retail trade
  (Directive 363/68; OJ No. L 260, 22.10.1968: abolition of restrictions);
  Directive 364/68; OJ No. L 260, 22.10.1968: transitional measures);
- Wholesale coal trade
  (Directive 522/70; OJ No. L 267, 19.12.1970: abolition of restrictions);
  Directive 523/70; OJ No. L 267, 19.12.1970: transitional measures).

Conclusion

The right of establishment and freedom to provide services has been attained for all commercial activities, subject to the final adoption of directives on poisonous substances by the Council, and with the exception of the retail tobacco trade and itinerant trade, for which the Commission submitted proposals on 4 June 1970.

(b) Mining, electricity, gas, water

- Mining
  (Directive 228/64; OJ No. 117, 23.7.1964: abolition of restrictions);
- Electricity, gas, water and sanitary services
  (Directive 162/66; OJ No. 42, 8.3.1966: abolition of restrictions);
- Exploration (prospecting and drilling) for petroleum and natural gas
  (Directive 82/69; OJ No. L 68, 19.3.1969: abolition of restrictions);

Conclusion

This sector has been completely liberalised.

(c) Industry and small craft industries

- Manufacturing and processing industries (industry and small craft industries
  (Directive 429/64; OJ No. 117, 23.7.1964: abolition of restrictions);
  Directive 427/64; OJ No. 117, 23.7.1964: transitional provisions);
- Food manufacturing and beverage industries
  (Directive 365/68; OJ No. L 260, 22.10.1968: abolition of restrictions;
  Directive 366/68; OJ No. L 260, 22.10.1968: transitional provisions).

Conclusion

The right of establishment and freedom to provide services has been attained for all industrial activities, subject to the final adoption by the Council of directives on various activities and with the exception of itinerant activities, for which the Commission submitted proposals on 4 June 1970.

(d) Service undertakings

- Real estate and certain other business services
  (Directive 43/67; OJ No. 10, 19.1.1967: abolition of restrictions);
- Restaurants, cafés, taverns and other drinking and eating places, hotels, rooming houses, camps and other lodging places
  (Directive 367/68; OJ No. L 260, 22.10.1968: abolition of restrictions;
  Directive 368/68; OJ No. L 260, 22.10.1968: transitional measures).

Conclusion

All activities in the services sector have been liberalised subject to the final adoption by the Council of directives on various activities and with the exception of itinerant activities and hairdressing, for which the Commission submitted proposals on 4 June 1970 and 29 July 1971 respectively.

(e) Agriculture

Attainment of freedom of establishment on agricultural holdings abandoned or left uncultivated for more than two years (Directive 262/63; OJ No. 62, 20.4.1963);

Attainment of freedom of establishment in agriculture in the territory of a Member State in respect of nationals of other countries of the Community who have been employed as paid agricultural workers in that Member State for a continuous period of two years (Directive 261/63; OJ No. 62, 20.4.1963);

Attainment of freedom to provide services relating to agriculture and horticulture (Directive 1/65; OJ No. 1, 8.1.1965);

- Application of the laws of Member States relating to agricultural leases to farmers who are nationals of other Member States (Directive No. 531/67; OJ No. 190, 10.8.1967);

- Freedom of nationals of a Member State established as farmers in another Member State to transfer from one holding to another (Directive 530/67; OJ No. 190.10.8.1967);

- Freedom of access to cooperatives for farmers who are nationals of one Member State and established in another Member State (Directive 532/67; OJ No. 190, 10.8.1967);

Attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in forestry and logging (Directive 654/67; OJ No. 263, 30.10.1967);

Freedom of access to the various forms of credit for farmers who are nationals of one Member State and established in another Member State (Directive 192/68; OJ No. 93, 17.4.1968);

Freedom of access to the various forms of aid for farmers who are nationals of one Member State and established in another Member State (Directive 415/68; OJ No. 308, 23.12.1968);

Attainment of freedom of establishment in respect of self-employed persons providing agricultural and horticultural services (Directive 18/71; OJ No. L8, 11.1.1971);

Conclusion

The right of establishment and freedom to provide services have been attained for all forestry activities and ancillary activities in agriculture and horticulture, only in relation to certain rights. The right of establishment in agriculture has so far only been attained for certain agricultural employees and certain holdings (abandoned or left uncultivated).

A proposal for a directive on the full attainment of the right of establishment in agriculture was submitted by the Commission on 3 February 1969.

3. Professional occupations

Film industry*

Two directives (Directive 607/63; OJ No. 159, 2.11.1963 and Directive 264/65; OJ No. 85, 19.5.1965) implementing in respect of the film industry the provisions of the general programme for the abolition of restrictions on freedom to provide services.

Attainment of freedom of establishment in respect of activities of self-employed persons in film distribution (Directive 369/68; OJ No. L 260, 22.10.1968: abolition of restrictions).

Attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in film production (Directive 451/70; OJ No. L 218, 3.10.1970: abolition of restrictions).

4. Insurance, banks and financial institutions

Abolition of restrictions on freedom of establishment and freedom to provide services in the field of reinsurance and risk-sharing (Directive 265/64; OJ No. 56, 4.4.1964).

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* With the exception of the specialised sector of the film industry and despite the advanced state of discussion at Council level, no other directive concerning the liberal professions has so far been issued.

5. Company law

First Council directive - 68/151 (OJ No. L 65, 14.3.1968) - on coordination of safeguards which, for the protection of the interests of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.

6. Public works contracts

The Community has adopted three directives in this matter:

(a) Commission Directive of 17 December 1969 concerning supplies of products to the State, to its regional or local authorities and to other legal persons governed by public law(OJ L 13, 19 January 1971);

(b) Council Directive of 26 July 1971 concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contracts to contractors acting through agencies or branches (OJ L 185, 16 August 1971);

(c) Council Directive of 26 July 1971 concerning the coordination of procedures for the award of public works contracts.

III. Freedom of establishment in Benelux

The Benelux Union Treaty of 1958 grants to the citizens of the participating States the freedom to enter and leave the territory of any Member State, and guarantees the same treatment as nationals as regards freedom of movement, residence and establishment, the pursuit of economic and professional activities, including the supply of services, capital transactions, working conditions, social security rights, taxation, civil rights and legal protection.

An exception is made in the Implementing Agreement of 1960 as regards testing the freedom of establishment against the requirements of public policy and safety, public health and morality (there are no exceptions made on the grounds of morality in the corresponding articles of the EEC Treaty).

One difference from the EEC right of establishment lies in the exceptions which the Member States can make. While both treaties exclude public office from freedom of establishment, the provisions of the Benelux Treaty also exclude other professions and services, for instance lawyers, pilots, harbour services and in one country, namely Luxembourg, medical and paramedical professions as well. The freedom of establishment for these professions can be arranged, however, by means of implementing agreements on the lines proposed by draft EEC directives (Article 233 EEC).

One further difference from the EEC right of establishment is that the Union Treaty does not include any commitment to harmonise the national regulations in regard to the recognition of diplomas.

All implementing agreements concluded on the basis of the Benelux Union Treaty are self-executing in character. The corresponding EEC rules, which go further than the Benelux rules in regard to the right of establishment, are cast in the form of directives, which by definition are not self-executing.

B. SITUATION IN THE INDIVIDUAL MEMBER STATES

I. BELGIUM

1. The rules governing aliens in occupations in Belgium wwere contained in Royal Decree No. 62 of 16 November 1939, ratified by the law of 16 June 1947. Under the terms of these provisions, aliens wishing to undertake an independent occupation for gain had to hold a professional card.

   This text was repealed and replaced by the law of 19 February 1965 relating to the exercise of independent occupations by aliens.

   Article 2 of the law of 19 February 1965 provides that:
   'The Crown may exempt certain categories of aliens from the obligation referred to in Article 1 (carte professionelle) as it shall decide... or when a similar condition is imposed on Belgium by international treaties or is desirable on the basis of reciprocal arrangements.'

2. The conditions of entry, residence and establishment of aliens in Belgium are governed by the Royal Decree of 21 December 1965, amended inter alia by the Royal Decree of 11.7.1969. This is based on the law of 28 March 1952, as amended by the law of 30 April 1964 and that of 1 April 1969. Directive 221/64 was introduced into Belgian law by the law of 1 April 1969 (grounds for appeal).

3. The transitional measures (recognition of the actual exercise of an activity) have formed the subject of several royal decrees based on the law of 24 December 1958, allowing conditions for the exercise of an occupation to be established in undertakings in the craft industry, small and medium-sized businesses and small industries, as amended by the law of 8 July 1964. The law of 24 December 1958 has been replaced in the meantime by that of 15 December 1970.

4. Directive 607/63 relating to the film industry formed the subject of royal decrees based on the budgetary law of 1963 and Article 29 of the Constitution.

5. The Government has submitted a bill empowering it, in the matter of public contracts for work, supplies and services, to take by a decree adopted in the Council of Ministers any measure necessary to ensure the fulfilment of the obligations resulting from the EEC Treaty and the international acts adopted in accordance therewith; such measures may include the repeal or amendment of legal provisions. This delegation of power was sanctioned by the law of 20 July 1973.

So far, no text has been recorded which has been adopted in application of the law of 20 July 1973. This law resembles that of 18 February 1969 on transport and the same comments apply.

6. Conclusion

Before the Community directives came into force, the matters in question were already, for the most part, the responsibility of the Government to which the legislative power had been delegated for this purpose.

II. DENMARK

1. Right of Establishment

In Denmark restrictions regarding nationality, residence, location of registered office and permission to provide certain services are normally found in parliamentary legislation. As they are rather numerous, the Danish Act of Accession (Article 5) authorises the competent Ministers of the Government to amend national law insofar as is necessary to comply with the EEC rules regarding the restrictions referred to above. Consequently the Folketing was able to avoid amending a great number of laws*. In other cases it has been necessary for the Folketing itself

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* The authorisation was intended to be used, inter alia, in respect of the following laws:
  1. Sparekasselov, 1 bkg. 8,15/1,1960;
  2. Banklov, 1 bkg. 169, 15/6,1956;
  3. Lov om Ejendomsmaeglere, 1. 218 8/6,1966;
  4. Lov om Statsautoriserede Revisorer, 1. 68, 15/3,1967;
  5. Lov om Restaurations - og Hotelvirksomhed, 1. 121, 25/3, 1970;
  6. Lov om Udøvelse af Erhverv i Grønland 1. 277, 27/5, 1950;
  7. Lov om Film og Biografer, 1. 236, 7/6,1972;
  8. Lov om Statens Udland til Jordbrugsmaessige Formal, 1. 181,28/4,1971;
  9. Lov om Saltsvandsfiskeri, 1. 195, 26/5, 1965;
  10. Sømandslov, 1. 229,7/6, 1952;
  11. Lov om Translatører og Tolke, 1. 213, 8/6, 1966.

to make amendments. Generally speaking there has been a considerable loss of power in this field because of the extensive liberalisation in respect of establishment and the supply of services. The Establishment rules for the agricultural sector can be maintained until 1978, since Denmark has been allowed to defer the obligation to effect a certain liberalisation in the field of agriculture, dealt with in Directives 261/63, 262/63, 530/67 and 531/67 (see Part A of this chapter). Thus, the Folketing has not yet lost power in this field.

(a) Purchase of land

The right to acquire real property is regulated by the 'Law on the acquisition of real property*. Ministerial permission for the purchase, etc. of land is no longer necessary for EEC persons and companies if the transaction is related to establishment as defined here. Before accession the above law was applied very liberally so that in fact the obligation to allow purchases, etc. in connection with establishment and employment by people and companies from other EEC countries has not caused Denmark to alter her practice. It should be added that the EEC rules do not compel Denmark to allow land purchases unconnected with professional establishment or employment. The Government and/or the Folketing may regulate such purchases as long as it does so without national discrimination (cf. Article 7 of the EEC Treaty).

(b) Company Law

The Directive concerning the coordination of guarantees for the protection of company partners and third persons in certain companies has compelled the Folketing to amend the old 'Company Law'** and it has adopted a new law. The new 'Company Law' also contains rules on limited companies. The loss of power by the Folketing in this field is not very great.

2. Services

As regards provision of services, the Folketing had to amend the 'Law on Admission of Aliens'*** - a natural and necessary parallel to the amendments in legislation that must otherwise be made to permit establishment, etc.

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* 'Lov om erhvervelse af fast ejencom' Law No. 344, 23.12.1959

** 'Aktieselskabslov' Law No. 123, 15.4.1930

*** 'Lov om udlaendinges adgang til landet' Law No. 224, 7.6.1952
cf. Directives 220/64 and 221/64

The 'Law on the Right to Trade'* lays down that in order to establish themselves in trade, the crafts, industry, etc., people must obtain a professional card and should be of Danish nationality. Under this Act foreigners may obtain this card as well if the craft or profession is governed by an international agreement.

As a consequence of the directives concerning freedom to provide services in respect of public building and construction works the Folketing cannot introduce any new restrictions or freedom. In future it will not be possible to reserve public contracts for national contractors and thus support Danish business firms.

3. Conclusion

The EEC rules result in a major loss of power by the Folketing, which previously had general power to regulate such matters. As the Folketing has hitherto followed a liberal policy in this field, and Denmark has been bound by similar obligations under the EFTA Convention, the de facto changes resulting from EEC membership are still relatively slight. To some extent the Government can still regulate land purchase by way of permits. Furthermore, the Government can extend its control over the purchase of land for farm use until 1978.

III. FEDERAL REPUBLIC OF GERMANY

Under Article 74 (4 & 11) the right of establishment and freedom to provide services in the Federal Republic come under the authority of both the Federal Government and the Länder, on a complementary basis.

1. The provisions of the Aliens Law and of the law on the entry and residence of nationals of EEC Member States (see Social Policy, Section X) are applicable also to self-employed persons. The Bundestag has lost power in this area, but only to a limited extent because obligations similar to those laid down in Community legislation had already been provided for under bilateral treaties (see Social Policy, Chapter X).

2. Right of establishment

The Industrial Code of 27 July 1900, last amended on 23 November 1973, contains comprehensive provisions regulating the exercise of activities by a self-employed person. Article 1 of this law lays down the principle

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* 'Naeringslov' Law No. 212, 8.6.1966

of freedom to conduct business. This freedom may, however, be restricted by law. There are no general restrictions on aliens in respect of business or professional activities. The legislature reserved only certain activities for nationals in individual cases. In these cases, German law has been adjusted to meet the requirements of Community law for EEC nationals, and this has resulted in a loss of power by the Bundestag. These are as follows:

- The restriction of the right to acquire real property maintained in several Länder was abolished by the Federal law of 2 April 1964;

- Under Article 55(d) of the Industrial Code, the right to conduct the tourist trade is limited by the precedence given to EEC rulings on the pursuit of this activity by aliens;

- Under Article 12 of the Industrial Code, authorisation is required for a foreign body corporate to pursue business activity. By the law of 13 August 1965, however, the Bundestag exempted bodies corporate based in the EEC from this requirement.

Further laws contain different regulations for nationals and non-nationals which means that the Bundestag may expect further losses of power as the right of establishment is implemented.

Examples: activities of pharmacists, coastal shipping, inland aviation, doctors, veterinary surgeons, dentists, patent agents, notaries, tax advisers, chartered accountants.

3. Freedom to provide services

In the Federal Republic the same provisions apply to services as to establishment.

4. Conclusion

There are numerous special regulations governing non-nationals in the Federal Republic in respect of freedom of establishment and freedom to provide services. Hitherto, the Bundestag has lost relatively little power in this field through the implementation of the objectives set out in the relevant section of the EEC Treaty and by virtue of the obligation of Member States not to introduce any new discrimination.

IV. FRANCE

1. Right of establishment

The right of establishment in France has been covered by a considerable amount of French legislation, some of which has been applied by decrees and orders, insofar as it fell within the 'regulatory domain'. Other enactments were considered to fall within the 'domain of the law', which is Parliament's responsibility. As there seemed to be a fairly large number in the latter category, the Government asked Parliament, in view of the traditional slowness of Parliamentary procedures, for wide power enabling it to apply Community directives by means of ordinances.

These enabling laws, requested under Article 38 of the Constitution, were passed by Parliament, subject to later ratification of the implementing orders adopted by the Government.

To apply the Community directives, the Government asked Parliament to pass three laws of delegation of power under Article 38 of the Constitution: the law of 14 December 1964, the law of 6 July 1966 and the law of 26 December 1969.

The first two laws are worded as follows:
'The Government is authorised to adopt by order, before 1 January 1966 (law of 1964), under the conditions referred to in Article 38 of the Constitution, the measures normally falling within the area of the law and necessary to ensure application of the EEC Council directives, with a view to the progressive attainment of freedom of establishment and the freedom to provide services within this Community'.

The 1966 law gives the Government a deadline of 31 December 1969 for adopting the orders (end of the transitional period) and that of 1969 gives a deadline of 31 December 1972. The 1969 law, however, restricts the Government since it stipulates that the orders must be submitted for parliamentary approval as and when they are published and not on expiry of the time limit.

No order was adopted under the 1964 law, but five were adopted under the 1966 enabling law and two under that of 1969.

Parliament's power is not reduced since Article 38 of the Constitution obliges the Government to present bills ratifying the orders it adopts, within the time limits laid down in the enabling law itself, otherwise they are no longer valid.

However, the Government, although presenting these ratification bills, may also refrain from including them in the Assembly's agenda if it has a 'priority agenda'. This is what happened in the case of the five orders adopted under the 1966 enabling law: the bills for ratification were indeed presented by the Government, but they never appeared on the Assembly's agenda.

The situation changed with the two orders adopted under the 1969 law, namely: order 72-447 of 1 June 1972 (licensed victuallers) and order 72-1242 of 29 December 1972 (Business identity card for aliens). The Senate placed the bills of ratification on its agenda on its own authority, and the Assembly decided likewise: on 27 June 1973 the bill of ratification was debated in the Assembly.

During the debate the rapporteur sought to show that in practice Parliament had lost the relevant power: either to the Government when the latter refrained from including the bills of ratification on the priority agenda (the 1966 case) or again to the Communities, insofar as it cannot make amendments to the said orders without amending Council decisions. In reply to the rapporteur, the Minister for Trade thought that consultation of Parliament at this stage was a pure formality and that its role (if it still had one) consisted solely in confirming the application of Government orders on French territory. To assist in this supervision, the Minister also gave a solemn undertaking to 'make a statement to Parliament on the implementation of the orders next spring'*.

2. Conclusions

In fact, the Government's responsibility is limited to providing Parliament with information. There is a loss of power in favour of both the Council of the Communities and the Government. Orders which are not ratified will be considered as regulatory measures and therefore open to dispute in the administrative court (Council of State) by those affected, whereas ratified orders are laws and therefore cannot be contested.

In practice, the French Parliament has lost power in respect of the application of Community decisions concerning the right of establishment.

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* National Assembly, Debates of 27.7.1973

V. IRELAND

1. Right of Establishment

Of particular interest to Ireland are directives relating to:

(a) Purchase of land

Under the Land Act, 1965, all non-nationals who have not lived in Ireland for at least seven years require the consent of the Land Commission to acquire land for farming. Any change in this requirement to enable nationals of Member States to acquire farms would have required amending legislation before accession.

(b) Company law

Compliance with the Directive regarding the safeguards required of companies, e.g. disclosure of accounts, etc. in the interest of shareholders and the general public would, before accession, have required amendment of the Companies Act 1963.

(c) Mining and exploration for oil and natural gas

Present legislation provides for the granting of facilities for exploration and exploitation of natural resources by way of licence or lease granted by a member of the Government on certain conditions. The Government's policy is to grant facilities for mineral and petroleum exploration to non-nationals and nationals on equal terms. No loss of power arises in this regard.

2. Ireland operates a liberal regime regarding the right of establishment and the supply of services by non-nationals in sectors covered by other directives adopted by the Community. No transitional arrangements were necessary for their implementation (apart from a six month period to allow certain procedural changes to be made in regard to public works contracts).

3. Conclusion

Changes in the law relating to the matters mentioned in (a) and (b) above may be made by way of regulations made by a member of the Government under section 3 of the European Communities Act, 1972. These regulations may be annulled by Parliament in certain circumstances. Moreover the power of Parliament will be further limited with the issue of each new directive which, before accession, would have required amending legislation.

VI. ITALY

1. In Italy the following provisions have been made for the implementation of Community directives:

   (a) Law No. 178 of 17 March 1965 which, in implementation of Directive No. 225/64 (reinsurance), abolished the restriction contained in Article 73 of the consolidation act embracing the laws on the exercise of private insurance (D.P.R. 13.2.1959, No. 449);

   Law No. 1213 of 4 November 1965, in application of Directive 264/65 on freedom of establishment and freedom to provide services in respect of the film industry;

   Law No. 22 of 8 March 1968 abolishing the particular requirements demanded of aliens in regard to the operation of services for the collection, transport and disposal of solid waste. This law implements Directive No. 43/67;

   (b) By decrees of the President of the Republic, issued in accordance with the laws made under delegated power No. 871 of 13 July 1965 and No. 740 of 13 October 1969 which authorised the Government to take the necessary measures in regard to the EEC Treaty. The following are some of the most important decrees:

   - DPR. 29.12.1969 No.1227, implementing Directive No. 68/51 on company regulations. This decree makes considerable changes to the Civil Code in regard to limited companies;

   - D.P.R. 29.12.1965 No. 1660 on harmonisation of the conditions applying to intermediaries (decree adopted in implementation of Directive No. 224/64).

   (c) Ministerial decrees (D.M. of 13.6.1967) on freedom of establishment and freedom to provide services in respect of activities of citizens of Member States as valuers and experts, in implementation of Directive 43/67.

   (d) Finally, by ministerial memoranda containing instructions of a technical nature for the implementation of certain directives.

2. The many directives in this field constitute an indivisible collection of legislative rules inasmuch as they emanate from the same decision-making body (the Council) and are based on a single 'ratio legis': the abolition of restrictions as provided for in the Treaty.

It is obvious that legislative power has been taken away from the national Parliament to the extent that it is exercised by the Council.

Therefore, even though at national level the implementation of a regulation issued by the Council begins with formal laws (as is the case in the implementation of the directives mentioned at the beginning of paragraph 2), the fact remains that Parliament's function has been rendered void in this area.

The same could be said of the cases in which directives have been implemented by means of ministerial or legislative decrees: here again Parliament is deprived of its power not only as the initiator but also as the 'executor' of the directive to be applied.

3. Conclusion

Loss of power by Parliament as regards amendments to be made to the national legislation in order to achieve freedom of establishment and freedom to provide services.

VII. LUXEMBOURG

1. The law of 2 June 1962* laying down the conditions of access to and exercise of certain occupations, and those governing the establishment and operation of undertakings, also gives rules on the right of establishment of aliens. This law makes the exercise of certain occupations subject to written authorisations from the Minister of Economic Affairs (Article 1). The following are subject to this regulation: businessmen and manufacturers; representatives, agents, brokers and commercial travellers; craftsmen, architects and self-employed engineers.

   Permission is granted following administrative enquiries and is non-transferable, revocable and generally for an indefinite period.

   Articles 19, 20 and 21 of the law define the conditions governing the pursuit of occupations by aliens. The basic principle is that permission to pursue an occupation under the same conditions as Luxembourg nationals is granted to nationals of countries which guarantee the same right to Luxembourg nationals (Article 19). Except for industrial undertakings the validity of the permission granted to aliens is limited to two years.

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* 'Memorial' 1962, p.488

This law repeals a number of Grand-Ducal decrees making the pursuit of certain occupations subject to Government permission, in particular those of 14 August 1934, 29 August 1935 (horticulture), 23 May 1938, 31 December 1938 (craftsmen) and 27 May 1937 (insurance transactions).

2. The conditions of entry and residence for aliens in Luxembourg are regulated by the Grand-ducal decree of 31 May 1934 introducing the aliens' identity card; this has been amended several times.

Council Directives 220/64 and 221/64 were introduced in Luxembourg by the Grand-Ducal decrees of 11 April 1964 (amending the decree of 1934) and 3 December 1968 and the ministerial regulation of 11 April 1964.

3. The law of 2 June 1962 stipulates that professional qualifications are required, except for industrial activities (Article 6). Further details are given in Article 7 of the law.

Trade sector: Professional qualifications are required for all branches except itinerant occupations; the applicant for establishment must hold a certificate of professional ability or a diploma recognised as equivalent by the Minister of Economic Affairs on the basis of an opinion from the administrative committee set up pursuant to the law of 2 June 1962.

Industrial sector: Professional qualifications are not required for industrial activities except for industrial buildings; the qualification required for these is the certificate of competence or recognised equivalent.

Craftsmen: Must be in possession of a certificate of competence or equivalent, with the exception of one category of craftsman listed (in accordance with the law of 1962) in the Grand-Ducal regulation of 9 September 1963.

Recognition of the diplomas and certificates required for commercial activities, craftsmen and building firms (and this is of particular interest for the establishment of aliens) is a matter for the Minister of Economic Affairs who takes his decision on the basis of an opinion from an administrative committee.

4. Conclusions

(a) The Luxembourg legislature has defined the general conditions governing access to and pursuit of certain occupations by aliens on the basis of reciprocal arrangements for Luxembourg nationals

abroad. Establishment permits are issued by the Executive (the Minister). The legislature does not seem to have lost any power as a result of the application of Community directives (apart perhaps from the fact that it cannot make any fundamental changes to the system in existence since the law of 1962), in view of the wide scope of the 1962 law.

(b) The conditions of entry and residence for aliens in the Grand Duchy are regulated by the Executive, even the recognition of diplomas, etc., which is based on the 1962 law.

VIII. THE NETHERLANDS

1. The situation before 1958

The conditions governing establishment were laid down by the Industrial Establishment Order of 1954 and the law on the Employment of Aliens. The law made policy on admission and establishment a matter for the Ministers of Justice and Economic Affairs.

2. Right of establishment

The Government was made responsible for implementation of EEC directives under the Aliens Act 1965. A Royal Decree (1966) empowered the Minister of Justice to implement the admission policy in regard to the supervision of aliens. The Industrial Establishment Order of 1954 made the Minister of Economic Affairs responsible for the policy on establishment.

The Netherlands legislation already largely conformed to the directives issued by the EEC Council, and where this was not so, it has been amended or adapted by the Executive body designated by the above acts. Since the transitional period for certain exceptions in the freedom of establishment under the Benelux Union Treaty expired (roughly 1963), there has been a regulation for the Benelux area (see note on Benelux).

EEC Directives 220/64 and 221/64 are implemented in the Netherlands by a Royal Decree under which further implementation is the responsibility of the Minister of Justice. The other directives are also implemented at ministerial level, unless the matter has been regulated in like manner in accordance with the Benelux law on establishment.

Only in the case of implementation of Directive 151/68 on safeguards in company law was an amendment needed and this has now been carried out. The Commercial Code and the Commercial Register Act were amended after the

Commission of the European Communities had delivered an opinion on the preliminary draft. This opinion was published in the Parliamentary Proceedings (Doc. 10 400, 1970-1971).

3. Conclusions

In fact Community legislation iin this area has scarcely modified the power of the States-General. The principle of liberalisation had already been accepted before 1958, (Benelux); moreover, the States-General had relinquished to the Government the power to grant exceptions for certain categories of aliens as far as the right of establishment is concerned. They now do so in application of the EEC directives.

IX. UNITED KINGDOM

1. Right of establishment

(a) In the United Kingdom, Parliament has traditionally been concerned to regulate the immigration of aliens (and, particularly in the last ten years, of Commonwealth immigrants). The most recent Act of Parliament in this field is the Immigration Act 1971, which amended and replaced the existing immigration laws. Power was given to the Government to regulate by delegated legislation the entry into and stay in the United Kingdom of persons from Member States and from the Commonwealth. Under this power, the British Parliament agreed to rules for this purpose in late 1972, which brought United Kingdom law into conformity with the numerous directives of the Council enjoining the grant of rights of establishment and freedom to provide services.

(b) Control of permission to work in the United Kingdom has also been exercised through legislation, which has usually left a fairly wide measure of discretion to the Government, subject to Parliamentary approval of delegated legislation.

(c) In both these fields, the Council directives applying the provisions of the EEC Treaty involve a loss of power to the United Kingdom Parliament. In practice, this has not so far been extensive, as before Accession the law in relation to the entry of aliens (i.e. immigrants from foreign countries) and their freedom to establish businesses in the United Kingdom was reasonably liberal.

2. Ancillary rights

The Council directives also require that Member States should ensure that nationals from other Member States should have the right to join professional or trade organisations under the same conditions as their own nationals. Although some aspects of membership of bodies such as trade unions are regulated by statute, in general membership of professional and trade organisations has not been the subject to Government or parliamentary control. The implementation of this item of the directives is at present therefore primarily a matter for the Government, which must ensure compliance with it. If legislation is ultimately required, Parliament would clearly lose some power but in a field where it has not previously legislated to a great extent.

3. Company law provisions

The principle of the Council Directive 151/68 is the disclosure of information regarding various aspects of the operations of a company and liability for certain of its acts. The Companies Act 1948 regulated the disclosure of information by companies, and further disclosure was, inter alia provided for by the Companies Act 1968. In order fully to comply with the directives, however, the European Communities Act 1972 which made legislative provision for the accession of the United Kingdom to the Communities, amended the Companies Acts to secure compliance with Directive 151/68.

There has therefore been a loss of power to the United Kingdom Parliament in this field, which has for many years been subject to legislation. This loss has, however, had a limited effect in practice, owing to the existence of legislation in this field antecedent to accession.

4. Conclusions

(a) Parliament has suffered a loss of power in regard to Directives of the Council liberalising the right of establishment and freedom to provide services in Member States. In practice, however, the effect of this loss has been limited.

(b) A limited loss of power may be suffered by the United Kingdom Parliament in regard to membership by nationals of other Member States of professional or trade associations.

(c) A loss of power has been experienced in regard to disclosure of information by companies, but the effect of this is in practice limited by the existence before accession of similar provisions in United Kingdom company law.

CHAPTER XII. BUDGETARY POWERS

A. GENERAL
   I. Introduction

B. TREATY PROVISIONS
   I. Adoption of the Budget
      1. Income
      2. Expenditure

   II. Financial control

A. GENERAL

I. Introduction

1. The national Parliament of each Member State has the right to adopt the budget and to audit the accounts: each Parliament exercises these rights effectively.

   This chapter will therefore be restricted to a brief outline of the main treaty provisions governing adoption of the budget and financial control.

2. Other aspects have been omitted, e.g. the size of the Community budget, or the manner in which it is implemented. These aspects of the question have been passed over in order to concentrate on the legal position.

B. TREATY PROVISIONS

Two subjects are dealt with here: the adoption of the budget and control of its implementation. Details on the right to impose taxation will be found in Chapter VIII.

I. Adoption of the budget

The loss of power varies according to whether income or expenditure is involved.

1. Income

The transfer of 'own resources' to the Community has been effected gradually. The EEC Treaty does not confer direct fiscal power on the EEC*.

Three distinct periods may be distinguished:

(a) Financial contributions from Member States up to 1970. The Member States included in their budgets, as expenditure or income, the contributions paid or refunds received under the heading of administrative, agricultural, social and Euratom expenditure; national parliaments kept control over these incoming and outgoing payments.

(b) Financing in full from 'own resources', due to begin in 1975. The national parliaments will lose control over these resources, consisting of agricultural levies, customs duties and a proportion of VAT. The loss of power over customs duties and agricultural levies, caused by the introduction of the customs union and the common agricultural policy, affects the Parliaments' right to decide on the type and size of revenue. Their right to dispose of this income, was taken away by the decision of 21 April 1970.

(c) Mixed financing, from 1971 to 1974.
The parliaments of the Member States retain control over the supplementary fraction of Community income made up of financial contributions, and hence over their annual increase or decrease, which is a decisive factor. The Treaty of Accession provides that the new Member States shall pay contributions rising from 45 per cent in 1973 to 92 per cent in 1977 and 100 per cent in 1978. This means that these States will retain a certain proportion of customs duties and agricultural levies. But like the parliaments of the original six States, the parliaments of the new Member States no longer have any power to change the size of resources.

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* The ECSC Treaty confers limited fiscal power on the Community (Article 49 of the ECSC Treaty)

Furthermore, if a uniform basis for assessing VAT is not laid down in all the Member States in 1975, those not ready for harmonisation will have to pay a 'financial contribution'. In the light of this obligation the Member States' parliaments retain their right to approve the nature of the resources to be allocated for this purpose (Article 4(2) and (3) of the decision of 21 April 1970).

This development means:

(i) that the Parliaments of the Member States have lost power over financial contributions. They no longer approve the amount itself but only the manner in which it is provided;

(ii) that in the matter of 'own resources' they have lost all power of consent within the 1 per cent VAT limit since this is laid down in the decision of 21 April 1970.

As far as the resources of the Community are concerned, power remains limited; the unanimous agreement of the Member States is required to exceed the 1 per cent VAT ceiling; the Commission has proposed (in October 1973) that this be authorized by a Community procedure.

The European Parliament has no fiscal power at present. Beginning in 1975 it will be able to decide on the amount of the tax - provided that VAT is harmonised - since the VAT rate will be fixed under the budgetary procedure (Article 4(1) of the decision of 21 April 1970).

2. Expenditure

The Parliaments of the Member States lost their power of control over expenditure - i.e. their vote on the Budget - as soon as the EEC Treaties were signed. The right to decide on budget expenditure has passed to the Council of the Communities, which must consult the European Parliament on this question.

With the Treaty of 22 April 1970, the rights of the European Parliament were extended, but at the sole expense of the Council of the Communities. Consequently, the loss of power in this area by national parliaments occurred only in 1952 and 1958, (and 1973 in respect of new Member

States)*. The power thus lost relates to both the amount and allocation of expenditure.

On the expenditure side, the size and allocation of the Community budget is restricted only by the objectives of the Treaties. Income and expenditure must, however, be balanced.

II. Financial control

The National Parliaments lost all responsibility for auditing Community expenditure with the entry into force of the EEC Treaty in 1958 and 1973.

In the case of the European Economic Community, the Council and the Parliament give a discharge to the Commission of the Communities, on the basis of an annual report submitted by the Audit Board.

The Parliaments of the Member States (except those of Ireland and the United Kingdom) could, however, deliver opinions directly on the accounts of the Community established by the EEC Treaty, when they come to discuss their national accounts and the amounts paid to the Community as financial contributions**.

The new 'own resources' created on the basis of Articles 201(EEC) will be audited by both the national and the Community authorities, as these resources are collected by national governments on behalf of the Community.

In conclusion, the parliaments of the Member States have lost responsibility for auditing expenditure. In the case of income, responsibility is shared.

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* This is the position adopted in France by the Constitutional Council and in Luxembourg by the Council of State when the treaties and decisions of 21 and 22 April were ratified. See selected documents 'The European Communities' own resources and the budgetary powers of the European Parliament - the debates on ratification' (October 1971). The objection of unconstitutionality was refuted by the argument that:

1. own resources were created on the basis of Article 201 of the EEC Treaty, already approved in 1957;
2. budgetary powers have been reallocated between them alone.

Although in France these arguments were sufficient to clear up any constitutional difficulties, in Luxembourg a special majority vote had to be taken on the bill relating to own resources.

** This does not apply in the case of the ECSC whose own resources have always been collected direct from the undertakings.

PART FOUR - SUMMARY AND CONCLUSION

It is, of course, not the function of the Directorate General for Research and Documentation to draw conclusions from its studies. To attempt to do so would inevitably prejudice the neutral and objective position its officials must at all times adopt if they are to retain the confidence of Members of Parliament in the integrity of their work. In this particular study, covering a very controversial area, it was especially important to keep to the facts and to avoid as far as possible subjective judgements. As already noted, every effort was made to check the information used with officials of the Parliaments or Administrations of the member countries, and the Directorate General is most grateful for the help it received in this field. However, these officials cannot, of course, be held responsible for the errors which must inevitably occur in a document of this length. For all such errors the Directorate General would like to apologise in advance.

Besides its sheer length, the diversity and complexity of the subject matter also made it difficult to avoid mistakes, particularly mistakes of emphasis. To take an obvious example, the study shows that some Parliaments, notably the French, have clearly demarcated functions: certain matters come within their powers; other matters are allotted by the Constitution itself to the Government. Consequently, in many cases it was possible in discussing a certain power, now or in the future, to be exercised by the Community, to say that this power used, in any event, to be exercised by the French Government and that the French Parliament had no say in the matter. For other Parliaments the situation is very different. The British Parliament, for example, has always been regarded as 'omni-competent'. Consequently, any field of activity in which the EEC is making rules must, from some points of view, involve a loss of power to the British Parliament, even though that Parliament may have had no formal procedure for dealing with a particular matter. Commercial treaties with other countries, for instance, have never been the subject of a special parliamentary ratification procedure in Britain, but the absence of such a procedure would not have prevented the House of Commons from compelling the Government to refrain from ratifying a particular Treaty, if it felt strongly enough on the subject.

Other examples of the same difficulty of definition may be found throughout the study. One noticeable theme which recurs is the numerous occasions where national Parliaments, de jure or de facto, no longer exercise functions which have been delegated or transferred to the Executive. In many instances this delegation occurred long before accession to the Community. In other instances, it will have been seen from the text that a national Parliament theoretically possessed a certain power but, in fact, rarely or never exercised it: with such cases, it is not easy to decide whether or not a loss of power to a national Parliament has occurred.

The study also notes that this process of circumscription of power has occurred where member countries have joined other international organisations such as GATT and EFTA, thereby sharing certain powers, particularly in relation to trade. This process is, in fact, an inevitable consequence of joining any international organisation.

In this respect it is perhaps possible to discern in the study a difference of standpoint between the six original members of the Community and the three new ones. Having been part of the Community for a long time, opinion in the Six may have become accustomed to seeing parliamentary influence exercised in different ways. Membership of the European Parliament is the most obvious example, where Ministers (and Commissioners) can now be questioned and challenged in ways sometimes difficult to achieve in a national Parliament. But in their national Parliaments, also, the Six have devised procedures for exerting pressure upon their Ministers taking part in the decision-making of the Council. These procedures may be regarded, to a greater or lesser extent, as constituting, in effect, a new form of parliamentary power, although not of parliamentary control in the strict sense. The study notes that two of the Parliaments of the new member countries, Britain and Denmark, are also now establishing Committees with the specific aim of exploiting this field of parliamentary activity.

How far these new parliamentary activities, both in the European Parliament (particularly with the new budgetary power to be granted to it) and in national Parliaments, compensate for loss of the parliamentary power formerly held is certainly not for the Directorate General for Research and Documentation to assess.

These matters and, indeed, the contents of the paper as a whole, are for the consideration and judgement of Honourable Members of the Political Groups of the European Parliament who commissioned this project, and to whom it is respectfully submitted.