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Direct Elections to the European Parliament

by Dr. Peter-Christian Müller-Graff*

The Act of September 20, 1976 will allow the representatives to the European Parliament to be directly elected by the people of each Member State instead of being selected by the national legislatures. The author examines the background of the direct elections issue and the implications of this change for the future relationship between the new Parliament and the other Community institutions. He explains how direct elections will broaden the political base of the Community as a whole, and further the cause of European unity.

THE DECISION TO elect the members of the European Parliament by direct universal suffrage, rather than to permit the members to be selected by the national legislatures of each Member State, carries important implications for the future of the European Community (EC). It would be an oversimplification to view the Community in terms of a State Structure, as Hans Peter Ipsen, one of the leading German scholars of European Community law, has repeatedly pointed out.¹ However, the impact of direct elections can best be assessed through considerations of theoretical concepts developed by the study of traditional state structure schemes.

Direct elections will almost certainly result in increased prestige for the European Parliament. This will affect the separation of powers between the various bodies of the Community, as laid down in the foundation treaties.² Further, direct elections provide an opportunity

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¹ H. P. IPSEN, *EUROPÄISCHES GEMEINSCHAFTSRECHT* 163, 187, 317, 973 (1972).

² The Treaty Establishing the European Economic Community (Treaty of Rome), *done* Mar. 25, 1957, 298 U.N.T.S. 11, [hereinafter cited as EEC Treaty]; The Treaty Instituting the European Coal and Steel Community, *done* Apr. 18, 1951, 261 U.N.T.S. 140, [hereinafter cited as ECSC Treaty]; The Treaty Creating the European Atomic Energy Community (Euratom), *done* Mar. 25, 1957, 298 U.N.T.S. ____, [hereinafter cited as EAEC Treaty]. It is interesting to note that the language of these foundation treaties substitutes the term "Assembly" for "Parliament." *See* EEC Treaty, art. 4; ECSC Treaty, art. 7; and EAEC Treaty, art. 3. The Assembly, however,

to increase the degree of legitimation of the European Community. As the Community's institutions assume a greater role in the lives of Europe's people, it becomes more important that the exercise of these sovereign powers rests upon, and is perceived as resting upon a legitimate basis. Since this basis has historically, at least in the Western World, been seen as the expressed will of the people, direct elections will provide a means of demonstrating the legitimation of the Parliament, and of the Community as a whole.

The resolution of the European Council in July 1976 approving direct elections to the European Parliament, and the signing by the foreign ministers of the European Community of the Act of September 20, 1976, concerning the election of the Assembly representatives by direct universal suffrage (Direct Elections Act), caused strong public reaction.³ This was to be expected in view of the fact that since the founding of the European Community the direct elections issue has assumed a key role in the development of European integration, as an indicator of Member support for the creation of a European Political

renamed itself the European Parliament by a resolution of Mar. 30, 1962. J.O. COMM. EUR. 1045 (1962). In this article, the terms "Parliament" and "Assembly" are used synonymously.

For an assessment of the direct elections issue *before* the European Council approved such practice, see Allott, *The Democratic Basis of the European Communities—The European Parliament and the Westminster Parliament*, 11 COMM. MKT. L. REV. 309 (1974); Zuleeg, *The Parliamentary System and the European Communities*, in BASIC PROBLEMS OF THE EUROPEAN COMMUNITY 110 (P. Dagtoglou ed. 1975). Detailed material is contained in the Report on Behalf of the Political Affairs Committee on the Adoption of a Draft Convention Introducing Elections to the European Parliament by Direct Universal Suffrage [hereinafter cited as Report Patijn]. [1974-1975] EUR. PARL. DOC. (No. 368) 74; Draft Convention, 18 O. J. EUR. COMM. (No. C. 32) 15 (1975). As an introduction to the general role of the Parliament within the European Community, see A. CAMPBELL & D. THOMPSON, COMMON MARKET LAW 80 (1962); B. COCKS, THE EUROPEAN PARLIAMENT (1973); J. LANG, THE COMMON MARKET AND COMMON LAW 12 (1966); Stein, *The New Institutions*, in 1 AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET: A LEGAL PROFILE 51 (E. Stein & T. Nicholson eds. 1960).

The general context of the law of the European Community can be found in the following works published in English: P. KAPTEYN & P. VERLOREN VAN THEMAAT, INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES (1973); D. LASOK & J. BRIDGE, AN INTRODUCTION TO THE LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES (2d ed. 1976); A. PARRY & S. HARDY, EEC LAW (1973).

³ 19 O.J. EUR. COMM. (No. L 278) 1 (1976). The Act went into effect July 1978 after ratification by each Member State. Prior to passage of the Act, a Draft Convention was adopted by the European Parliament. Report Patijn, note 2 *supra*.

Union.⁴ The evaluation of the agreement and its contents varied according to the direct different political hopes concerning European unity.

It is the purpose of this study to clarify the significance of the Direct Elections Act in two stages: (1) by analysing the historical genesis of the act introducing the direct elections, and (2) by evaluating the perspectives opened by direct elections. When referring to the European Treaties, the main emphasis will be on the Treaty Establishing the European Economic Community.

I. ANALYSIS OF THE HISTORICAL GENESIS OF DIRECT ELECTIONS

Initially, it is necessary to distinguish between: (1) the drafts of the Assembly in the European Treaties, especially in the Establishing Treaty, and (2) the actual development of the direct elections issue between the time the Treaties came into effect in 1958 and the resolution of the Council concerning the direct elections in September 1976.

A. Drafts of the Assembly in the European Treaties, especially in the Establishing Treaty

Articles 4 and 137 of the Establishing Treaty form the basis of the discussion.⁵ These were introduced by the founders of the EC to institutionalize an Assembly as one of the bodies of the Community. Political consensus of the founders established four institutions for the activities of the Community; the Assembly, the Council, the Commission and the Court of Justice.⁶ It was not by chance that this sequence was laid down in the Treaty; the bodies were fixed according to the ideal of functions which the classical theory of the separation of

⁴ See K.-H. NASSMACHER, DEMOKRATISIERUNG DER EUROPÄISCHEN GEMEINSCHAFTEN 35 *et seq.* (1972); Zuleeg, *supra* note 2, at 110. See also COMMISSION DES COMMUNAUTÉS EUROPÉENNES, RAPPORT DUE GROUPE AD HOC POUR L'EXAMEN DU PROBLÈME DE L'ACCROISSEMENT DES COMPÉTENCES DU PARLEMENT EUROPÉEN 61 *et seq.* (1972); [hereinafter cited as Rapport Vedel] H. VON DER GROEBEN & MESTMÄCKER, ZIELE UND METHODEN DER EUROPÄISCHEN INTEGRATION 22 (1972); H. P. IPSEN, *supra* note 1, at 322 *et seq.*

⁵ See the corresponding articles in the other Treaties: ECSC Treaty, arts. 7 & 20; EAEC Treaty, arts. 3 & 107.

⁶ In the ECSC Treaty the High Authority (Commission) is mentioned first, ahead of the Assembly, Council and Court, while in the EEC Treaty and the EAEC Treaty, the Assembly is mentioned first, ahead of the other bodies.

powers⁷ had in mind: Assembly and Council as legislative powers,⁸ the Commission as an executive power and the Court of Justice as a judicial power.⁹ At that time this represented a major foray into new territory, both political and legal. Without creating a nationalistic structure, the concept of state separation of powers was transposed to an extra-state institution. This concept was applied to each of the three former European Communities (European Coal and Steel Community, European Economic Community and European Atomic Energy Community) which were later to be merged.

Institutional forms of international cooperation with bodies fulfilling different functions had emerged at an earlier date. For example, the League of Nations and the United Nations, the North Atlantic Treaty Organization and the Council of Europe were provided with different institutions to serve mutual and national interests.¹⁰ However, the traditional international organizations are based on a concept of association of inter-state cooperation, which generally does not provide for rights with respect to individuals, but directs measures only against the Member States. Secondly, no judicial power is institutionalized as a third independent body in the traditional international organizations. The International Court of Justice and the European Commission for Human Rights were created by independent foundation acts. Finally, the European Community, created on the basis of international law, differs from the traditional international organizations not only in its internal structure and the objects of its authorizing measures, but also by its extraordinary competence to perform denationalized public tasks by using a public power of its own.¹¹ This is why the Community has

⁷ See generally R. HERZOG, ALLGEMEINE STAATSLHRE 228 *et seq.* (1971), for the classical theory of the separation of powers.

⁸ However, this theoretical concept does not correspond to the actual division of powers between the institutions on a more concrete level.

⁹ A review of the constitutional powers of the Court of Justice of the European Community is given by, Donner, 11 COMM. MKT. L. REV. 127 (1974). For the general rule, see E. WALL, THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES (1966).

¹⁰ For the basic structural elements of an international organization, see I. SEIDL-HOHENVELDERN, DAS RECHT DER INTERNATIONALEN ORGANISATION EINSCHLISSLICH DER SUPRANATIONALEN GEMEINSCHAFTEN 91 (2d ed. 1971). The result of the constitutional convention of Philadelphia in May, 1787, was the draft of a federal constitution, not a transnational cooperation agreement.

¹¹ For further analysis of this difference, see H.P. IPSEN, *supra* note 1, at 193; see also E. HAAS, THE UNITING OF EUROPE 34 (1958).

at times been called a pre-federal association.¹²

Even now, more than twenty years after the founding of the EC, to understand the Community in historical and political terms it is advisable to ask what was the impulse leading to the creation of such a new institutional structure for an extra-state organization. Looking back it is easy to grasp that the European Treaties were not brought about by a single motive but rather a host of factors.¹³ In order to answer the question as to which political data helped to shape the aims and structure of the Community, it is useful to distinguish between the general factors which brought European integration into being after 1945, and the legal formulation of these aims which resulted in concrete political endeavors of the European Economic Community.

Without any claims of perfection it is possible to distinguish several basic impulses pushing towards institutionalized European integration at that time. The effects of an international order of selfish and hostile states on life, moral stability, property, overseas influence, position in world trade and political rank of the European states, an order which was eventually to explode its accumulated tensions in two world wars, were catastrophic. It was this insight which gave force to those concepts of an international order purporting to soften and abolish the status of isolation resulting from a nation-states policy.¹⁴ This coincided with differently motivated considerations concerning the future role of the destroyed Germany. Western Germany hoped for political rehabilitation, equality and an increase in influence,¹⁵ while on the other hand France, especially, emphasized the security aspects of including

¹² Scheuner, in 23 VERÖFFENTLICHUNGEN DER VEREINIGUNG DER DEUTSCHEN STAATSRECHTSLEHRER 106 (1966).

¹³ See Rapport des Chefs de Délégation aux Ministres des Affaires Etrangères 9 *et seq.* (1956) [hereinafter cited as Rapport Spaak]. W. HALLSTEIN, DIE EUROPÄISCHE GEMEINSCHAFT 9 (1973); G. WEIL, A HANDBOOK ON THE EUROPEAN COMMUNITIES 1 (1965).

¹⁴ This thought is clearly articulated in the Preamble of the ECSC Treaty of Apr. 18, 1951:

Resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared,

See also C. FRIEDRICH, EUROPA—NATION IM WERDEN? 9 (1972); W. HALLSTEIN, UNITED EUROPE 5 (1962); and W. HALLSTEIN, *supra* note 13, at 13; A. JÜTTNER, DIE EUROPÄISCHE EINIGUNG 7 (1966); K. SAVAGE, THE HISTORY OF THE COMMON MARKET 14 (1969).

¹⁵ K. ADENAUER, ERINNERUNGEN 1945-1953, 295 (1965).

Western Germany.¹⁶ Simultaneously, the hegemonic extension of the Soviet Union in Eastern Europe since the end of the war troubled the Western European states and was considered a military, political and ideological threat. It was the time of the articulated East-West conflict.¹⁷

The United States also influenced the situation in two ways. First, through the dependence of the Western European states on America, and on its own internal development which appeared difficult to influence, and second, by the fact that the United States served as an historical example of the successful integration of single states which had been formed by immigrants coming from every European country.¹⁸ This in turn was connected with an awareness of technological underdevelopment as compared with the United States; it seemed an almost impossible task for a single European country to compete successfully because of limited economic and intellectual resources.¹⁹

¹⁶ This was one of the reasons for the proposal of May 9, 1950, promoted by the French government in order to establish a common authority for the German and French mining industry. See W. DIEBOLD, JR., *THE SCHUMAN PLAN* 9 (1959); W. HALLSTEIN, *UNITED EUROPE* 9 (1962).

¹⁷ See Preamble of the EEC Treaty of March 25, 1957: "Resolved by thus pooling their resources to preserve and strengthen peace and liberty, . . ."; C. FRIEDRICH, *supra* note 14, at 9; W. HALLSTEIN, *UNITED EUROPE* 6 (1962); W. HALLSTEIN, *supra* note 13, at 15; W. KITZINGER, *THE POLITICS AND ECONOMICS OF EUROPEAN INTEGRATION* 7 (1963); K. SAVAGE, *supra* note 14, at 43.

¹⁸ See C. FRIEDRICH, *supra* note 14, at 9 *et seq.*; W. HALLSTEIN, *supra* note 13, at 5 *et seq.*; C. KAISER, *EUROPE AND THE UNITED STATES* (1973); J. SERVAN-SCHREIBER, *LE DÉFI AMÉRICAIN* (1967); Gazzo, *Allianz auf der Probe, Europa und die U. S. A.*, in *ZIVILMACHT EUROPA—SUPERMACHT ODER PARTNER* 186 (M. Kohnstamm & W. Hager eds. 1973).

It is generally possible to demonstrate that the creation, rise and institutionalization of the United States have influenced many concepts of European integration. The theories of American scholars, namely of E. Haas and K. Deutsche, also had their impact on European integration policy; cf. Warnecke, *American Regional Integration Theories and the European Community*, in *INTEGRATION* 1 (1971).

¹⁹ This consideration is spelled out in the Preamble of the EAEC Treaty of Mar. 25, 1957:

Convinced that only a joint effort undertaken without delay can offer the prospect of achievements commensurate with the creative capacities of their countries, [the signatories] [r]esolved to create the conditions necessary for the development of a powerful nuclear industry which will provide extensive energy resources, lead to the modernisation of technical processes and contribute, through its many other applications, to the prosperity of their peoples. . . .

Moreover, economic considerations also played a role. It was hoped that by creating a large unitary economic territory, greater demand, more efficient production techniques, a more varied distribution pattern, and a higher standard of living would result.²⁰ Furthermore, organizational theories implied that a unified European Community could provide more efficient solutions to inter-state public tasks by shaping an infrastructure through common policy.²¹

Finally, the dynamics of a movement toward European integration among intellectuals and politicians, which had existed since the 1920's, could be put into effect.²² The worldwide shift in the balance of power which had shaken the self-confidence of every European state and which had broadened their horizons were motive enough to consider anew the question of the existence and character of mutual interests which had emerged from the common history and identity of the European people. The movement toward European integration channelled the experiences and insights of that era into a concept of a political order which would integrate the European states into a single body, able to regain international power and prestige.²³ In this period of intense pressures pushing toward integration of the Western European states, the foundation of the European Economic Community and of the European Atomic Energy Community (EAEC) stand out. Before that time, the European Coal and Steel Community (ECSC) had been founded, but the idea of a European Defense Community and a European Political Community had failed to get off the

²⁰ See Rapport Spaak, *supra* note 13, at 13, *et seq.*; Preamble of the EEC Treaty: Affirming as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples, [r]ecognising that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition, [a]nxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the difference existing between the various regions and the backwardness of the less favored regions. . . .

See also Preamble of the ECSC Treaty: "Anxious to help . . . to raise the standard of living . . ." For the theory of the large market, see J. DENIAU, *THE COMMON MARKET* 11 *et seq.*, 35 *et seq.* (1962).

²¹ See Preambles of the EEC Treaty and the EAEC Treaty. For the importance and perspectives of border-crossing cooperation in practical problems, see A. ROBERTSON, *EUROPEAN INSTITUTIONS* (3d ed. 1973); V. VON MALCHUS, *PARTNERSCHAFT AN EUROPÄISCHEN GRENZEN* 13 *et seq.* (1975).

²² A. JÜTTNER, *supra* note 14, at 11; A. ROBERTSON, *supra* note 21, at 4.

²³ W. HALLSTEIN, *supra* note 13, at 16; A. JÜTTNER, *supra* note 14, at 19, 25 *et seq.*; M. PALMER & J. LAMBERT, *EUROPEAN UNITY* 23 (1968); Runge, *Einführung*, in *DAS RECHT DER EUROPÄISCHEN GEMEINSCHAFTEN* (2d ed. 1975).

ground.²⁴ Since the more far-reaching concepts of integration proved to be unrealizable and since the ECSC had been drawn up only for a special economic sector, the foundation of the EC and the EAEC represented the first real effort to begin the process of political integration by creating an integrated structure for the economy of Europe. The basic concept can be summarized as the idea of political integration through the logic of economic integration.²⁵ It is an idea similar to that developed for the integration of Germany a century ago by the economist List.

The objectives of the EC Treaty have been laid down according to that principle. Article 2 of the Treaty contains a catalogue of objectives for the Community:

1. to promote a harmonious development of economic activities throughout the Community,
2. a continuous and balanced economic expansion,
3. an increased stability,
4. an accelerated rise in the standard of living,
5. and to promote closer relations between the Member States of the Community.

Simultaneously, the instruments for realizing these aims are not open to the discretion of the partners but have been fixed in two ways: by establishment of the Common Market, and by gradual approximation of the economic policies of Member States. In particular, the creation and development of the Common Market as the basis of the Community has been regulated by stringent rules and provisions. Free movement of goods has been guaranteed by the creation of a customs union²⁶ and by eliminating quantitative restrictions and all measures with equivalent effect between Member States.²⁷ Another provision safeguards the freedom of movement for workers.²⁸ Restrictions on the freedom of establishment,²⁹ on the free supply of services³⁰ and, to a lesser extent, on the movement of capital³¹ were abolished progressively.

²⁴ For a discussion of the bases and the failure of those plans, see A. JUTTNER, *supra* note 14, at 34 *et seq.*, 54 *et seq.*; and Runge, *supra* note 23, at 2.

²⁵ For the idea of the expansive logic of sector integration, see E. HAAS, *supra* note 11, at 283 *et seq.*; and W. HALLSTEIN, *supra* note 13, at 21 *et seq.*

²⁶ EEC Treaty, *supra* note 2, art. 12 *et seq.*

²⁷ *Id.* art. 30 *et seq.*

²⁸ *Id.* art. 48 *et seq.*

²⁹ *Id.* art. 52 *et seq.*

³⁰ *Id.* art. 59 *et seq.*

³¹ *Id.* art. 67 *et seq.*

Special rules were laid down for agriculture³² and transportation.³³ In order to aid in the realization of these objectives, the common policy is guided by rules governing competition,³⁴ fiscal provisions,³⁵ approximation of laws³⁶ and economic and social policy.³⁷ These provisions elucidate the aim of partial integration (*i. e.*, of the economy) in a double sense: national sovereignty is circumscribed by the aims of the Treaty,³⁸ and a common policy within the Community and towards non-Member States is envisioned within the concept of the Treaty. Moreover, the preamble³⁹ and catalogue of objectives underline the hopes of the founders to develop progressively into a political union.

It is important to note that the special integration programme of the EC Treaty deals not only with aims and means but also with institutions and political powers of the Community. Only the political features connected to this venture of partial integration demonstrate that an institutional structure inspired by the theory of separation of state powers was created. The Assembly, renamed European Parliament some years later by its own resolution, was first in rank in the system of institutions laid down in the Treaty. The function of the Assembly, and the number and allocation of seats are regulated by article 137 of the EC Treaty.⁴⁰ The Assembly, which shall be composed of representatives of the peoples of the States united within the Community, shall exercise the advisory and supervisory powers which have been conferred upon it by the EC Treaty. Therefore, the tasks and powers of the Assembly are fixed and limited by the aims and provisions of the Treaty. The Assembly has not been given the authority to create or annul its own powers. A theoretical parallel can be seen in the limitation of the powers conferred upon national parliaments by their respective constitutions. The procedure for access to the Assembly is regulated by the well-known article 138 of the EC Treaty. In the beginning, a method was chosen by which the delegates were ap-

³² *Id.* art. 38 *et seq.*

³³ *Id.* art. 74 *et seq.*

³⁴ *Id.* art. 74 *et seq.*

³⁵ *Id.* art. 95 *et seq.*

³⁶ *Id.* art. 100 *et seq.*

³⁷ *Id.* arts. 103 *et seq.*, 117 *et seq.*

³⁸ For the problem of sovereignty, see H. P. IPSEN, *supra* note 1, at 227 *et seq.*

³⁹ EEC Treaty Preamble: "Determined to lay the foundations of an ever closer union among the people of Europe. . . ."

⁴⁰ The corresponding Articles are ECSC Treaty, art. 20; EAEC Treaty, art. 107.

pointed by each national Parliament from among its own members in accordance with a procedure laid down by each Member State, without regard to the procedures adopted by any other Member State. The number of representatives apportioned to each state is laid down in a standard formula: the heavily populated states (Germany, France, Italy) were to send thirty-six delegates each, the smaller states (Belgium, Netherlands) fourteen each, and Luxemburg was allotted six delegates. After the enlargement of the Community in 1973, Great Britain was assigned to the first group, and Denmark and Ireland formed a new group of ten delegates each.⁴¹ Future development of the means of access was laid down in article 138 (III) of the EC Treaty:

The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.⁴²

Identical provisions can be found in article 20 (III) of the ECSC Treaty and article 108 (III) of the EAEC Treaty. These provisions have been criticized as being untrustworthy and for sticking slavishly to nationalistic models which fail to take the peculiarities of functional integration into account.⁴³ However, article 138 (III) of the EC Treaty has played a dominant role in the discussions of integration.

B. Actual Development of the Direct Elections Issue, 1958 to 1976

During the first part of the period, from 1958 to approximately 1970, direct elections were blocked. However, the issue received considerable attention. As early as 1958 a working group of the Assembly, presided over by Dehousse, had begun to tackle the task of drafting a proposal for direct elections.⁴⁴ In 1960, the deliberations led to a resolution of the Assembly on a draft of an agreement concerning the

⁴¹ See *Documents Concerning the Accession*, O.J. EUR. COMM. 849 (Spec. ed. Mar. 27, 1972).

⁴² Wagner, in 9 DER STAAT, ZS. FÜR STAATSLHRE, ÖFFENTLICHES RECHT UND VERFASSUNGSGESCHICHTE 267 (1970); see also H. P. IPSEN, *supra* note 1, at 164.

⁴³ H. P. IPSEN, *supra* note 1, at 325.

⁴⁴ Pöhle, in H. VON DER GROEBEN, H. VON BOECKH, J. THIESING, KOMMENTAR ZUM EWG-VERTRAG at 138/IV 2(a) (2d ed. 1974); K.-H. NASSMACHER, *supra* note 4, at 36.

election of the European Parliament by direct universal suffrage.⁴⁵ Thus, the Assembly had fulfilled its part of the task by referring the draft to the Council.⁴⁶ In 1961, at a conference of the EC foreign ministers in Bonn, the French delegation expressed its concern that the time for electing the Assembly by direct universal suffrage was not yet ripe.⁴⁷ In 1963, the Council was formally asked by different members of the European Parliament when it intended to enact provisions putting article 138 (III) of the EC Treaty into effect. The Council answered that the preconditions of unanimity on the question had not yet been fulfilled.⁴⁸ In 1969, the European Parliament formally urged the Council, by a majority decision, despite the opposition of the Gaullist party, to apply the procedure laid down in the Treaty to the draft transmitted by the Parliament without any further delay.⁴⁹ Simultaneously, the Parliament threatened to submit to the Court of Justice a complaint to the effect that the Council had violated the Treaty in failing to act.⁵⁰ The complaint could have been based on the assertion that an obligation to act had been violated by not determining the provisions as mentioned in article 138 (III) of the EC Treaty, although no deadline is specified for putting the provision into effect. The complaint could have referred to the holdings of the Court of Justice in other decisions that no provision of the Treaties had been made arbitrarily by the founders; each provision is deemed to have been designed to be put into effect within a reasonable period of time.⁵¹ In the Parliament's view, nine years exceeded the reasonable term set for the Council to act on the draft submitted in accordance with article 138 (III). However, even if such a complaint had been successful it would not have had any great impact, since the Member States are not legally bound to adopt the provisions recommended by the Council under article 138 (III).

Several factors account for this period of delay. On the surface, the decisive hinderance was France's repugnance. This was based on feelings of national sovereignty and self-sufficiency in France strongly ar-

⁴⁵ See *Für Allgemeine Direkte Wahlen zum Europäischen Parlament*, EUROPÄISCHES PARLAMENT DOKUMENTENSAMMLUNG 24 (1969).

⁴⁶ Pöhle, note 44 *supra*.

⁴⁷ K.-H. NASSMACHER, *supra* note 4, at 41.

⁴⁸ *Id.*

⁴⁹ See EUROPÄISCHES PARLAMENT, *supra* note 45, at 268 *et seq.*

⁵⁰ EEC Treaty, *supra* note 2, art. 175.

⁵¹ Pöhle, *supra* note 44, at IV(4).

ticated by General de Gaulle after the founding of the Fifth Republic and the granting of Algerian independence.⁵² The effect of France's European policy is well known; *e.g.*, the veto of Great Britain's entrance into the European Community, the so-called policy of the deserted chair,⁵³ the enforced practice of unanimity rule for decisions for which majority rule was provided by the Treaty, and finally the political label of a "Europe of the Fatherlands."⁵⁴ France's reluctant attitude was only the accumulated expression of some basic factors working against integration, not only in France, but throughout Europe, which gained momentum after 1958.

The first factor was a renewed consciousness of national identity rooted in the political considerations and practices of all Member States and strengthened by the French example. At the time, this national consciousness was sheepishly articulated in Western Germany, despite the declared reunification policy. The experiences and consequences of the Third Reich, the war and the division of the country had deeply shattered the belief in the meaningfulness of nation-state schemes. However, the quick return of political stability and the breathtaking economic accomplishments immediately after the end of the war prepared the ground for the reoption of national impulses such as those given expression by General de Gaulle in his famous Ludwigsburg Speech in 1962.

A second factor hampering the course of integration has to be seen in the unchanged national character of the political sub-structure in spite of the formation of transnational, economic pressure groups. The political parties remained exclusively organized on a national scale. Similarly, the legal systems and the hierarchy of social values remained separated by the national frontiers, and thus preserved, in the main, their peculiarities, despite the beginning of the approximation of laws provisions of the Treaties.

Thirdly, energies working towards integration were absorbed and disillusioned by the daily work in the EC, although the transitional period prescribed by the Treaty ended quickly. The daily routine of the EC was marked by the tangling of European idealism in the meshes of technical specialties as contained in agricultural regulations,

⁵² A. JÜTTNER, *supra* note 14, at 55, 93 *et seq.*

⁵³ *Id.* at 93 *et seq.*

⁵⁴ As to the different stages of that period of French policy toward the European Community, see A. JÜTTNER, *supra* note 14, at 93 *et seq.*; E. STEIN & P. HAY, *LAW AND INSTITUTIONS IN THE ATLANTIC AREA* 106 (1967).

by the increasing financial burdens of a quickly spreading bureaucracy, and by the problems of agricultural overproduction as well as by marathon sessions of the Council to resolve relatively insignificant problems. In the long run, those squabbles nurtured basic doubts about the theory in which political integration was thought to follow economic integration.

The resistance to direct elections was represented by the French uneasiness with the idea of autonomous, legitimated political institutions, independent of national parliaments, and perhaps capable of usurping national power and authority. The discussion sometimes even referred to an historical example, the inter-state conference at Philadelphia in 1787 which resulted in the Constitution of the United States.

The summit at the Hague in December 1969, marks the first shift in the balance of political factors and arguments concerning the direct election issue.⁵⁵ Prior to that, several attempts had been made within individual Member States to implement the direct election proposal.⁵⁶ The idea was to put pressure on the French government by threatening to carry out elections to the European Parliament by direct universal suffrage on a national scale unilaterally. In 1964, for example, Social-Democrat members of the German Bundestag introduced a bill connecting the forthcoming federal election with an election of German delegates to the European Parliament by direct universal suffrage. The bill was rejected by the existing coalition government of Christian-Democrats and Liberals for political and legal reasons. A similar motion was later made by the CDU/CSU acting in opposition and was then rejected by the SPD/FDP coalition. Similar motions were brought up in Italy and Luxemburg in 1969.

At the Summit in the Hague, the direct elections issue was taken up again. Acting in accordance with the communique, the Council called upon the permanent representatives to work out, in collaboration with the European Parliament, a draft for a treaty concerning direct elections.⁵⁷ Concurrently, the Vedel Report dealing with the problem of extending the powers of the European Parliament was made public in 1972.⁵⁸

⁵⁵ K.-H. NASSMACHER, *supra* note 4, at 42; J. PINDER & R. PRYCE, EUROPA—SUPERMACHT ODER ENTWICKLUNGSKONTINENT? 9 (1970).

⁵⁶ Pöhle, *supra* note 44, at 138/IV (5).

⁵⁷ K.-H. NASSMACHER, *supra* note 4, at 42.

⁵⁸ See note 4 *supra*.

In 1974, the Paris summit decided to plan for direct elections in 1978; in 1975, the Assembly presented a draft to put article 138 (III) of the EC Treaty into effect. Following protracted and lengthy negotiations on single questions, especially in fixing the total number and allocation of seats, the European Council reached a definite agreement in Brussels on July 12, 1976. This paved the way for the decision of the Council of September 20, 1976, to introduce direct elections to the European Parliament.⁵⁹ This change in attitude toward the direct elections issue was caused by several factors. Beginning in 1968, the idea of European cooperation was given new impetus although for slightly different reasons.⁶⁰ The intervention of the Soviet Union in Czechoslovakia in August 1968, kindled anew the fears of hegemony. General de Gaulle's retirement as French President in the spring of 1969, the topicality of the problem of world resources, and the threatened danger of the so-called North-South conflict⁶¹ all had an effect. In addition, the internal political situation and the international role of the United States in the face of violence caused by racial problems and the psychological wounds resulting from the Indochina war caused increasing uncertainty. Moreover, the end of China's political isolation since 1971, and its acceptance as the third World Power created both new opportunities and new problems. Further, the permanent danger was emphasized that some Member States, especially Italy, would drift into economic and political dishomogeneity. Simultaneously, the problem of neglecting regional powers and peculiarities by a rigid national order surfaced explosively in some Member States. Political changeovers took place on the Iberian peninsula and in Greece, and the Member States of the European Community felt obligated to make a common effort to assist in building new internal structures. The interests of the small Member States in gaining more political influence on a world scale through the Community was as strong as ever. Finally, the original integration programme of the EC Treaty had been put into effect in important respects.

These factors heightened the perception of the advantages to be gained by the development of a common European policy in world af-

⁵⁹ 19 O. J. EUR. COMM. (No. L 278) 1 (1976).

⁶⁰ The differently articulated revival of original motives are evident in the considerations of J. PINDER & R. PRYCE, *supra* note 55, at 77 *et seq.* (e.g., modern European economy; equal partnership with the United States; defense, but also détente in relation to the Soviet Union; modeling a new international order).

⁶¹ Hartshorn, *Europas Ohnmacht: Die Abhängigkeit vom Erdöl*, in ZIVILMACHT EUROPA, *supra* note 18, at 131 *et seq.*

fairs, which found expression in the greater political cooperation of the Member States' foreign ministers. The first concrete success to result from the renewal of interest in integration was the enlargement of the Community by the addition of Great Britain, Denmark and Ireland in 1973.⁶²

A second series of developments also contributed to the increasing interest in political integration: the experience of economic stagnation, and, indeed, the perceived danger that the level of integration already achieved might crumble away. The repeated levying of compensations to protect the ability of domestic producers to compete economically can be seen as a warning sign. This was a clear violation of the basic community principle of free movement of goods. Above all, projects which had been optimistically planned never succeeded in getting off the ground. The Economic and Monetary Union⁶³ and the European Union⁶⁴ remained in the design stages. These symptoms demonstrated that the originally successful concept; political integration through the logic of economic integration, had been too overloaded to efficiently push the integration process forward. The "logic of economics," itself a result of a selection between alternatives, collided with political considerations of different origins. It became evident that these political considerations were equal or superior to the economic goals and it became necessary to choose between these alternatives, thereby purposely selecting a policy detrimental to integration, despite the economic arguments in its favor. No preponderant economic argument had been developed which could convince the Member States to

⁶² See O. J. EUR. COMM., (Spec. ed. Mar. 27, 1972); 7 GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN COMMUNITIES 449 *et seq.* (1974). See also K. NASS, ENGLANDS AUFBRUCH NACH EUROPA (1971); J. PINDER & R. PRYCE, *supra* note 55, at 38 *et seq.*

A general survey of the legal aspects of the accession is given by Brinkorst & Kuiper, *The Integration of the New Member States in the Community Legal Order*, 9 COMM. MKT. L. REV. 364 (1972). For the legal and constitutional implications for the United Kingdom, see Mitchell, Kuiper, & Gall, *Constitutional Aspects of the Treaty and Legislation Relating to British Membership*, 9 COMM. MKT. L. REV. 134 (1972).

⁶³ See B. KOHLER & G. SCHLAEGER, WIRTSCHAFTS UND WÄHRUNGSUNION FÜR EUROPA (2d ed. 1971); Everling, *Institutional Aspects of a European Economic and Monetary Union*, 8 COMM. MKT. L. REV. 495 (1971); Maas, *The Powers of the European Community and the Achievement of the Economic and Monetary Union*, 9 COMM. MKT. L. REV. 2 (1972).

⁶⁴ See generally Scheuner, *Perspektiven einer Europäischen Union*, 11 EUROPARECHT 193 (1976).

transfer or steadily harmonize their rights of sovereignty.⁶⁵ This can be seen in the conflict between, on the one hand, the aim of integrating the national economies as laid down in the EC Treaty, and on the other, the sovereignty of national economic politics. For example, while article 7 of the EC Treaty forbids discrimination against persons of foreign citizenship in the procedure for awarding public works contracts,⁶⁶ structural policy aims work in the opposite direction to foster national and local industry.⁶⁷ Thus, the inherent limits of the logic of partial integration became evident even in the case of partial aims.⁶⁸

Reaching the limits of the original concept gave impetus to proposals that advocated a direct drive to integrate the political sub-structure, especially the separate, nationally organized political parties. In a catch phrase, this meant political integration through the creation of integrated political sub-structures. Thus, the cooperation between the political parties in Western Europe and the interests of the different parties in European integration was increasingly in the spotlight.⁶⁹ Different groupings have formed on a pre-political scale as a result of the activities of the European Community. Numerous pressure groups with a European structure emerged, mainly in the field of agriculture but also in the fields of industry, crafts, banking, insurance and finally among the trade unions.⁷⁰ The formation of these groupings on a Community-wide scale was an inevitable result of the fact that the institutions of the European Community had been empowered to take sovereign measures which would immediately affect persons involved in any of the above-mentioned fields of the economy.

A third factor also heightened interest in direct elections. Starting in the late 1960's, there was a marked increase in the frequency and sophistication of demands that any political measures having direct impact on people be based on legitimately democratic decision-making

⁶⁵ Although some increase in the harmonization of foreign policy can be detected (the so-called European Political Cooperation), see Report Davignon, 11 BULL. EUR. COMM. 9 (1970).

⁶⁶ Wägenbaur in KOMMENTAR ZUM EWG-VERTRAG, *supra* note 44 at art. 7/I, II.

⁶⁷ Regulations for state aids to the economy are laid down in the EEC Treaty, art. 92, § III (b); see also J. LANG, *supra* note 2, at 293 *et seq.*

⁶⁸ H. VON DER GROEBEN & E. MESTMÄCKER, *supra* note 4, at 18 *et seq.*; Scheuner in BASIC PROBLEMS OF THE EUROPEAN COMMUNITY, *supra* note 2, at 66.

⁶⁹ See Zuleeg, *supra* note 2, at 114.

⁷⁰ See C. FRIEDRICH, *supra* note 14, at 79 *et seq.* (industrial pressure groups), 105 *et seq.* (agriculture), 157 *et seq.* (trade unions), 181 *et seq.* (towns), 213 *et seq.* (professionals).

processes. Measured by this standard it became obvious that the status of the European Community was hardly acceptable even at its then current point of stagnating and diminishing degrees of integration.⁷¹ The Community's sovereign powers were not balanced by classical forms of control and participation by a body composed of representatives legitimated by direct election by the affected population. On the contrary, the existing procedure called for a European Parliament nominated by the national parliaments.⁷² In Italy, an even less favorable variant of mediation was developed which permitted the participation of the second chamber. In addition, the coalition government claimed the right to participate in the nomination process.⁷³ This raised the general question whether it was permissible to select the delegation by majority rule and thereby confine it to members of the government coalition, or whether the national delegation had to correspond proportionally to the strength of the parties in the national parliament. This in turn led to the far-reaching question of whether the European Parliament was to be considered an extension of the executive or of the legislative power on a European level. No procedural problems arose in the Benelux Countries and in Germany.⁷⁴ The composition of the German delegation is adjusted to correspond to the new proportions of the Bundestag after every federal election.⁷⁵ Corresponding to the composition of the Bundestag in the 8th legislative period, the present German delegation includes eighteen members of the CDU/CSU, fifteen of the SPD and three of the FDP. In France the composition of the delegation was negotiated by the factions of the two chambers. In 1973, a proportional distribution was introduced.⁷⁶ These examples are sufficient to demonstrate the problem connected with the old nomination system.

Finally, long and fervent discussions were held concerning whether the first step in integration of the European Community should be the increase of the power and competence of the European Parliament or

⁷¹ See K.-H. NASSMACHER, *supra* note 4, at 7, 35, 95, 155; Kohler, 26 EUROPA—ACHIV 727 (1971); Oppermann, *Parlamentarisierung der Europäischen Gemeinschaft?*, in UM RECHT UND FREIHEIT 454 (H. Kipp, F. Mayor & A. Steinkamm eds. 1977); Zuleeg, *supra* note 2, at 110.

⁷² For the different national procedures, see A. BLECKMANN, *EUROPARECHT* 32 (2d ed. 1978).

⁷³ Pöhle, *supra* note 44, at 138/II(2)(c).

⁷⁴ *Id.* art. 138/II(2)(a).

⁷⁵ *Id.* art. 138/II(2)(b).

⁷⁶ See Allott, *supra* note 2, at 313; Zuleeg, *supra* note 2, at 110.

the direct election of its delegates. In view of the reluctance of the Member States to surrender greater sovereignty, as discussed above, the direct elections choice was preferred.

C. The Decision of the Council to Introduce Direct Elections

After long negotiations between the Member States, the factors mentioned above eventually helped to form the decisions of the Council concerning the Direct Elections Act of September 20, 1976.⁷⁷ The Act contains several essential points. First, the Assembly is to be composed of a total of 410 representatives. Eighty-one are to be sent by Germany, France, Italy and the United Kingdom each, twenty-five by the Netherlands, twenty-four by Belgium, sixteen by Denmark, fifteen by Ireland and six by Luxemburg.⁷⁸ Thus a German delegate represents approximately 763,000 people and therefore 13 times more inhabitants than a delegate from Luxemburg, who represents 60,000 people. The proportional figures for the other Member States can be fixed between this range. The value of a single vote decreases as the population of the Member State increases. The preference given to the small Member States was inevitable in view of the population differences, if no proportional extension of the number of seats could be effected. Second, the representatives shall be elected by direct universal suffrage,⁷⁹ and shall serve a five-year term.⁸⁰ The so-called dual mandate, *i.e.*, the simultaneous membership in both the European and a national Parliament, is permissible.⁸¹ However, it is forbidden to be both a member of the European Parliament and a member of another institution of the European Community, or of the government of a Member State.⁸² The electoral procedure shall be governed independently by each Member State.⁸³ The European Parliament shall draw up a proposal for a uniform electoral procedure,⁸⁴ in order to abolish the

⁷⁷ 19 O. J. EUR. COMM. (No. L 278) 1 (1976). For a presentation of the issues at stake during the negotiations and their development, see Stewart, *Direct Elections to the European Parliament—With Special Reference to the United Kingdom*, 13 COMM. MKT. L. REV. 286 (1976).

⁷⁸ For the negotiations concerning the proportional number of representatives for each Member State, see Bieber, 2 PARL. 226 (1976).

⁷⁹ 19 O.J. EUR. COMM. (No. L 278) 1 (1976):

⁸⁰ *Id.* art. 3, § I.

⁸¹ *Id.* art. 5.

⁸² *Id.* art. 6.

⁸³ *Id.* art. 7, § II.

⁸⁴ *Id.* art. 7, § I.

unilateral national procedures in the future. Elections were to be held in a prescribed period in 1978.⁸⁵

The procedure designed by the Council to introduce direct elections was not in accord with article 138 (III) of the EC Treaty, which postulated direct elections under procedures to be applied uniformly by all Member States. The new article provides for simultaneous direct elections in accordance with a procedure determined by each Member State. This development of article 138 (I) without attaining the ideal of article 138 (III) implies a revision of the Treaty⁸⁶ in the same way as it is implied by the specification of a new total number and national allocation of seats and by the provisions barring membership in both the Assembly and other institutions.

In spite of the misleading formulation in the preamble to the Direct Elections Act referring to article 138 (III) of the EC Treaty, the Council's determination cannot put these provisions into effect in those Member States that have adopted them in accordance with their respective constitutional rules. Rather, article 16 of the Direct Elections Act, in combination with the information clause in the preamble make clear that the provisions enter into force only after being ratified by all Member States in accordance with their respective constitutional rules as laid down in article 236 (III) of the EC Treaty, and after the formal notification of the Secretary of the Council that the procedure has been followed. The failure of the election procedures of article 7 of the Direct Elections Act to conform to the ideal of uniform procedures contained in article 138 (III) of the EC Treaty reflects the over-all failure to standardize sufficiently the national structures necessary to support uniform procedures.

II. ASSESSMENT OF THE PERSPECTIVES CONNECTED WITH DIRECT ELECTIONS

Two perspectives connected with direct elections will be the center of attention: (1) The perspective of legitimation and (2) the perspective of control. The question of legitimation is a legal problem, whereas the question of control touches on the problem of political efficiency.

A. *The Perspective of Legitimation.*

Before assessing the legitimation perspectives manifested by direct

⁸⁵ *Id.* Preamble & art. 9, § 1. The election has been re-scheduled for 1979. N. Y. Times, Apr. 8, 1978, § 2 at 3.

⁸⁶ EEC Treaty, *supra* note 2, art. 236.

elections, it is necessary to clarify some preliminary questions and to analyze the present status of legitimation of the European Community.

Legitimation can be described in an abstract manner as the right to act in a manner which affects other people. It may be generally defined as the right to exercise power. For the lawyer, legitimation is not only of interest for aspects of its real manifestations, which can be defined as the description of the decision processes and the procurement of consensus leading to the observation of regulations. This is primarily a subject for political scientists, sociologists and psychologists.⁸⁷ Legally speaking, legitimation is also important in demonstrating how basic values are realized.

Different basic values underlie different forms of legitimation. In the field of private law, the competence of one person to act for another rests on the legally recognized principle of private autonomy. Exercise of sovereign powers, on the other hand, is historically legitimated by the principle of democracy in each of the Member States.⁸⁸ This is sometimes expressed as the principle of peoples' sovereignty. Exercise of sovereign powers also raises the question of legitimation for the European Community.⁸⁹ While the Community presently lacks etatistic qualities,⁹⁰ there seems to be no good reason why the democratic principle of legitimation, though developed on the national level, should not be applied to the Community in view of its specific sovereign powers, its own legal system, and its lengthy catalogue of tasks and aims. However, it would not be necessary to frame the legitimation structure and the division of powers in accordance with state patterns. The possibility of developing new and different methods of legitimation, control and separation of powers within the Community cannot be excluded.⁹¹ This might even serve as a model for states.⁹²

The appeal to peoples' sovereignty by the principle of democratic legitimation as, for instance, expressly laid down in the German Constitution⁹³ is understood to be the expression of the common will of the

⁸⁷ See O. VON DER GABLENTZ, *EINFÜHRUNG IN DIE POLITISCHE WISSENSCHAFT* 55 *et seq.* (1965).

⁸⁸ The concept of democratic legitimation applies also to Member States with a monarch as head of state; *cf.* R. HERZOG, *supra* note 7, at 204, 264.

⁸⁹ *Cf.* H. VON DER GROEBEN & E. MESTMÄCKER, *supra* note 4, at 14.

⁹⁰ *Cf.* H. P. IPSEN, *supra* note 1, at 187.

⁹¹ *Id.* at 169.

⁹² *Id.* at 318.

⁹³ GG art. 20, § II (1) (Constitution of the Federal Republic of Germany).

people living in a given area. This concept is based on the idea of the natural equality of all human beings, and thus, in view of the inherent differences between people, on the idea of humanity.⁹⁴ The idea of humanity means the willingness of the stronger to let the weaker participate in state power on an equal footing with the dominant group.

On this basis, the question is whether direct elections can or will increase the democratic legitimation of the exercise of sovereign powers by the European Community. It goes without saying that the lack of a standard of measurement obliges us to find an answer by assessing the various aspects relevant to the degree of legitimation. The aspects of valuation laid down in the following consideration are:

1. the type and scale of actions indigenous to legitimation, and
2. the structure of legitimation as expressed in the participatory procedures which form decisions indigenous to legitimation. This is exemplified by the number and types of intermediate participatory procedures.⁹⁵

At present, the state of legitimation in the European Community is sharply criticized. Placard-like assessments, such as "deficit of legitimation," "democratic deficiency" and "technocracy without legitimation" are well-known.⁹⁶ Showing whether or not these evaluations can stand the test of rigorous analysis is the next consideration.

1. Type and Scale of Actions Indigenous to Legitimation

Actions indigenous to legitimation include all the sovereign measures taken by institutions of the Community. These measures are regulated by provisions of the Treaties which allot certain powers to the Community. The powers of Council and Commission⁹⁷ are particularly important because of their recurrent nature and wide scope. The essential methods for exercising power are laid down in article 189 of the EC Treaty.

Regulations have general applicability in each Member State and are binding in every respect. Regulations form substantive law. Their coming into force requires only the publication in the Official Journal; publication in the official journals of the Member States is neither

⁹⁴ R. HERZOG, *supra* note 7, at 202.

⁹⁵ *Id.* at 203.

⁹⁶ See, e.g., K.-H. NASSMACHER, *supra* note 4, at 8; Kohler, *supra* note 71, at 727; Oppermann, *supra* note 71, at 450; Zuleeg, *supra* note 2, at 114.

⁹⁷ E. POULETT & G. DEPRez, *STRUKTUR UND MACHT DER EG-KOMMISSION* (1976).

necessary nor sufficient. The national legislative institutions do not participate. Regulations are self-executing, thereby creating actionable rights for the citizen.⁹⁸ The organization of agriculture is a concrete example of the scope and the significance of these regulations. The total basic legal structure of the agricultural market is founded on regulations which regulate and protect the different production sectors, *e.g.*, the market organization concerning cereals, rice, milk, sugar and beef.⁹⁹ Thus, an integrated system involving intervention prices, special measures, target prices, threshold prices and compensations for exports has been constructed for the respective products. Another example is Regulation No. 17 of the Council that completes the rules governing economic competition within the Community begun by EC Treaty articles 85 and 86.¹⁰⁰

The Directive addresses the Member State as an entity.¹⁰¹ According to the Treaty, a Directive binds any Member State to which it is addressed as to the result to be achieved, while leaving the means and form of compliance to domestic agencies. Directives oblige the Member States to enact pre-determined measures through their own legislative systems. Directives have been formulated in a specified and detailed way to an increasing extent, thereby narrowing the scope of action for the national legislator. Thus, notwithstanding the dispute on the admissibility of specification,¹⁰² the European Court of Justice has judged

⁹⁸ See *Marimex v. Ministero delle Finanze*, (1972) Comm. Mkt. L. R. 907. *Leonesio v. Ministero dell' Agricoltura*, (1973) Comm. Mkt. L. R. 343; P. MATHIJSEN, *A GUIDE TO EUROPEAN COMMUNITY LAW* 234 (2d ed. 1975).

⁹⁹ See Brändel, *The Decisions of the European Court of Justice on The Agricultural Market System*, 10 COMM. MKT. L. REV. 240 (1973); Happle, *Die rechtliche Grundstruktur der Agrarmarktorganisation*, in *EINFÜHRUNG IN DIE RECHTSFRAGEN DER EUROPÄISCHEN INTEGRATION* 276 *et seq.* (3d ed. 1972). For a critical review of the Common Agricultural Policy see the Report of the Commission in BULL. EUR. COMM. (Supp. Feb. 1975).

¹⁰⁰ J.O. COMM. EUR. (No. L 13) (1962); Schroter, in H. VON DER GROEBEN, H. VON BOECKH, J. THIESING, *KOMMENTAR ZUM EWG-VERTRAG*, *supra* note 44, at 811/IV; E. MESTMÄCKER, *EUROPÄISCHES WETTBEWERBSRECHT* 2 (1974); for the anti-trust law of the European Community, see J. GUYENOT & C. D'ÈVEGNEE, *EUROPEAN ANTITRUST LAW OF THE COMMON MARKET* (1976); J. LANG, *supra* note 2, at 377 *et seq.*; D. MCLACHLAN & D. SWANN, *COMPETITION POLICY IN THE EUROPEAN COMMUNITY* (1967); Van Gerven, *Twelve Years EEC Competition Law (1962-1973) Revisited*, 11 COMM. MKT. L. REV. 38 (1974).

¹⁰¹ See, *e.g.*, A. PARRY & S. HARDY, *supra* note 2, at 61.

¹⁰² See H. P. IPSEN, *supra* note 1, at 458; Runge, *supra* note 23, at 26.

that actionable rights can be established by Directives.¹⁰³ Directives are primarily aimed at achieving the approximation and uniformity of legislation envisioned by article 100 and other provisions of the EC Treaty.¹⁰⁴ This task involves abolishing any distinct national law which impedes the aims of the EC Treaty.

Approximation therefore aims toward constructing an equal or comparable stock of legal provisions in the Member States, thereby tending to harmonize the sub-structural "legal order." The Directives concerning the approximation of company law may serve as an example.¹⁰⁵

Other Directives concern the abolishment of restrictions of the free movement of persons, services and capital, and the abolition of non-tariff barriers to free trade. Directives have been worked out to regulate such diverse fields as the reissuance of insurance, the film industry, the conditions of wholesale and retail trade, trade in pharmaceutical products and the free movement of professionals.¹⁰⁶

The right to issue Directives represents an important opportunity to advance further integration. This is due to the fact that the enactment of a Directive implies the actual transfer of partial national legislative power to the European Community. The Directive obliges a Member State not only to conform its national law to it but also to abstain from any independent regulations on the subject matter in question which might deviate from the content of the Directive and bar its effect.¹⁰⁷ This injunction against national legislative change combined with the lack of any power by a European parliamentary institution to initiate such change could lead to torpidity.

The Decision concerns a single, isolated case. It is binding in every respect upon the addressees named therein, who can be natural persons or the Member States. The law of economic competition is a

¹⁰³ See *Spa S.A.C.E. v. Ministero Delle Finanze*, (1970) Comm. Mkt. L. R. 1213; Daig, in H. VON DER GROEBEN, H. VON BOECKH & J. THIESING KOMMENTAR ZUM EWG-VERTRAG, *supra* note 44 at 189/II(4)(a).

¹⁰⁴ See, e.g., H. P. IPSEN, *supra* note 1, at 686.

¹⁰⁵ See Lutter, 10 EUROPARECHT 44, (1975); 1st Directive in O. J. EUR. COMM. (No. L 65) 8 (1968).

¹⁰⁶ For the different subjects of harmonization, see BULL. EUR. COMMUNITY (Supp., Mar. 1975); *id.*, Sept. 1972; *id.* Je. 1970; *id.*, May 1968; *id.*, Dec. 1967; *id.*, Aug. 1966; *id.*, Aug. 1965.

¹⁰⁷ See Meier, 5 EUROPARECHT 332 (1970); Seidel, *Die Rechtsangleichung zur Herstellung des Gemeinsamen Marktes und der Wirtschaftsunion*, in EINFÜHRUNG IN DIE RECHTSFRAGEN DER EUROPÄISCHEN INTEGRATION, *supra* note 99, at 221.

broad field for Decisions concerning enterprises. As an example, the injunction against the proposed merger by the American producer of packing materials, Continental Can Co., and the biggest Dutch competitor, TDV, was based on the allegation that this merger constituted the taking of an improper advantage of a dominant position within the Common Market.¹⁰⁸ The fine imposed upon United Brands Co. because of unjustified price discrimination for the same products in different Member States in violation of article 86 of the EC Treaty is another example.¹⁰⁹ Decisions referring to Member States are numerous in the field of the free movement of goods. These concern national measures with equivalent effect such as quantitative restrictions which try to protect internal economic sectors.¹¹⁰

Other powers of Community institutions are expressed in recommendations, opinions, acts of organization and financing, programmes and agreements with non-Member States or international organizations.¹¹¹ The competence of the Court of Justice is circumscribed in articles 164 *et seq.* of the EC Treaty. Among the most important are the powers of the Court of Justice to render judgments, to order the suspension of execution and to make any necessary interim order.¹¹² Examples of Parliamentary action are laid down in article 137 of the EC Treaty and its supplementary provisions. Finally, the Court of Justice has held that the law created by the institutions of the Community has priority over national law, as does the law laid down in the Treaty itself.¹¹³ This holding is crucial to legitimation of the decisions of the Community's institutions.

¹⁰⁸ Decision of the Commission in O. J. EUR. COMM. (No. L 7) (1972).

¹⁰⁹ Decision of the Commission in O. J. EUR. COMM. (No. L 95) (1976).

¹¹⁰ See generally Ehlermann, in H. VON DER GROEBEN, H. VON BOECKH & J. THIESING, KOMMENTAR ZUM EWG-VERTRAG, *supra* note 44.

¹¹¹ See Runge, *supra* note 23, at 27.

¹¹² EEC Treaty, *supra* note 2, arts. 171, 185, 186.

¹¹³ See *Costa v. Enel*, [1964] C.J. Comm. E. Rec., 585, 593, Scheuing, 11 TEX. INT'L L.J. 549 (1976), remarks upon the interesting resemblance of this decision to *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed 60 (1803) both "in its strategic significance and the tactics employed." See generally Bebr, *How Supreme is Community Law in the National Courts*, 11 COMM. MKT. L. REV. 3 (1974). The Constitutional Court of the Federal Republic of Germany (Bundesverfassungsgericht) has taken a different position concerning the priority of constitutional fundamental rights over the law created by the institutions of the European Community. See Bundesverfassungsgericht, May 29, 1974, case BvL 52/71, BVerfGE 37, 271, translated in (1974) Comm. Mkt. L. R. 540 (Rupp, Hirsch, Wand dissenting). The decision has been widely criticized, since the Court of Justice of the European Community had already

2. The Structure of Legitimation

The above-mentioned placard-like assessments do not seem exaggerated when examining the role of Parliament in the institutional structure of the Community as a basis for evaluating the present structure of legitimation. The limited palette of powers possessed by the European Parliament is evident when compared with the rights to act and organize inherent in democratic legitimation. Article 137 of the EC Treaty states that the Assembly shall exercise those advisory and supervisory powers which are conferred upon it by the Treaty. The content and limits of the powers conferred by article 137 are briefly outlined.

One positive power conferred on the Assembly is the right to give advice on the formulation of Community legislation such as Regulations, Directives and Decisions. This advisory power, however, is not granted for all measures of the Council and Commission by the express terms of article 137, but by single provisions of the Treaty referred to by the same article,¹¹⁴ and by legal acts based on the Treaty. This guarantees at least that community actions in more important cases can only be taken after a hearing by the Assembly.

The procedure for Assembly consideration requires the following steps. The Commission submits a formal proposal to the Council, which is sent to the Assembly with a request for its opinion. The proposal is referred to the competent advisory Committee by the President of the Parliament. The Committee files a report on which a plenary session eventually votes. This opinion is sent to the Council and the Commission, but is without any binding effect.¹¹⁵ Provision for a "conciliation procedure" between the Parliament and the Council with the active participation of the Commission was made possible by the joint declaration of March 4, 1975. This procedure can be used for acts of general application which have appreciable financial implications and whose adoption is not yet required by virtue of acts already in existence.¹¹⁶ The right to veto contained in article 95 of the Economic

taken steps to articulate and protect "the fundamental human rights enshrined in the general principles of Community law." (See Court of Justice of the European Community, Nov. 12, 1969, case 29/69, *Stauder v. Ulm* (1969) Eur. Ct. Reps. 507; Pescatore, *The Protection of Human Rights in the European Communities*, 9 COMM. MKT. L. REV. 446 (1971).

¹¹⁴ EEC Treaty, *supra* note 2, arts. 7 II, 14 VII, 43 II, 54 II, 56 II, 57 I.

¹¹⁵ Pöhle, note 44 *supra*.

¹¹⁶ O. J. EUR. COMM. (No. C 89) (1975); 9 *General Report on the Activities of the European Communities* 14 (1976) [hereinafter cited as *General Report*].

Coal and Steel Community Treaty (the so-called little revision provision) is an exception.

Article 137 of the EC Treaty refers to a second set of powers conferred upon the Assembly; the supervisory powers. According to article 140 (III) of the EC Treaty, the Commission is obliged to reply orally or in writing to questions put to it by the Assembly or by its members. The delegates have made good use of this right.¹¹⁷ Second, the Commission has to submit an annual general report under article 143 of the EC Treaty. Finally, the Assembly can force all members of the Commission to resign in a body by a motion of censure adopted by a two-thirds majority.¹¹⁸ However, the Parliament has no influence on the nomination procedure of the new Commission.¹¹⁹

The limited scope of powers held by the Assembly can be illustrated by comparison with the national Parliaments. There is no true legislative power since opinions have no binding effect. The right to initiate legislative programs is denied by the restrictive language of article 137 of the EC Treaty, and no budgetary right in a classical parliamentary sense is conferred. However, some efforts have been made in this direction. The Assembly may determine its own budget and since 1971, it has been able to participate to a greater degree in making the budget of the Community. Since 1975, the Parliament has had the right to set the dispositive part of the budget, *i.e.*, the part not yet fixed by legally required expenditures.¹²⁰ However, in the total budget of the Community of 1976, this part amounted to only one percent of the total sum. It was increased to twenty percent in 1978.

The Treaty Amending Certain Financial Provisions of July 22, 1975, provides for the establishment of a European Court of Auditors. It provides for enforcing the budgetary powers of the Parliament in three ways. The procedures for definite dispositions of parliamentary proposals to modify the draft budget are reversed in certain cases. Until now Parliamentary motions to change the budget were deemed to be rejected unless explicitly accepted by the Council. The new treaty

¹¹⁷ See Pöhle, *supra* note 44, at 140/IV(2)(b).

¹¹⁸ EEC Treaty, *supra* note 2, art. 144.

¹¹⁹ In the Parliament's history, only three unsuccessful motions of censure have taken place.

¹²⁰ EEC Treaty, *supra* note 2, arts. 203, 203(a). See Allot, *supra* note 2, at 319; Kapteyn, *The European Parliament, the Budget and Legislation in the Community*, 9 COMM. MKT. L. REV. 386 (1972); Scheuing, *supra* note 113, at 562.

reverses the presumption so that motions which are not explicitly rejected are deemed to be accepted.

Second, under the new treaty, Parliament is granted the right to reject the draft of the budget as a whole if there are "important reasons." Further, the Parliament can demand the submission of a new draft, and discharge the Commission with the implementation of the budget.¹²¹

The Council is not subject to any powers of the Assembly. According to article 140 (IV) of the EC Treaty, the Council only confers with the Assembly under conditions which the Council itself has laid down in its procedural rules. This provision has been relaxed by the introduction of the conciliation procedure, as well as by a resolution of the Council concerning the cooperation of Council and Parliament in the budget procedure.¹²² According to the treaty, the Council is not subject to any right of interpellation by the Assembly. The readiness of the Council to answer written questions as displayed since 1958 is purely a matter of custom.

The Parliament's nearly total lack of power *vis-a-vis* the Council is not remarkable since the Council, being composed of representatives of the national governments,¹²³ is the actual political decision-making body of the Community. In view of the institutional structure constructed by the Treaty, the Council can be considered as the senior of two legislative chambers. Thus, the Council represents the Member States directly and is granted more powers than the Parliament, which can be seen as the representative body of the European peoples.

Finally, the Assembly does not have any right to participate in the appointment of members of the Court of Justice, unlike the German and American legislative institutions which take part in the nomination process to their Highest Courts.¹²⁴ According to article 167 of the EC Treaty, the appointments shall be made by the governments of Member States acting in common agreement. At present, the Parliament contributes little toward the legitimation of the exercise of sovereign powers by the other institutions of the Community. Although

¹²¹ 9 *General Report*, note 116 *supra*; European Community Bulletin 7/8 No. 2504 (1975).

¹²² Decision No. 3, protocol of the Apr. 4, 1970 session of the Council.

¹²³ EEC Treaty, *supra* note 2, art. 146.

¹²⁴ For the Federal Republic of Germany, see FEDERAL BASIC LAW G.G., art. 94 (Constitution of the Federal Republic).

it represents most directly the ideal of people's sovereignty, the Parliament is granted very limited powers to participate in decision-making. Moreover, the Parliament has only a very weak authority to supervise the activities of the Commission.

In addition, the legitimation of the Parliament itself has to be taken into account. The appointment of delegates by national Parliaments, and in some cases through participation by a second chamber or by the government, injects an increased degree of intermediation and thus a decreased degree of legitimation as compared to the selection of national Parliaments. Therefore, the allocation of powers to, and the legitimation of the European Parliament indicate a deficient state of legitimation in the Community.

However, a complete picture of the state of legitimation cannot be gained merely by an assessment of the role of Parliament. What is decisive is the shaping of the legitimation structure for sovereign acts in the overall construction of the European Community, which must be seen as a new form for exercising public and sovereign functions. This perspective reveals primarily an institutional legitimation. The creation of the institutions, and their allocation of duties and powers has been ratified as part of the EC Treaty and the other Treaties by the Member States, in accordance with their respective constitutions, thereby incorporating them into their respective national legal orders. In the same way, the new Members have ratified the exercise of sovereign powers by the Community's institutions with their own stamp of legitimation. In terms of international law the institutionalization and structuralization of the European Community is based upon individual national acts of agreement and legitimation, these acts being themselves legitimated by democratic procedures which are currently in use for basic, political decision-making in each country.

Additionally, it is conceivable that the legitimation of sovereign actions of the Community rests upon a continuing flow of legitimation from other sources. It is perhaps beyond the realm of possibility to suggest that the Community's acts are legitimated by the concerted will of the people of Europe. However, it is possible to envision the legitimation of the Community as derived from the individual national sovereigns. This relationship would not be expressed by co-decisions on single substantive acts, but could be imagined as taking place through personal lines of delegation and appointment from national holders of sovereignty to the institutions of the Community. On the other hand, the majority rule for Community decisions, the state of integration of

the Commission,¹²⁵ and the possibility that the interests of a single state might be overruled or be deemed irrelevant, and the impossibility of drawing a line attributing any single action of the Community to a single state legitimation create theoretical barriers. Fundamentally, there is only the overall institutional legitimation of the Community. However, there is no mechanism to require an accounting of the actions of the Community to a representative legislative institution. At most, a government or a minister is called upon to account for only a single act or decision which affects the Community.¹²⁶

Above all, the effort to find legitimation for acts of the Community by derivation from the single national sovereigns fails in the face of the legal and sovereign independency of the Community; sovereign acts of the Community are not sovereign acts of the single states. Beyond the institutional legitimation, decision by majority rule in all institutions of the Community, and the special shaping of the decision procedure in the Commission cannot be convincingly justified either by a single state legitimation or by the sum of single state acts of legitimation.

Thus, the Community is not entirely without legitimation. However, its present state of legitimation is fragile compared to the structures of legitimation in the Member States. It is characterized by a high degree of intermediation, a predominantly executive-determined decision-making procedure required by the institutional structure and by the failure to try to find parliamentary legitimation of community measures by reference to the ideal of peoples' sovereignty. Thus, the question of whether there is an additional need for legitimation in the field of functional integration has to be answered in the affirmative.¹²⁷

The background for an assessment of whether direct elections imply a gain in legitimation is established. Proceeding on the assumption that the actions indigenous to legitimation remain unchanged, despite the proposals of the Werner Report concerning the Economic and Monetary Union and the proposals of the Tindemans Report¹²⁸ concerning the European Union, what is also unchanged is the possibility of

¹²⁵ For a concrete example, see Graupner, *Commission Decision-Making on Competition Questions*, 10 COMM. MKT. L. REV. 291 (1973).

¹²⁶ A well-informed study on the national decision-making process in European Community matters is included in C. SASSE, *REGIERUNGEN, PARLAMENTE, MINISTERRAT, ENTSCHEIDUNGSPROZESSE IN DER EUROPÄISCHEN GEMEINSCHAFT* (1975).

¹²⁷ This question has been posed repeatedly by H. P. IPSEN, *supra* note 1, at 163.

¹²⁸ See note 63 *supra*; Tindemans Report, BULL. EUR. COMMUNITY (Supp. Jan. 1976).

deriving legitimation from the role of the national peoples in the overall construction of the Community. Thus, a gain in legitimation can only result from an increase in the role of the European Parliament.

Direct elections of the members of the European Parliament will abolish in principle the existing additional degrees of intermediation compared to the respective access procedures of the national Parliaments. Clearly, this will result in a gain in legitimation. However, even this increase in the degree of legitimation is subject to different restrictions that contradict the ideal of a single procedure for all representatives which would provide an equal degree of legitimation for each of them.

Because article 7 of the Direct Elections Act assigns the determination of the electoral procedure for the first directly elected representatives to the Member States, it can doubtless be expected that the electoral procedures will differ substantially for representatives coming from different states. Individual national procedures only accentuate the principle laid down in article 1 of the Direct Elections Act that the basis of legitimation is not the single sovereignty of the people of Europe, but sovereignty of the various national peoples. Nationally different election procedures have a bearing on nationally different degrees of legitimation of the representatives.

The various technicalities are irrelevant. However, all those peculiarities of national procedures which lend different significance to the single vote in each of the Member States will run contrary to the integration ideal of equal legitimation and the principle of equality on which democratic legitimation is based. Votes which result from basically different types of electoral procedures will not be equivalent.

Conducting the elections according to the national electoral laws, *e.g.*, the first past system in Great Britain and the proportional system in Germany, implies the simultaneous applications of totally different voting procedures and of weight given to each vote. This difference will result in a distinct composition of each national group of representatives, and it will also result in disproportionate strength for some political parties. For example, it is to be expected that the British Liberals will be proportionately less represented when compared to their total number of votes than will the German Free Democrats when numbered by the proportional system.¹²⁹ Another form of diverse vote

¹²⁹ Bieber, 31 *EUROPA-ARCHIV* 707, 710 (1976). Mr. Bieber thinks that it is possible that the British Liberals will not be represented in the European Parliament at all.

efficacy will result from separate national decisions on whether to apply a condition requiring a party to gain a minimum percentage of the total vote in order to be eligible for representation in the Assembly.

A third problem could arise from the various procedures of parties' admission and from individual States barring candidates of parties held to be unconstitutional in that State. However, this question will not be of immediate interest until integrated European parties attempt to run candidates throughout the whole Community; a possibility not envisioned for the first direct elections which will be based on nationally organized parties confined to their respective countries. The creation of integrated European parties will most probably be preceded by a uniform electoral procedure (according to article 7 of the Direct Elections Act) and thus the third problem might not arise at all.

The expected different vote efficacy is dealt with in article 1 of the Direct Elections Act by recognizing the sovereignty of the separate national peoples. However, the idea of integration and the principle of democratic legitimation would suggest the necessity of avoiding gross disproportions of vote efficacy in the different national procedures, even in the first direct elections. However, in the long run, the basis of legitimation for the Community and its institutions may shift from the peoples of the States brought together in the Community, as it is formulated in article 1 of the Direct Elections Act, to the people of the European Community grouped into single States.

The proportional system of national allocation of seats as laid down in article 2 of the Direct Elections Act, and taken over in principle from article 138 (II) of the EC Treaty, does not even roughly realize equal vote efficacy. Judged by the standards of the ideal of integration and of the principle of democratic legitimation it can only be justified for a transitory period. The number of voters represented by a future Member of Parliament varies between 60,000 and 763,000 which implies institutionalized discriminations of vote efficacy along the line of national borders. As national populations decrease, each vote is more valuable. The allocation was the result of compromise between the national State principle and an agreed proportionality, thereby very roughly taking into consideration the differences in national population.

To solve the problems resulting from the disproportionate value of the vote in the respective Member States, and from the intention to limit the number of national seats, a concern felt especially by Luxembourg, better solutions must be found in the long run. The creation of

regional voting districts crossing national borders, or a connected Benelux system, or a minimum guarantee of seats for Luxemburg alone would all be conceivable. However, realizing roughly comparable vote efficacy need not mean that the smaller States will be swamped. A system of minority protection has to be found. Moreover, equal national representation can be guaranteed by use of the Council as a second chamber comparable to the American Senate. Countries which choose to apply proportional election procedures to a pure party list system will sacrifice a degree of the gain in legitimation which will result from direct elections. Legitimation will flow more directly if the proportional election procedure is used in voting districts.¹³⁰

Article 5 of the Direct Elections Act permits delegates to hold seats in the national parliaments as well. However, the burden of executing a national as well as a European mandate meaningfully and seriously should make the dual mandate an exceptional case. Linking the European ideals to membership in the national parliament in a mandatory way would obscure the distinctions between the two autonomous sources of legitimation.

The City of Berlin is an exception to the overall scheme. Its representatives will not be elected by direct universal suffrage, but by the City Assembly (Abgeordnetenhaus) as originally decided by the three Western Allies. If this special treatment is based on the principle that Berlin is not governed by the Federal Republic,¹³¹ and thus is not subject to the procedures laid down in the federal law, nothing should prevent Berlin's participation in the uniform procedure to be determined by the Community for future elections, the rights and powers of the Allies notwithstanding.¹³²

Direct elections will increase the degree of legitimation of the European Parliament despite the problems and restrictions discussed above. A gain will be achieved by the fact that the citizens of the Member States will cast a special European vote.

While the palette of powers of the Parliament remains as limited as before, the possibility cannot be excluded that a Parliament elected by

¹³⁰ Listing systems without electoral areas would forego unnecessarily the chance of a more intense representation. For a British perspective of this problem, see Stewart, *supra* note 77, at 295.

¹³¹ See The Agreement on Berlin of Sept. 9, 1971, at II B and the *Letter of the Western Allies* of May 12, 1949 concerning the BASIC LAW at No. 4.

¹³² For the position of Berlin in the European Community, see 7 *Europarecht* 232 *et seq.* (1972).

direct universal suffrage will exercise its powers with greater resonance. Moreover, it may succeed in having its powers enlarged by Treaty revisions concerning the shifting of authority and competence within the Community structure. The Direct Elections Act has already inspired discussion of possible future developments. In Germany, the experts on European policy in each of the three parties represented in the Federal Parliament all see as the next objective the allocation of new powers to the European Parliament. Biedenkopf, of the CDU, has suggested as possibilities, a right to confirm the President of the Commission, the right to initiate legislation and send it to the Council, the right to control the entire budget, the right to enact legislation in cooperation with the other institutions of the Community and a qualified right to veto decisions of the Council. Bangemann, of the FPD, has declared it essential to accord to Parliament the right to initiate legislation, and the right to participate in drafting a European Constitution. Friedrich, of the SPD, has urged that the Parliament be given equality with the Council in legislation, especially in budget and financial matters, and in the election of the Commission.

Official proposals on a European level are presented by the Vedel Report,¹³³ the Tindemans Report¹³⁴ and the recommendations of the Werner Report.¹³⁵ However, it is not possible to examine these proposals without considering the reasons for the time lag between the ratifications of the European treaties and the passage of the Direct Elections Act, as discussed above. The national discussions on adopting the Direct Elections Act demonstrated the intricacies of progressing toward European integration.

Three factors may be decisive in determining whether the powers of the directly-elected Parliament will be enlarged:

- (1) The relationship between the important national political parties which will form the majority in the European Parliament, and the degree of consensus in matters of European policy among them.
- (2) The political importance of the future Members of the European Parliament in their respective home countries.
- (3) The size of the voting turnout at the first direct elections. This will help to measure the interest of the population of the Community as a whole in achieving European integration, as well

¹³³ See note 4 *supra*.

¹³⁴ See note 128 *supra*.

¹³⁵ See note 63 *supra*.

as identifying regional and national differences. Thus, the size of the turnout can serve as an important argument for future steps towards integration. The turnout will also depend upon how convincingly and to what degree the national politicians supporting integration have succeeded in attracting the attention of various groups to Community activities by appealing to their special interests.

The Direct Elections Act does not change the fact that decision-making procedures within the Community are predominantly executive determined. However, it provides an opportunity for an increase in the degree of legitimation of the Community as a whole, and may lead toward future integration.

Finally, it is possible to hypothesize an enlargement of political control over the other Community institutions by a directly-elected European Parliament.

This control may be directly exercised through legally institutionalized forms and procedures, or may result from more indirect influences such as the Parliament's role as the forum for political discussion.

At present the Assembly's control over the Commission and Council is very weak. The analysis of powers demonstrates that there are few legally institutionalized forms of control over the Commission and there is no power to control the Council at all. This may partially result from the fact that the composition of the present Assembly is dominated by politicians who are less influential in national politics, although exceptions do exist. Thus, the potential for the present representatives to influence single decisions of the Council and Commission through direct contact or by an appeal to national legislative and executive institutions might be limited, despite the immense achievements of some consultations. Thus, the control of the Council and Commission is essentially in the hands of the executive institutions of the Member States.

Direct elections present an opportunity for increasing the control of the Parliament. A continuous, steady enlargement of the powers and participatory rights of the Parliament is not unlikely to occur. Simultaneously, the possibility exists of augmenting the powers by universally accepted custom and by working to increase the willingness of the Member States to revise the treaties to give greater authority to the Parliament. This is more likely to occur if the question of the allocation of powers among the Community institutions is kept separate from the problem of the surrender of national sovereignty.

The election of nationally influential politicians can be expected to increase the influential capabilities of the new Parliament. It is already known that Brandt, Tindemans and Strauss intend to become candidates.¹³⁶

The third factor which could increase the political control of the new Parliament will be the possibility of forging alliances among national parties with similar political views to create factions within the Parliament. The ongoing national structure of political parties indicates that the traditional national electoral campaign will also continue with all of its attendant features, *e.g.*, the nomination procedures for candidates and the formation of party programmes. The possibility of cooperation among similar parties in different Member States may allow for the development of a consensus of opinion on policy toward the integration of Europe, and toward increasing the power and influence of the Parliament. In the present Assembly, delegates have already formed factions which emphasize political similarities rather than national differences. For example, Christian-Democrat, Socialist, and Liberal alliances already exist.¹³⁷ Even outside the Assembly, it appears that party associations of Christian-Democrats, Liberals, and Social-Democrats are beginning to transcend border divisions.¹³⁸

However, complete unity is made more difficult by the real ideological differences which exist among parties with similar names by the existence of competing wings within each national party, and also by the presence of peculiarly national parties, *e.g.*, the Gaullist Party in France.¹³⁹ Formation of transnational factions can contribute to increasing the degree of control of the Parliament over other Community institutions. If the delegates choose instead to remain isolated in national party groups, or even coalesce into broader national alliances, there will be two negative effects. Not only would the idea of integration not be furthered, but the opportunity for reaching a prior, transnational commitment to increasing the control of the Parliament over the Commission and perhaps, the Council, will be lost.

¹³⁶ Bieber, *supra* note 129, at 713.

¹³⁷ For a more detailed treatment of the factions in the European Parliament, see G. ZELLENTIN, *EUROPA* 1985, 95 *et seq.* (1972); *ZUSAMMENARBEIT DER PARTEIEN IN WESTEUROPA* 412 *et seq.* (1976).

¹³⁸ See *ZUSAMMENARBEIT*, *supra* note 137, at 13, 143, 251.

¹³⁹ See M. BANGEMANN & R. BIEBER, *DIE DIREKTWAHL-SACKGASSE ODER CHANEL FÜR EUROPA?* 136 (1976); *ZUSAMMENARBEIT*, *supra* note 137, at 341 (problems of transnational cooperation between political parties).

While direct elections will further the integration of the European Community by increasing the degree of legitimation of the Parliament, and, indeed, of the Community as a whole, it is this opportunity for transnational political cooperation which may be the greatest benefit of the Act of September 20, 1976. Alliances between similar national parties can increase under a commitment to the idea of a European Political Union which can be implemented by concerted action in the new, directly-elected Parliament.