Community Topics 11

How the European Economic Community's institutions work

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Common Market Commission

european community
information service

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The aim of this paper is to describe how the institutions of the European Community work – particularly those of the Common Market. It is written from the standpoint of the t chnician rather than the lawyer – which is understandable since its author's daily task is to see that the Community's procedure is applied correctly and smoothly.

It is difficult to say to what order the institutional system of the Community belongs. The Community is much more than an inter-governmental organization. Its institutions hav a personality of their own and have extensive powers. Nor does the Community form a 'federal government' to which, in its spheres of competence, the national Governments and Parliaments might in some way be subordinated. In fact, Community officials have refrained from putting the Community's institutional system into any one of the categories d fined by specialists in international law, leaving this task to future historians. If asked to defin in a word th institutional syst m of the Community, th y prefer to reply simply that it is a 'Community' system.

The Institutions

The Rome Treaty lays down that the tasks entrusted to the Community shall be carried out by four institutions : the European Parliament, the Council of Ministers, the Commission, and the Court of Justice.

The **Parliament** consists of 142 members appointed by the six national Parliaments from among their own members.

Each member Government is represented in the **Council** by one of its Ministers. The composition of the Council may thus vary according to the subjects on the agenda. Although the Foreign Minister is to some extent regarded as his country's chief representative on the Council, the Ministers of Agriculture, Transport, Finance, etc., often take part in meetings, either alone or accompanying the Foreign Minister.

The **Commission** consists of nine Members appointed for four years by unanimous agreement of the six Governments. During the whole of their period of office, the Members of the Commission must act in complete independence both of their Governments and of the Council of Ministers. The Council has no power to terminate the mandate of a Member of the Commission. Only the Parliament could procure the automatic resignation of the Commission by passing a vote of no confidence.

The Council and the Commission are assisted by the **Economic and Social Committee,** a consultative body composed of representatives of business and industry, farming, trade unions, etc. In many matters the Council and the Commission must consult the Committee before they can take a formal decision. The Committee also ensures that professional and business circles play their part in the development of the Community.

Lastly, the **Court of Justice,** consisting of seven judges appointed for six years by agreement among the Governments, ensures the rule of law in the implementation of the Treaty.

There are several ways in which the institutions, acting executively through the Council and the Commission, can take the steps needed to achieve their aims under the conditions laid down for various circumstances by the Common Market Treaty.

In the first place they can adopt **Regulations.** Under the Treaty, a Regulation must have general application; it is binding in every respect and directly applicable in each member State.

They can also issue **Directives** to one or more of the member States. A Directive binds any member State to which it is addressed on the result to be achieved, while leaving it to the national authorities to decide the form and the means to be employed.

They can take **Decisions,** to be addressed either to a Government, a firm or an individual. A decision is binding in every respect on those to whom it is addressed.

Finally, they can formulate **Recommendations** or **Opinions,** which have no binding force.

In this context, it is perhaps most fruitful to concentrate on the internal operation of the Commission and the Council and on the way in which their mutual relations are organized. These two bodies in fact constitute the power-house of the entire institutional system of the Community, and their relationship is perhaps the most original aspect of the system.

To begin with, there is the Commission. The Treaty gives it extensive responsibilities which can best be outlined as follows :

The guardian of the Treaty ;

The executive organ of the Community ;

Initiator of Community policy and the body which gives expression to the interests of the Community as a whole.

The Commission as guardian of the Treaty

The Commission sees to it that the Treaty's provisions and the decisions taken by the institutions are correctly applied. It is responsible for maintaining an atmosphere of mutual confidence. If the Commission does its job of watchdog properly, everyone can fulfil his obligations without mental reservations, knowing that his partners are doing the same and that action will be taken against any breach of the Treaty. Conversely, nobody can plead shortcomings of his partners as an excuse for not fulfilling his own obligations. If there are any shortcomings, it is up to the Commission

as an impartial body to make inquiries, to give an objective judgment and to prescribe what measures the country at fault must take to right the situation.

The Treaty lays down a strict procedure for preventing infringements. If the Commission considers that there has been a breach – and it can reach this conclusion either as a result of *ex officio* inquiry, or at the request of a Government, or by investigating complaints from private persons – it can call on the State concerned to submit its comments or justify its action within a specified period (a month or a month-and-a-half). If the member State continues the practice in question and if its comments do not induce the Commission to modify its view, the Commission issues a reasoned Opinion (*avis motivé*), which the member State is obliged to comply with within the time limit prescribed by the Commission. If the member State does not do so, the Commission may put the case to the Court of Justice, whose decision is binding both on the member State and on the institutions.

These provisions, which give considerable power to the institutions, are in fact fully applied. From 1958 to October 1962, the Commission made statements on 30 cases[1]. In 12 of them, the State concerned came into line from the beginning – as soon as the Commission asked for its comments. In 10 cases, the Commission had to issue a reasoned opinion, with which member States complied in five cases. In five other cases, the Commission had to lay the matter before the Court of Justice. The Court has already given its verdict in two of these cases, upholding the Commission's viewpoint and requiring the Government in question to do as the Commission asked. In one case, the Commission's complaint was withdrawn, the member State having meanwhile agreed to take the steps required by the Commission. Two cases are still *sub judice*.

Proceedings are still being taken in 18 fairly recent cases. In addition, 40 files on suspected breaches are at present being examined by the Commission, which has not yet made any pronouncement on them.

These, clearly, are large figures in comparison with the 40 cases brought since 1958. This is because the provisions of the Treaty become more stringent as the stages of its implementation progress, while the extension of Community legislation multiplies opportunities for mistakes. Most of the cases during the first four years of the Community's existence were concerned with customs duties and quotas. In the near future there will be just as many cases on the agricultural regulations and the regulations on restrictive practices. So there is not much chance of the Commission's "law enforcement" becoming less frequent . . .

Be that as it may, the measures that have given rise to these proceedings have been of very limited economic significance. They have been, moreover, fairly evenly distributed throughout the Community. The breaches of the Treaty have been more in the nature of mistakes – almost inevitable when we are adapting national administrations to Community procedures – than deliberate attempts to escape the obligations of the Treaty. In some cases, they were due to contrasting interpretations of the Treaty – again quite natural in so novel a field. After analyzing all such cases, the Commission came to the conclusion, in a recent report on the first stage of the Treaty, that the breaches committed in these four years have had no perceptible effect on the correct implementation of the Treaty's clauses.

The Commission as the executive organ of the Community

Considerable executive powers are already vested in the Commission, and they will increase in the future. Both the Treaty and its implementing Regulations entrust the Commission with the task and power of drawing up the texts (we might call them "administrative decrees") which give effect to the "European laws" contained in the Treaty or adopted by the Council. In recent months the implementation of the common agricultural policy has led to a considerable increase in the number of Decisions and Regulations. For example, on July 1, 1962 only 9 out of a total of 55 Community Regulations had been adopted by the Commission acting alone, but by October 1, 1962, 70 out of a total of 128 Community Regulations had been adopted by the Commission acting alone. In the three months from July 1 to October 1, 1962, 85 new Regulations were adopted, almost all of them concerned with the application of the basic agricultural rules decided on by the Council in January 1962.

1. These and other statistical data represent the position in October 1962.

The Commission must also take most of the individual Decisions prescribed by the Treaty or its implementing regulations. These Decisions may be addressed to a Government in order, for example, to grant or to refuse tariff quotas, or to adjust or prohibit State aid to a particular sector of the economy, or to authorize some departure from the Treaty under the safeguard clauses. They may also be aimed directly at a firm or individual: the Regulation on monopolies and restrictive practices gives the Commission exclusive power to authorize economically justified agreements between firms.

The Commission also has direct supervisory powers. In the field of restrictive practices or transport rates, for example, it can institute on-the-spot inquiries on behalf of the Community at the level of the individual firm.

When the Community was first set up, the Commission had relatively little occasion to take such "individual Decisions". From 1958 to July 1962, they totalled no more than 200 – and most of these related to tariff quotas. But in this field also, the Regulations recently adopted on agriculture and restrictive practices involve a considerable extension of the Commission's executive rôle. For example, to ensure the proper working of the levy system for grain, the Commission has to take daily decisions, directed to the six member States, fixing the bases on which the levies are worked out. To take care of this single sector, a total of about 100 decisions now has been taken every month since July 1, 1962 – the date when the agricultural rules came into force. A further consequence of these rules is that the Commission has now to undertake some measure of direct administration and in fact constitutes the beginnings of a federal civil service. Some of the Commission's departments will have to be gradually transformed with this end in view.

The Commission as initiator of Community policy

The initiation of policy measures is no doubt the Commission's most important, and perhaps most original, task. The Commission carries it out in close cooperation with the Council of Ministers, so that a description of this aspect of the Commission's activities will serve also to explain the greater part of what the Council has to do and how it does it.

The Common Market Treaty is frequently defined as an "outline" Treaty (*"un Traité-cadre"*) as distinct from the Euratom Treaty and the Coal and Steel Treaties, which may be called "law-establishing" Treaties (*"Traités-lois"*). Whereas the latter two Treaties specify exhaustively the general regulations to be applied within relatively narrow sectors, the Treaty establishing the Common Market (apart from its "automatic" clauses on customs and quota disarmament) confines itself to indicating the general lines of Community policy in the main spheres of economic activity. It is left to the Community institutions – and particularly the Council of Ministers and the Commission – to elaborate the provisions to be applied by the Community.

In a way, everything connected with economic union was left blank in the Treaty, but these blanks can be filled in by the Community's institutions without any new treaties being concluded or new parliamentary ratification being obtained. The measures that the institutions are empowered to take are real "European laws" that can be directly applied in all member States and may bring about far-reaching changes in the branches of the economy which they concern. The European rules on agriculture adopted by the Council in 1962 together form a body of law as significant, perhaps, as the entire Coal and Steel Treaty.

It is worthwhile here to touch upon a comment that is often made – that the Common Market Treaty is less "supranational" or more inter-governmental than the Coal and Steel Treaty. In my opinion, this is really a case of optical illusion. The Coal and Steel Treaty laid down in full detail the implementing powers entrusted to the High Authority. In contrast, the powers of implementation of the Common Market Commission in all the fields affected by the Rome Treaty will not be fully known until all the Community's common policies have been adopted. They are known already as far as restrictive practices and agriculture are concerned, and it is clear that these powers are at least as extensive as those of the High Authority. In fact, the Treaties of Paris and Rome are based on the same principles and set up equivalent institutional systems. But as the Common Market is in process of continuous creation and leaves scope for solutions to be found pragmatically and adapted individually to a given sector or situation, the Rome Treaty is less alarming even to those people who have most reservations about the structure of the Community. At the same time, it makes the balance between the powers of national Governments and those of the European

institutions more evident to people who are just beginning to familiarize themselves with the Communities.

These considerations can help one to a greater understanding of the rôle of the institutions in putting the Treaty into effect. First of all, they have to create the structure of economic union in Europe out of nothing. The Treaty provides the foundations, but the house itself has still to be built. Once the structure is there, the institutions will also have to frame Community policy and apply it from day to day. To guide the whole of this process the Treaty makes the Commission today the architect of the new building and tomorrow the initiator of the common policy.

All provisions which are general in scope or of major importance require the approval of the Council of Ministers. With one or two specific exceptions, however, the Council can only decide on a proposal of the Commission; thus the initiative must always come from the Commission. If the Commission does not submit any proposals, the Council is paralyzed and the Community's progress halted. And this is equally true in agriculture, transport, commercial policy, or harmonization of national legislation.

The submission of a proposal by the Commission initiates the dialogue between the national Governments represented in the Council (who express their national points of view) and the Commission – a "European" body called upon to give expression to the interests of the Community as a whole and to seek "European" solutions to common problems. It might be feared that this dialogue could be distorted if the Commission were in too weak a position *vis-à-vis* the Governments – strong in their authority and the attributes of sovereignty. But the Treaty balances the situation ingeniously.

By the very fact of formulating the proposal which is to form the basis of the Council's discussion (and it is only on this basis that the Council can discuss), the Commission already acquires real influence. But there is more to it than this. Article 149 of the Treaty, which is perhaps one of the keys to the Community's institutional system, stipulates : " When, pursuant to the Treaty, the Council acts on a proposal of the Commission, it shall, where the amendment of such proposal is involved, act only by means of a unanimous vote."

Provided it is unanimous, the Council of Ministers can therefore take a sovereign decision even against the Commission's proposal. And this is only reasonable, since the Council then expresses the common standpoint of all the member Governments. On the other hand, when the Treaty provides for a majority decision and the member States are not unanimous, they are bound by the Commission's proposal. In fact, they can adopt by majority vote only the actual proposal submitted by the Commission, without amendment. In such a case, only the Commission can amend its own proposal. The Council can do nothing but reject it, if the required majority is not in favour, or adopt it as it stands. Thus, the Commission has real powers of negotiation in the Council. Discussion can be joined, and is in fact joined, on ground chosen by the European body.

The importance of these provisions is shown by the fact that from the beginning of the Common Market's third Stage – from January 1, 1966, as things are at present – the Council will have to take nearly all its decisions by simple majority (a majority of the Members of the Council) or by a qualified majority (a two-thirds majority, the vote of each Member being weighted).

What are the consequences of this system ? On the practical plane, it puts the Commission in a central position within the Council, where it can permanently play the rôle of "honest broker" – of a mediator between Governments – and also steer the discussion towards agreement.

The political consequences are still more important. The Commission's proposals are the expression of a policy it has framed with no other consideration in mind than the common interest of the Community as a whole. The permanent status of the Commission during its four years of office ensures the continuity of this policy, and the Council can only decide on proposals submitted by the Commission, which are the means of putting this policy into effect. It is therefore not possible for the Council to adopt contradictory proposals resulting from changing majorities, the whims of pressure groups, or struggles for influence between Governments.

Without the consent of the Commission it is also impossible for a majority of the Council to impose on a country forming part of the minority any measure that would do grave harm to its vital interests. If the Commission really fulfils its obligations, it cannot be party to such an action. Its intervention is therefore an important guarantee to individual States.

The European Parliament

For a system such as this to work efficiently, the independence of the Commission must be guaranteed. To this end, as already indicated, the Treaty prescribes that the Commission shall be responsible to the European Parliament, and to that Parliament alone. The composition of the Parliament makes it essentially a Community body, completely integrated. There are no national divisions, but only political groups organized at the European level. The Parliament exercises permanent control over the Commission, making sure that it respects its rôle as representative of the Community interest, and always prepared to call it to order should there be any reason to suspect that it is yielding to canvassing by one or more of the Governments. Furthermore, the Parliament must be expressly consulted on the Commission's main proposals before the Council takes any decision.

The parliamentary committees play an important part in this field. The Parliament cannot hold more than about eight sessions a year, each lasting a week. Between these sessions, most of the parliamentary committees meet at least once, and sometimes more often. Whatever subject it is dealing with, a parliamentary committee invites the responsible Member of the Executive to explain his standpoint – whether on decisions taken by the Executive or submitted to the Council, or on the attitude adopted by the Executive in the Council.

The committees deal with matters in detail, and as their meetings are held in private they can be given complete and confidential information. Their work has contributed greatly to the extension of the European Parliament's influence on the day-to-day progress of affairs.

The written questions that the Members of the European Parliament can put to the Commission (and to the Council of Ministers) are also a means of parliamentary control that is being used more and more. During the six months to October 1962, 95 written questions were put to the Common Market Commission.

The widening of the Community's responsibilities will make it absolutely necessary in the near future that the powers of the European Parliament should also be widened and that its representative character should be strengthened – for example, through election by direct universal suffrage. Such a development is inevitable, whatever reservations may have stood in its way up to now.

Parliamentary control thus ensures the independence of the Commission, thanks to which the Council enjoys the advantages of the majority principle, while being preserved – as far as is possible – from its few attendant risks.

During the first stage of the Treaty, of course, unanimity was required for most Council decisions, so the procedure I have just described could not be applied. However, the Community spirit of the Members of the Council and the personal authority of the Members of the Commission meant that the dialogue between them was carried on satisfactorily. The Commission has always given real impetus to the Council's work and has played a vital part in its deliberations, guiding them and helping towards the necessary compromises. Moreover, the majority principle was already applicable in some fields – few in number but important – such as restrictive practices and the free movement of workers.

Experience has shown (though the conclusion is rather paradoxical) that the majority principle made it much easier to come to unanimous decisions. Provided a minimum of concessions are made to its arguments, a Government likely to find itself in the minority often prefers to come round to the majority opinion. In this delicate interplay, the rôle of the Commission has always been decisive.

How the Commission works

Such are the main tasks of the institutions, the nature of their inter-relations and the way in which their powers are balanced. What are their working methods ?

Let us first see how the staff of the Commission functions. It consists of nine Directorates-General, the Executive Secretariat (which has a coordinating rôle) and the Spokeman's Group. There are also three Services – the Legal Service, the Statistical Office, and the Information Service – which are common to the three Communities.

The total staff of the Commission now numbers about 2,200, almost 600 of whom are officials in responsible positions ("category A"). Together with the staff of the European Parliament, the Council of Ministers and the Court of Justice, the total number of Common Market officials is something like 3,000 people.

The Community's budget for 1962 was about $59 million. Half of this sum was earmarked for assistance granted by the European Social Fund in retraining or resettling unemployed workers; the other half covered the operating expenses of the Commission and the three other institutions.

Each of the Commission's nine Members has special responsibility for one of the main spheres of the Community's activity (external relations, agriculture, social affairs, etc.), and has the corresponding Directorate-General under his authority. The Treaty lays down, however, that the Commission must act as a collegiate body with cabinet responsibility. In other words, all the acts that the Treaty or its implementing regulations entrust explicitly to the Commission (Regulations, Decisions, proposals to the Council, etc.), must be performed by the Commission as a whole. The Commission cannot therefore delegate to one of its Members powers in the sphere of his special responsibility that would give him a degree of independance comparable, say, with that of a Minister in his own department.

In order that this collegiate system should not paralyze the Commission, generous use is made of what is known in Community jargon as "written procedure": The Members of the Commission receive the dossier and the draft decision; if they have not submitted reservations or objections within a fixed period (generally a week), the proposal is deemed to have been adopted. To give some idea of how this works out, 850 decisions of all kinds were reached in this way during the course of 1961.

Thus only questions of importance appear on the agenda for Commission meetings, which take up one whole day every week.

For the most delicate questions, the Members of the Commission meet alone, with no official present except the Executive Secretary and his Deputy. For ordinary matters – or those of a technical nature – the responsible officials may be called in. Although Commission decisions can be taken by a majority vote, most of them are unanimous. The solidarity of the Members of the Commission and the underlying unity of their views, which transcend differences in character and background, make a considerable impression on anyone who follows the activities of this body. It is therefore relatively rare for matters to be put to the vote in the Commission, and when this has happened the minority has always considered itself bound by the majority decision.

How does the Commission draw up its Decisions or the proposals it submits to the Council ? Two very different cases can be distinguished: first, definitions of the main lines of the policy the Commission intends to follow in a given sphere – the Commission in its political rôle; and secondly, the choice of the ways and means of putting policy into practice – the Commission in its technical rôle.

When the Commission has to lay down the main lines of its policy it first enters into consultations on the broadest possible basis, seeking the opinions of Governments, permanent officials and private organizations. Then it decides its attitude, with the assistance of its staff, but of no one else. This process takes place in the course of often numerous and lengthy working meetings, with weeks of reflection between one draft proposal and the next. That was how the Commission prepared documents as important as its first Memorandum on European problems after the breakdown of the Free Trade Area negotiations, the proposal to speed up the implementation of the Treaty, the Memoranda on the common agricultural policy and transport policy, and the proposals on the renewal of the convention of association with the African associated countries.

On the other hand, when the Commission must prepare the ways and means of applying a previously defined policy, or decisions of a mainly technical nature, it regularly calls on technical experts from the six Governments. In such a case its responsible departments convene and preside over meetings of government experts appointed by each of the national administrations concerned. These experts do not formally commit their Governments, but, as they are informed of the interests and opinions of the latter, they perform a useful function in guiding the Commission in its search for solutions that are technically accurate and generally acceptable to the six Governments.

These meetings of experts are held very frequently. In 1961, for instance, rather more than a thousand meetings of this kind were organized by the Commission on the most varied subjects connected with the implementation of the Treaty. Every year this provides an increasing number of civil servants from the various countries with a truly "European education".

These meetings also enable contact to be made at the administrative level between European officials and Government officials. They are supplemented by many consultative meetings organized

by Members of the Commission or its various departments, with, for example, leaders of the Community-wide groupings of trade unions, employers' associations, farmers' unions, and traders' associations.

The results of all this preparatory work are eventually laid before the Commission, which has to take the final decision.

This, then, is how proposals submitted to the Council by the Commission are drawn up. The same procedure is also very often used to frame Regulations or Decisions which the Commission can adopt itself, but in the preparation of which it endeavours to ensure the participation of national administrations.

How the Council of Ministers works

When the Council has before it a Commission Memorandum of general scope or a proposal on a well-defined subject, it entrusts the preparation of its discussions either to an *ad hoc* committee of senior officials (for example the Special Committee for Agriculture) or to one of its permanent committees (*Groupes de travail*), of which there is one for each main branch of the Community's activities. The work of these bodies is coordinated by the Committee of Permanent Representatives, which functions rather like a committee of ministerial deputies.

The Commission is represented at all meetings of the permanent and special committees, and of the Committee of Permanent Representatives, so that the dialogue begun at the level of national experts can be carried further with officials appointed by the Governments.

Council decisions may only be taken by the Ministers themselves, though on less important questions and where unanimous agreement had been reached between the six Permanent Representatives and the Representative of the Commission, the decision is taken by the Council without any discussion.

All questions of major importance or of political significance, however, are thoroughly discussed in the Council by the Ministers and the Members of the Commission, the latter taking part in the Council meetings as of right. It is at this point that the rules of Article 149, described above, are applied.

These meetings are not a pure formality – as is sometimes the case with ministerial meetings in other international organizations – but working meetings at which discussion is often prolonged and fierce and the final result long uncertain. Council Decisions, moreover, are becoming more and more frequent: from January to July 1962, there were nearly three sessions a month, of one or two days each. And everyone in the Community remembers the marathon session on the agricultural regulations that went on for nearly three weeks at the end of 1961.

These, then, are the rules and the facts that seem to me most characteristic of the basis on which the Common Market Council of Ministers and the Commission, and – more generally – the Community as a whole is built.

The *style* of the Community institutions in Brussels is perhaps best conveyed by three of their salient features:

The institutions, and particularly the Commission, are not inward-looking. On the contrary, they are focal points for the constant interchange of opinions and suggestions made by Governments and civil servants, European parliamentarians, and representatives of labour and management.

There are strict legal rules that must be rigorously respected, but at the same time the maintenance of permanent contacts creates that common spirit and mutual confidence which ensure the necessary flexibility.

Private organizations, parliamentary circles, national civil servants and Ministers have confidence in the impartiality of the Commission, and the Commission believes that Governments are resolved to play the Community game according to the rules.

After four-and-a-half years' experience of the Common Market, and an even longer one of the European Coal and Steel Community, everyone working in Brussels is convinced of the efficacy of the Community system. They are convinced, too, that this system can be extended to any number of new problems, and that there are no difficulties – however great – that cannot in the last analysis be resolved in order to bring the Common Market to its full fruition.

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European Community Information Service

London : 23 Chesham Street, SW1.

Washington : Farragut Building, Farragut Square, Washington D.C.

Printed for the Information Service of the European Communities by Edwin Snell & Sons Limited of Yeovil, England