

European Communities

EUROPEAN PARLIAMENT

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Report

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on the substance of the preliminary draft Treaty establishing
the European Union

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PE 83.326/fin./C

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EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

WORKING DOCUMENT
ON THE LAW OF THE UNION

Rapporteur: Mr K. DE GUCHT

8 February 1983

METHOD

1. There will be no descriptive section so that all the space available can be used to develop ideas about the future Union. For a description of the present situation, reference should be made to the Commission's and Parliament's background documents. The best description of Union law is in our opinion to be found in 'The European Community's legal system' (Periodical 6/1981, European Documentation). Some of Parliament's reports will be referred to in connection with the discussion of certain specific problems.
2. The present Community Treaties constitute a mixture of constitutional and policy provisions. In the Union, decisions will be taken by the institutions of the Union in accordance with the provisions of the Treaty. The rules contained in the Treaty will thus be of a purely constitutional nature. As a result the Treaty will be short and clear. As regards Union policy, the Treaty will deal only with general objectives (in the preamble and first few articles) and the distribution of powers at the various levels (Union, Member States, regions) and between the institutions. This means that the Treaty of the Union will not contain chapters mainly devoted to policies (such as agriculture, transport or social policy) (otherwise we would be obliged to draw up a Treaty containing some thousand articles).
3. The existing Community is based on law. As such, the construction of Europe has been a success. The following views are thus based on existing law as developed particularly in the case-law of the Court of Justice.

I. PRINCIPLES AND OBJECTIVES OF THE UNION

A - INTRODUCTION

4. In view of developments in the Community during the seventies and the Union's new powers, Union law should form the basis for reliable and efficient European construction. The structural principles that will give the Union its image and represent the basic values from which Union leaders should draw inspiration will have to be defined much more clearly than was the case in the Community conceived as a means of attaining certain objectives.

1. Political bases

5. The system is based on democracy: the institutions' powers stem from either direct (Parliament) or indirect (Council, Commission) elections. The Law of the Union, approved by the two branches of the legislative authority (Parliament and the Council) is the instrument through which the Union's main decisions are taken.
6. Respect for fundamental rights and their development are the prerequisite for and essential foundation of the Union.
7. Respect for fundamental rights and their development will provide the construction of Europe with the necessary legitimacy.

2. Rule of Law

8. Rules and policies will be formulated and applied strictly in accordance with the provisions of the Treaty and the separation of powers whilst allowing such intervention as is necessary for the proper functioning of the Union. This will fully guarantee the States and the Union that their respective powers will be respected and the citizens that their rights will be safeguarded and that they will be able to determine who is responsible for the policies pursued.

3. Primacy of Union Law

9. Union law takes precedence over the law of the Member States. This basic principle already exists in the Community, but we must ensure that it is complied with and uniformly applied. It is a sine qua non for the construction of Europe.

4. Single legal and political corpus

10. The construction of Europe must be more than the sum total of initiatives that reflect different rules administered by different institutions. The Union will have to centralize and harmonize the different (Community, EMS, political cooperation) initiatives by adopting established Community Law. All policies and initiatives falling within the jurisdiction of the Union will have to form part of the single Union system.

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11. The above principles are of paramount importance to the construction of Europe even though it is not always easy to define their subject-matter. Fundamental rights, a single legal and political corpus and the primacy of Union law must however be clearly described.

B - FUNDAMENTAL RIGHTS

1. The legitimacy aspect

12. Fundamental rights occupy an important position since they provide the construction of Europe with the necessary legitimacy.
13. In our societies, any constitutional structure requires legitimacy which comes from two sources: democracy and protection of fundamental rights. Apart from the occasional rules contained in the existing Treaties, protection of fundamental rights has been developed by CJ decisions dating from the judgment in the Stauder case (1).
14. The CJ also decided that the contents of the European Convention on the Protection of Human Rights and Fundamental Freedoms and its protocols were an integral part of the protection of fundamental rights within the Community. Although all such rights and their protection (in the same way as other international conventions and covenants (2) and the fundamental rights common to all the Member States (3)) are an integral part of Community law, the Community's shortcomings as regards protection of fundamental rights have frequently been deplored. This is a reference to by the effect of legitimacy that fundamental rights can confer upon a political system, an effect which does not occur unless a list of fundamental rights is available. Only a list can provide the necessary legitimacy. It is such a list that will provide the public image of the Union.

(1) Case 29/69, (1969) ECR 419 et seq.

(2) Case 4/73, Nold, (1974) ECR 491 et seq.

(3) Case 11/70, Internationale Handelsgesellschaft, (1970) ECR 1125 et seq.

See also the Joint Declaration by Parliament, the Council and the Commission, OJ No. C 103, 27 April = Reports of Cases p. 366 et seq.

15. Since we are speaking of a public image, the list should include only those fundamental rights that are deemed essential and meet with broad consensus. The list does not therefore need to be exhaustive. In any case, no list can provide solutions to all disputes that may arise; that is and will continue to be a matter for court decisions. Nevertheless, the list will be supplemented by a general reference to international conventions and covenant; which the Member States have signed (1).

2. Legal protection

16. Protection of the fundamental rights recognized in a Member State will not of course be called in question.

17. There can thus be no restriction on or derogation from the fundamental rights recognized or in force in the Member States or the Community under the pretext that the Treaty of the Union does not recognize them or recognizes them to a lesser degree. This rule does not justify the failure of the Member States or courts to apply Union legislation which respects fundamental rights on the pretext that they conflict with a national constitution.

18. When adopting rules and applying them, the institutions of the Union and the Member States will have to respect the fundamental rights enshrined in the annex to the Treaty of the Union.

19. It will be the task of the institutions of the Union and the Member States to bring about conditions ensuring that all their nationals and, to the extent laid down in the laws of the Union, all those residing on the territory of the Union, can effectively exercise their fundamental rights. At the same time, citizens will have the right to request that appropriate measures be taken to ensure that those rights can be exercised.

(1) In particular the Convention for the Protection of Human Rights and Fundamental Freedoms and the 1966 United Nations International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights and the European Social Charter.

20. Restrictions on the enjoyment of such rights will be laid down by the Union Treaty and by law only to the extent compatible with the nature of such rights and solely in order to promote general wellbeing in a democratic society. Such restrictions, particularly those relating to public order and security, may not exceed what is strictly necessary to safeguard those requirements and should not prevent the Member States from implementing the laws of the Union.
21. As regards the protection of civil and political rights, the Union and the Member States will respect and grant to any person within their respective jurisdiction the rights and freedoms contained in the Treaty and those stemming from the Constitutions of the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations International Covenant on Civil and Political Rights.
22. As regards the protection of economic, social and cultural rights, the Union and the Member States undertake to create, uphold and develop, within the limits of their respective competences, the rights and principles contained in the Treaty and stemming from the Constitutions of the Member States, the European Social Charter and the United Nations International Covenant on Economic, Social and Cultural Rights.
23. The Treaty establishing the European Union will contain in an annex thereto a list of the fundamental rights including particularly the rights set out below:
24. Civil and political rights
- (a) the right to life (1) and to physical integrity
 - (b) personal liberty
 - (c) freedom of thought, conscience (including the right of conscientious objection) (2) and expression

(1) See the VAYSSADE report, Doc. 1-65/81, and the resolution adopted by the EP on 18 June 1981, OJ No. C 172 of 13.7.1981

(2) See the MACCIOCCHI report, Doc. 1-546/81, and the resolution adopted by the EP on 7 February 1983, OJ No. C

- (d) freedom of movement and freedom to choose one's residence
- (e) absolute equality in the enjoyment of rights
- (f) equality of access to the public service
- (g) the right to respect for family and private life, home and correspondence
- (h) freedom of association and assembly
- (i) the right to political asylum
- (k) the right to freedom of education and scientific research
- (l) the right to vote and to stand for election
- (m) the right to be tried by the proper court
- (n) the right to a swift judgment
- (o) the right of petition and appeal against administrative decisions

25. Economic, social and cultural rights

- (a) the right to work and to protection against unemployment
- (b) the freedom of economic initiative
- (c) the right of ownership
- (d) the right of workers to fair pay
- (e) equality of the sexes as regards the right to work and pay
- (f) freedom to choose a profession and to exercise it throughout the territory of the Union
- (g) the right to strike
- (h) worker participation in the running of undertakings
- (i) the right to health protection and social security
- (k) the right to education and vocational training
- (l) the right to housing
- (m) the right to rest and leisure hours
- (n) recognition of the rights of ethnic and linguistic minorities
- (o) the right to the protection of the ecological balance and the environment.

26. Any discrimination on grounds of nationality between the citizens of the Union is prohibited in the Union and the Member States. The list of fundamental rights will state which of these rights apply only to citizens of the Union.

C - THE UNION'S SINGLE LEGAL AND POLITICAL CORPUS

27. The need for legal coherence and certainty in the system means that there must be a single legal and political corpus if the objective of the Union is to be attained.
28. In order to achieve this, all existing Community policies and future Union policies must first of all be incorporated into a single system. This means that political cooperation and the EMS will be incorporated into the Union's institutional structure and administered by the same institutions in accordance with the rules laid down in the Treaty of the Union.
29. The relationship between the Community patrimony and the law of the Union must therefore be clarified.
30. As regards the Community patrimony, the resolution adopted by Parliament on 6 July 1982 (1) states that: 'The Community patrimony - comprising the existing laws and policies of the Communities, political cooperation and the European monetary system, as well as all bodies or institutions set up within the Community context - shall remain in force in the Union unless and until altered by new laws or policies of the Union'.
31. This raises a hierarchical problem. Legislative provisions of the existing Community can obviously be changed by the legislature of the Union. In the same way, the Union's executive body can change regulations. For the rules laid down in the existing Treaties, however, the Union Treaty should provide for a 'minor amendment' system as laid down in the old Treaties.

(1) Doc. 1-305/82/A paragraph 10, OJ NO. C 238, 13.9.1982, p.27 et seq.

D - PRIMACY OF UNION LAW

32. If the system of the Union is to be uniform, the law of the Union must take precedence over national law. This forms part of the Community patrimony recognized by the case-law of the CJ (1). This is not a question of political supremacy, but simply a condition for consistency. As regards the position of national courts, in its decision in the SIMMENTHAL case (2) the Court of Justice ruled that the consequence of the primacy of Community law was that every national court must, as an organ of a Member State, protect the rights conferred upon individuals by Community law in a case within its jurisdiction. It follows that it is not necessary for such courts to request or await the actual setting aside by the national authorities empowered so to act of any national measures which might impede the direct and immediate application of Community rules. In our opinion this judgment should be interpreted as follows. Any national court applying Community law is empowered, solely on the basis of the principle of primacy of Community law, to declare the conflicting national law is not applicable.

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II - ANALYSIS OF THE VARIOUS COMPONENTS OF UNION LAW

A - UNION LEGISLATION

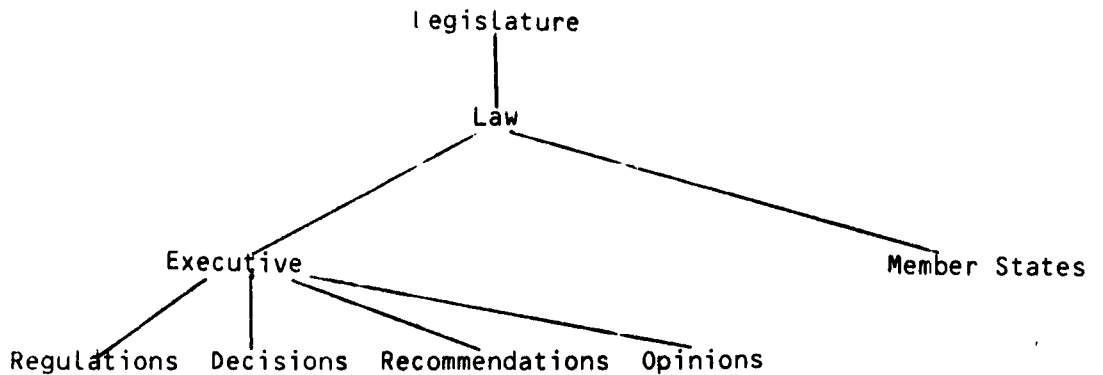
33. It is not within the scope of this report to define the organs and procedures that should create and implement the law of the Union. The report will however cover the nature of the laws of the Union, the persons to whom they are addressed, their implementation and the persons that must apply them. They will be based on the Community system which has already proved its worth, owing above all to the case-law of the CJ.

(1) Case 6/64, COSTA/ENEL, (1964) ECR 1141 et seq.

(2) Case 106/77, (1978) ECR 629 et seq.

34. A clear and simple system and terminology must be devised.

35. Outline of the Union's Legislative acts:



1. The basic law (constitution)

36. The basic law of the Union is primarily contained in the Treaty of the Union and - where the latter so provides - in the other Community Treaties. International acts on the protection of human rights will form part of the basic law as provided for in the section of the report dealing with fundamental rights.

2. Laws

37. The laws of the Union are adopted solely by the legislature of the Union - in order to implement the Union's policies in accordance with the provisions of the Union Treaty and within the scope of its competences. The law is the only legislative act adopted by the legislature.

38. The laws must comply with and be compatible with the basic law of the Union.

The different types of laws are as follows:

39. - laws revising the Treaty which are adopted by special majorities and must be ratified by all Member States;
40. - organic laws specifying, in the circumstances laid down by the Treaty, the organization of the institutions and other bodies; they are adopted by special majorities;
41. - ordinary laws which are of a general nature; they lay down the framework, principles and objectives governing the measures taken by the Union's executive body or the national authorities;
42. - budgetary laws which fix in detail the annual revenue and expenditure of the Union.
43. All laws are directly applicable throughout the Union. If they are outline laws, in other words if they lay down the framework for secondary legislation to be adopted either by the Union's executive body or by the national authorities, they are directly applicable in the sense that they confer upon individuals rights which they can enforce in a Member State and which the national courts must uphold (1).
44. With regard to the concept of a 'variable rate of integration', a Union law may provide that its entry into force may be preceded by transitional periods limited in time. The periods may be varied by the law from one Member State or region to another where there is a clear need but these variations may only serve to facilitate the subsequent full implementation of the law in the State or region in question.
45. The Union's executive body and the authorities of the Member States - where necessary, the local authorities (regions or countries) - are responsible for implementing the laws.

(1) Restating the case-law of the Court of Justice of the European Communities on the applicability of directives - an expression which will no longer exist in the terminology of the Union - see Case 33/70, SACE, (1970) ECR 1213 et seq. and Case 4 /74, VAN DUYN, (1974) EUR 1347 et seq.

3. Regulations

46. The executive will still be empowered to adopt (implementing) regulations. The law will stipulate the contents, objective and scope and of the executive's power to adopt a regulation.
47. Laws adopted by the legislature are always general and abstract in nature. Implementing regulations adopted by the executive may however be detailed and specific. As regards the limits, the hierarchical system should be maintained under which each provision must be in conformity with a higher provision.

4. Decisions

48. Decisions are the responsibility of the executive body. They are addressed to specific parties (for example a Member State, a region, an undertaking or a citizen) and may be taken only in pursuance of a law or a Treaty on the conditions and for the purposes laid down. They are binding on the addressees, as laid down in the Community Treaties.
49. Preparatory acts, recommendations and opinions provided for in the Union Treaty and - unless amended by the Union Treaty - in the Community Treaties, will be issued in accordance with the provision of those Treaties and the procedures laid down in the rules of procedure of the institution which is to adopt the measure.

B - APPLICATION OF UNION LAW

50. The laws of the Union will lay down any rules and set up any bodies which may be required for the executive to implement the law and policies of the Union and, where appropriate, provide for the power of the Union executive to exercise direct control over certain national bodies.
51. Primary responsibility for implementing laws and policies as well as the budget of the Union is vested in the executive which will have the power to verify that the Member States and, where appropriate, local and regional authorities, fulfil their obligations). The executive has the power to ensure either by legal proceedings (before national courts or the Court of Justice of the Union) or by administrative means, that obligations are fulfilled.

52. As regards the implementation of the law and policies of the Union - and the formulation of regulations implementing the laws - the State cannot be exonerated from liability for the acts or omissions of the regional or local authority which is in principle responsible.

C - JUDICIAL REVIEW

53. Judicial review of the Community's acts and activities is well developed in the system in force. For this reason the Court of Justice will be responsible for judicial review within the Union on the same conditions as those laid down in the Community Treaties, with the following additional details and amendments which will be specified by the law of the Union:
54. - wider access for individuals by means of individual applications to the Court of Justice in cases where a person has been adversely affected by any Union act concerning him;
55. - express jurisdiction of the Court in respect of the protection of fundamental rights, in principle after domestic remedies have been exhausted;
56. - right of the Court of Justice to annul the decision and refer the case back to the national court where an application for a preliminary ruling is refused or a preliminary ruling is misinterpreted and no further appeal is possible;
57. - equality of access to and of review of their acts by the Court of Justice for all the institutions;
58. - power of the Court of Justice, on the basis of a Union law, to impose penalties on Member States for failure to fulfil their obligations under Union law;
59. - power of the Court to annul a Union act within the context of proceedings brought by a private individual;
60. - jurisdiction of the Court of Justice in any dispute between Member States in connection with the tasks and principles of the Union.

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61. The CJ draws up its rules of procedure in accordance with the Treaty and Laws of the Union.
62. The executive of the Union has the right to intervene in national judicial proceedings according to the laws of the Member States if the subject-matter of the case is of interest to the Union and related to the competences of the Union.
63. Where the existence of a serious and persistent infringement of democratic principles, fundamental rights or important provisions of the Treaty has been established by the Court of Justice at the request of Parliament or of the Commission, the European Council, after hearing the legislative and executive bodies, will, by special majorities, take the following:
 64. - measures suspending the application of part or the whole of the Treaty mechanisms to the State in question,
 65. - which may go as far as suspending participation by the State in question and its nationals in the Institutions of the Union.

D - THE EUROPEAN JUDICIAL AREA

66. The objective of European Union is not limited to certain economic requirements. The Community has already demonstrated the need to extend its field of action in order to create a judicial area for European citizens.
 1. Harmonization of national legislation
67. Within the scope of its competences, the Community has taken numerous measures to harmonize rules of civil and public law (for example regarding customs and taxation) Even interpreted broadly, Article 100 of the EEC Treaty makes provision for this only in the case of matters that directly affect the establishment or functioning of the common market.

68. In addition to the development of the law of the Union based on the Treaty and the common measures taken by the Union, the latter will proceed with the harmonization of national legislation in accordance with the cooperation method with a view to forming a homogeneous judicial area within the Union.
69. The Commission and the Parliament may submit recommendations along these lines to the European Council.
70. The fight against international forms of crime is a matter of cooperation within the framework of the European Council.
71. The creation of a common judicial area will help to bring to fruition the concept of European citizenship, the main component of which is the common enjoyment of fundamental rights.

E - THE TERRITORY OF THE UNION

72. In the Community Treaties, the problem of the territory of the Union is defined in Article 79 of the ECSC Treaty, Article 227 of the EEC Treaty and Article 198 of the ECSC Treaty. Obviously any change in the territory to which the Treaties apply will entail an amendment of the Treaties. The Treaties make no provision for total or partial withdrawal. If a political problem arises, it must be resolved as such. This situation must not be changed.
73. As regards maritime territory, problems have arisen over the exclusive economic zone. So far the problem has concerned the delimitation of customs territory. It has been accepted on the one hand that maritime zones - which to some extent are subject to the sovereignty of the Member States - are a part of the customs territory of the Community and, on the other, that the Community cannot be excluded from negotiations on those zones. Moreover, as regards fisheries, the Community has the exclusive power to negotiate with third countries.
74. The Union must retain the prerogatives of the Community; a provision could be inserted in the Treaty giving the Union exclusive or concurrent competences as regards agreements delimiting maritime economic zones, including fisheries problems and the delimitation of customs territory.

F - REVISION OF THE TREATY

75. As part of a balanced system guaranteeing the defence of the interests of the Member States and the Union a procedure must be laid down for the revision of the Treaty which involves all the Union's political authorities and all Member States:
76. Three delegations of the Council of the Union, a third of the Members of Parliament or the Commission may submit to the legislature a reasoned draft law supplementing, abolishing or amending certain articles of the Treaty.
77. The proposal for amendment may only be adopted by agreement of the two branches of the legislature deciding by qualified majorities.
78. The proposal thus approved is submitted to the Member States for ratification and comes into force when they have all ratified it.

EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

WORKING DOCUMENT

on

ECONOMIC UNION

Rapporteur: Mr J. MOREAU

17 January 1983

PE 83.326/fin./C

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II. THE ECONOMIC COMPETENCE OF THE UNION

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INTRODUCTION

1. By its resolution of 9 July 1981, Parliament resolved 'to take full initiative in giving fresh impetus to the establishment of European Union', and to create a committee 'whose task it will be to draw up amendments to the existing Treaties'.
2. By its resolution of 6 July 1982, Parliament defined more precisely the terms of reference of that committee by instructing it to prepare 'a draft of modifications of the Treaties ... , defining the tasks, competences and Institutions of the Union in accordance with the Community's fundamental values'.
3. In the economic sector, this resolution specifies as follows:
 - 'The tasks of the Union ... shall be formulated with a view to growing political, economic and social solidarity of its peoples ... and to a stable and open economy'¹;
 - 'To carry out these tasks ... the Union ... must possess appropriate competences in order to ... propose new initiatives ... in the following areas: ... general economic policy (in particular: credit, investment, taxation, research), sectoral policies (industry, agriculture, the tertiary sector, energy) and commercial policy (in particular as regards energy and raw materials supplies), monetary policy and the parallel development of the economic and the monetary aspects of economic and monetary union, and in particular the development of common instruments'².

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4. The task of the rapporteur on the internal and external economic policy of the Union, in other words the Economic Union, is thus to define:
 - on one hand, the tasks which the Union must undertake in the economic sector;
 - on the other, the competences which it must have in order to carry out those tasks.

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¹ Paragraph 4 of the resolution of 6.7.1982 (OJ No. C 238 of 13.9.1982, p. 25)

² Paragraph 6 " " " " " "

5. These will therefore form the two main parts of this document, which will however be preceded by a chapter on the definition of the 'Economic Union', its objectives and its fundamental principles.

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The rapporteur's viewpoint

6. As an introduction to this survey, the rapporteur would like to specify his general political concept.:

Within the context of the 'fresh impetus to the establishment of European Union', the essential problem is to promote Europe from the rank of a world commercial power to that of a genuine economic and political power: in the key sectors (energy, industry and technology, currency and so forth), Europe must be able both to meet the formidable challenges posed by the economic changes in the modern world and to guarantee its independence, and therefore its security, in relation to its major competitors and partners. By achieving genuine economic independence Europe will finally be able to become a political actor on the world stage.

7. This objective will be achieved if the efforts towards economic recovery made on a national scale are united and at the same time passed on by a considerable strengthening in solidarity, fairness and cooperation at Union level.
8. The scope and diversity of the problems to be dealt with make it necessary to explore all avenues, encourage all initiatives and implement all means in order to encourage such cooperation since only the creation or the development of common policies which are not only stronger and bolder but also more imaginative and more varied than those hitherto pursued by the Community will enable the Union to achieve this ambitious objective.
9. These new policies will only attain their true proportions if they are accompanied by certain changes in the decision-making mechanisms, or even in the institutional framework of the existing Community. Various specific, concrete and pragmatic suggestions are put forward to this effect below.

10. On the other hand, it seems necessary to stress the close links which must unite economic and social policies in Europe. Some form of social consensus is in fact the essential characteristic of the European economic system: social progress must accompany (and not 'compensate for') economic progress. Social harmonization is therefore a necessary basis for European cohesion and solidarity.

Observations as to the methods used

11. a) In drafting this document, the author has of course constantly borne in mind the importance of the Community patrimony in the economic sector, both the political consensus between the Member States of the Community as regards the legitimacy of and the need for economic integration as well as the specific achievements of that Community in twenty-five years of activity (customs union, agriculture - but also, to a certain extent, competition, coal and steel and so forth).
12. The author has also taken into account 'Community work-in-progress', in other words action being carried out and projects for reform or extension (see the 1980 'mandate').
13. Thus, although basing his analysis on past experience, your rapporteur has been however chiefly inspired by a voluntarist, prospective concept of European Union, paying particular attention to eliciting the innovating features which will enable a genuine qualitative leap forward to be made and existing contradictions truly to be overcome rather than enabling corrections or adjustments to be made to the existing situation; in so doing he felt that he was correctly interpreting Parliament's resolution of 9 July 1981 'to take full initiative in giving fresh impetus to the establishment of European Union'.
14. b) Within this working document, 'Economic Union' covers the various sectors of economic activity. However, certain sectors are excluded from this study which, although having undeniable but secondary economic repercussions, are dealt with from a different angle in the working documents on 'the Union's policy for society' (in particular, regional policy and social policy) and on 'the Union's international relations' (in particular, non-commercial economic relations).

DEFINITION - OBJECTIVES - PRINCIPLES

1. Definition

15. The concept of European Union covers a very large field of very different activities which may be grouped under two main ideas:
- the unification of the economic, commercial and monetary area;
 - the carrying-out of common sectoral policies.

Unification of the economic area

16. This unification consists of approximating, coordinating, harmonizing and completing, according to the circumstances and where the need arises, the rules governing the operation of the economic mechanisms in the various Member States, so that they do not jeopardize but rather encourage the best possible use of the common potential of the Union; it is necessary to create the common framework of European economic activity.
17. These rules, to which economic operators are subject, are generally fixed by the public authorities of the Member States, so that their activities must be harmonized or coordinated so as to achieve the following:
- complete openness, fluidity and unity of the 'internal market';
 - coordination of national short-term economic policies;
 - the implementation of a common monetary and financial policy;
 - the final consolidation of the external Customs Union and the creation of a common commercial policy.
18. The unification of the economic area has been partly laid down and organized in the Community Treaties and partly carried out in some sectors; but part of the Community patrimony is fragile (internal market), it has been impossible fully to achieve certain objectives (common commercial policy) and others have barely been dealt with at all (short-term economic policy).

The carrying-out of common sectoral policies

19. The harmonization of this area and these economic rules, which is still very unsatisfactory in the field of major sectoral policies, is intended to enable the development of active cooperation between economic operators. However, to be effective, this cooperation will necessitate varying degrees of organisation, management, incentive and financial guarantees which the Union must provide. With this aim in view, the institutions of the Union will formulate measures more or less limited in scope and more or less structured policies.

20. The major sectors concerned will be agriculture, energy, research/development/innovation, industry and technology and transport and telecommunication:

The Community patrimony is large in certain of these sectors (agricultural guarantees, nuclear research) even if adjustments are now necessary; it is on the other hand small or even negligible in other fields.

2. Objectives and principles

The need for Economic Union

21. At the end of the Second World War, the Western, and thus the European, economy began its reconstruction and development on the basis of the two great foundations of the Bretton Woods and GATT agreements; this new world economic order encouraged the commencement of Community integration which greatly benefited from the high-growth period of the 'sixties. On the contrary, the gradual disarray of world monetary and commercial mechanisms from 1970 onwards considerably checked this impetus, whilst successive energy crises have placed a great strain on the economic and political solidarity between European countries.

22. The need to give fresh impetus to European economic integration is based on three findings:

- since the beginning of the 'seventies, the European area has not adjusted itself adequately to the new world economic situation in the energy, industrial, technological and monetary fields; its competitive capacity has decreased; the decline in growth and corresponding rise in unemployment not only threaten the living standard of citizens and

the political stability and social cohesion of the Member States but also their economic independence amongst the great industrial powers;

- efforts towards recovery, chiefly made at national level, have been insufficient to reverse these developments; they have been little or badly coordinated, owing in some measure to failure by the Community institutions to act, and have in fact worsened the economic disparity between the various states, none of which can any longer have a reasonable hope of meeting these new challenges on its own;
- the Community arrangements, as designed 25 or 30 years ago in a completely different world economic setting and intended to initiate cooperation projects in certain specific sectors (coal and steel, customs union, agriculture and so forth) no longer have at present the necessary means to develop a more intense and more varied form of activity and cooperation.

23. Confronted with this situation, it is necessary to define the new framework in which the essential common action for economic recovery may be taken; this framework must be outlined bearing in mind two complementary requirements:

- on the one hand, more numerous, more daring and more extensive common action and policies must be formulated;
- on the other, decision-making structures and procedures must be adapted as far as necessary to allow the variety of action necessary and guarantee that it is effective, speedy and permanent.

A pragmatic approach

24. After 25 years of experience, the Union will have a clearer idea of the strategies to be implemented, in other words of the definition of the objectives to be attained (market unity, Community preference, monetary union, and so forth) and of the ways and means of achieving them; it will thus be able to refine to some extent the economic role of the Community. In this sense there cannot be any opposition between the concepts of common 'strategies' and 'policies'.

25. The Union will thus perform economic tasks which are extremely varied and perform them at varying levels of responsibility. It will therefore be necessary to speak of common responsibility for specific problems for which appropriate solutions must be found at Union level rather than of a gradual, general and linear transfer of the economic competence of the Member States to the institutions of the Union. In certain cases this responsibility will take the form of integrated action and an integrated policy leaving little autonomy to the national bodies entrusted with their implementation. In other sectors, it will simply take the form of an exchange of information and mutual consultations. However, variety does not mean dispersal and the institutions of the Union will ensure that the common decisions are consistent as a whole and implemented effectively.
26. This necessary pragmatism will also mean that the mechanisms will be implemented gradually. The use of stage-by-stage procedures, which has proved itself in the Community system, for example as regards the abolition of customs tariffs, will be extended to fresh areas of active cooperation. It will also be possible to have recourse to cooperation projects in which the participation of the Member States varies, in other words the projects come into force gradually and differently from one Member State to another: such action, decided by the relevant institutions of the Union, will initially be taken only by certain Member States and the other Member States will join in later on in accordance with a timetable which will take into account specific problems and difficulties; it will however be necessary to attach certain safeguards to this special procedure; these will be specified below.

The principle of political realism and responsibility

27. The Union must exercise some degree of direct or indirect regulation of the economy. Its actions will thus have a political aspect which is likely to raise questions of the following kind:
- how far can the Union interfere, or urge the Member States to interfere, in the activities of undertakings; may it, for example, pursue a detailed 'industrial policy' ?

- what sort of short-term economic policy may it pursue, encourage or recommend? What priority should be given to the fight for employment and against inflation? What type of economic recovery should it advocate (consumption, investment) ?
- etc.

28. The replies to these questions must be based on the common characteristics of the economic systems of the Member States: mixed economy systems (State/ private undertakings), systems in which resources are redistributed, collective guarantee systems and so forth. Within this context the Union must seek, through its action and policies, economic and social effectiveness at the lowest possible cost.
29. Therefore, the principle criterion for action will be the rationality of the economic mechanisms employed and the implementation at the same time of a Union 'policy for society' (in the regional, social and environmental sectors).
30. However, if circumstances so require, the Union must be able to solve certain questions which have political aspects and are linked to its economic activities (for example, the development of nuclear energy, the reorganization of whole industrial sectors, the choice of industrial processes, and so forth): the Institutions of the Union must have sufficient political status, legitimacy and responsibility to take such decisions.

The principle of subsidiarity

31. According to this principle 'the Union shall only undertake those tasks which can be executed more effectively in common than by the Member States separately, or those whose execution requires a contribution from the Union'; consequently, it is clear that 'the Union shall act only in clearly delineated areas'¹.

¹ Paragraphs 5 (a) and (b) of Parliament's resolution of 6 July 1982 (OJ No. C 238 of 13.9.1982, p. 25).

32. The competence of the Union will therefore 'be limited to what is assigned to it, meaning that its field of competence will be specified in the Act of Constitution, other matters being left to the Member States'¹.
33. The application of this principle should both guarantee the Member States an autonomous area or level of economic competence and ensure the complementarity of the activities of the Member States and of the Union.
34. This principle does not prevent the Member States from continuing to participate (directly or indirectly) in European or international cooperation projects designed, developed and financed outside the legal framework of the Union (for example Ariane, Airbus, CERN and so forth); these activities must however remain compatible with the objectives of the Union and may possibly be integrated in the future in its own activities if a common interest is revealed, in application of the principle of subsidiarity.

The alignment of economies

35. The struggle to reduce the development gap between the Member States and between the regions, which is both the objective and the principle for any action, must form the basis of the whole economic policy of the Union.
36. The Union must of course equip itself with specific means for regional development but it must above all ensure that in all sectors (energy, industry, agriculture, currency and credit and so forth) the policies pursued aim to bring the levels of development closer together, whilst respecting the typical economic characteristics of the regions (industry, agriculture, services and so forth).
37. However, the Union must also refine the actual principle of alignment so as to define more precise lines of action: there must be no forced, artificial unification of the means of and procedures for regulation of the economy nor must some model based on one or other 'dominating

¹ Paragraph 12 of the Report of the Commission of the European Communities on European Union (1975).

economy' within the Union be imposed. On the contrary, the aim will be to define precise objectives (for example as regards rates of inflation, public spending deficits, investment programmes and so forth) which are coordinated and harmonized at the level of the Member States and the regions: it will thus be possible to develop genuine interdependence and real economic cohesion which will enable the Union to preserve its autonomy in the international context.

I. THE ECONOMIC TASKS OF THE UNION

38. As stated in the introduction, the aim of this document is twofold:
- to define the tasks which the Union will have to perform in the economic sector;
 - to define the field of competence with which it will be entrusted in order to fulfil those tasks.
39. Preliminary analysis of the tasks to be accomplished is essential not only in order to appreciate the nature and importance of the corresponding fields of competence which are necessary but above all to explain specifically, sector by sector, the need for a radical boost to economic cooperation between the Member States.
40. This analysis will of necessity be only an outline but it aims to describe the essential features of the reforms, reinforcement and innovations which are desirable in order that the new European political solidarity, symbolized by the Union, is met by reinforced economic cohesion; it will moreover be for the institutions of the Union, once they are set up, to define precisely the contents of the policies which are only outlined in general below.
41. In many sectors, the economic tasks of the Union take the form of extending Community achievements to which I shall therefore briefly refer; I shall however emphasize the innovative aspect of these tasks.

42. For the purposes of the analysis two chief functions of the Economic Union may be distinguished, as stated above:

- unification of the economic area;
- the carrying-out of common sectoral policies.

A. UNIFICATION OF THE ECONOMIC AREA

43. This term covers not only the creation of a genuine internal market within the Union but also the unification of the framework of economic activity: short-term economic policy, monetary policy, commercial policy and so forth.

44. The creation of a unified economic area was the original goal of the EEC and is still the foremost requirement of the Union.

It is in fact the prerequisite for the development of active economic cooperation through common action or policies. Four main sectors will be analysed in turn:

- the internal market;
- short-term economic policy;
- monetary and financial policy;
- external economic relations.

1. The internal market

45. This concept covers all measures which are necessary to ensure free movement of goods, persons and capital, to harmonize the conditions of competition so as to develop a legal framework common to the undertakings of the various Member States. Complete liberalization of the internal market will in particular be achieved by continuing to harmonize national legislation, but this harmonization must be limited to what is

strictly necessary and pay attention as far as possible to the special nature of national laws and customs.

46. a) Freedom of movement

- goods: total abolition of customs duties and quotas is a considerable achievement for the Union but the continued or even increased administrative barriers (customs documents, VAT) and technical barriers (technical and health standards) at frontier crossing-points prevents the attainment of a genuine internal market;
- persons: real and guaranteed freedom for all Community employees in the private sector to work in any Member State is an achievement which is just as fundamental; progress is unfortunately much slower with regard to the professions and non-existent as regards the public sector;
- capital: the reticence of the Member States and the lack of a sufficiently integrated common monetary policy have prevented the provisions of the EEC on the free movement of capital from being implemented, although they are binding; at present this freedom of movement is in conflict with disparate national measures which are often very restrictive.

47. The slow progress made in certain of these sectors for the last 25 years makes it impossible for the Union to proceed at the same pace and according to the same methods; the often artificial nature of the obstacles encountered (unwillingness to alter customary procedures or rules) and the need to increase the degree of openness and thus the economic vitality of the 'Common Market' justify a more energetic approach to this problem in future.

48. [It is therefore proposed that the Union should undertake to take (in accordance with a specific and binding programme and timetable) all measures necessary in order actually to liberalize the internal market fully and definitively, at least where this liberalization is not directly subject to the existence of a common policy in this sector: (for example

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1 Paragraphs marked thus [] are the rapporteur's proposals

movement of capital and monetary union); in the latter case, progress should be made gradually and at the same time.

49. This programme would be decided by the legislative authority on a proposal from the Union's executive body; the latter would be responsible for carrying out the programme and its decisions would come into force after certain periods had elapsed unless they were expressly vetoed by an overwhelming majority of the legislative body.

50. (b) Competition policy

The existence of a free market only enables available resources to be better allocated towards the best possible level of productivity if common rules of competition are applied.

51. In this respect, the provisions of the Treaties, the regulations and directives and Community case-law have enabled the development of an effective and even exemplary 'competition policy' in certain respects (particularly as regards the extent of the field of competence conferred upon the Community executive).

52. This policy has however come up against fixed limits either in the form of competition between undertakings (the lack of a regulation on the control of combinations) or especially in that of state intervention in economic activities (for example, direct or concealed subsidies and the rules relating to public undertakings). The tendency towards oligopolization of the industrial structure and the effects of the present crisis even provoke a suspicion that the Community institutions have somewhat lost control of this policy when confronted with the power of the major industrial groups and particularly when confronted with the unilateral and determined steps taken by certain Member States; the Community has thus paid more attention to prohibiting certain practices to tackling the necessary reorganization of European industry.

53. The Union must therefore first of all restore the authority of the common competition policy, particularly in relation to the public sector and to the Member States themselves. The existing legislative lacunae must

therefore be speedily filled and the authority of the executive body will be strengthened (powers of information, investigation, decision-making and power to impose penalties).

54. However, the Union must at the same time ensure that its activities in this sector do not cripple the necessary organization of the Community industrial area; competition policy must not prevent the Union from progressing from the stage of a commercial area to that of a production area.

55. (c) The legal framework of undertakings

The Union will not actually become an integrated area of trade and production unless the obstacles caused by legal differences are removed by sensible approximation of national legislation and, if, at the same time, a specific legal framework is proposed for undertakings wishing to operate straight away at European level.

56. The net result of 25 years of Community effort in this sector is in substantial: the national legislation on the rules applying to companies is still widely disparate in spite of the arduous adoption of 7 directives and it has been impossible to create any legal framework to accommodate companies of European proportions and character; nor are there rules or even a common code of conduct applicable to multinational undertakings. Although a uniform patent law and even a European Patent Office had existed on paper since 1975 nothing has yet come into force because of lack of ratification; the creation of a European trademark is at the drafting stage. Apart from the undisputed success of the harmonization of the basis for assessing the value-added tax (the rates are still very different), tax harmonization progresses very slowly whereas national legislation is in constant evolution; the irritating question of duty-free allowances for travellers comes up against the great differences in the rates of VAT and excise duties.

57. The Union must pay particular attention to the speedy filling of this legal vacuum which hampers the activities of undertakings and even dissuades them from organizing their production on a European scale; to this end, the two following projects will be resolutely carried out:

- as a priority, a legal framework will be created which is as complete as necessary to enable 'European undertakings' to be formed and to operate out of reach of the disparities between national legislation; this framework will be proposed by the executive body (in particular on the basis of proposals which already exist) and will be adopted by a majority vote of the legislature;
- the harmonization of national legislation in all fields in which this appears to be economically justified will be continued in accordance with a precise, binding timetable.

2. Short-term economic policy

58. Article 103 of the EEC-Treaty provides as follows: 'Member States shall regard their conjunctural policies as a matter of common concern. They shall consult each other and the Commission on the measures to be taken in the light of the prevailing circumstances ... The Council may, acting unanimously on a proposal from the Commission, decide upon measures appropriate to the situation'.
59. On the other hand, Article 145 of the EEC-Treaty provides that 'the Council shall ... ensure coordination of the general economic policies of the Member States'.
60. On these two bases, a Council decision of 18.2.1974¹ aims to attain a 'high degree' of convergence of the economic policies of the Member States ... without which 'there can be no gradual attainment of economic and monetary union'. This decision provides that:
- the Council shall, each year, acting on a proposal from the Commission establish 'the guidelines to be followed by each Member States in its economic policy for the following year';
 - the Council shall adopt every five years, on a proposal from the Commission, a medium-term economic policy programme whose purpose is 'to ensure the convergence of overall economic policies';
 - standing and prior consultations on the economic policy measures envisaged by Member States are provided for, as well as the possibility of examining, in an emergency meeting of the Council, economic or

¹ OJ No. L 63, 5.3.1974, p.16

budgetary measures of a Member State 'departing from the guidelines laid down by the Council'.

61. The precise, or even binding, nature of the provisions is in strange contrast with the facts of the present situation: these mechanisms function little or badly and do not come to grips with realities; the Member States and even the Community institutions have shown clearly their disaffection for the annual and medium-term programmes¹; the crucial instruments of short-term economic policy (budget, credit, prices and incomes) are used with complete autonomy by each of the Member States.
62. The fact that there has been comparative failure in relation to the objectives heralded in the Treaty (and specified in 1974) is partially due to the disarray of the national economies provoked by the crisis and by political differences as to the economic priorities; however, the fundamental cause of the failure lies above all in the fact that there is not sufficient mutual confidence to transfer to common administrative bodies the competences which ought necessarily to be conferred upon them, as Mr Tindemans noted as long ago as 1975 in his Report on European Union.
63. The effect of this situation has been to jeopardize the effectiveness of the measures taken unilaterally by each Member State (failure to inject fresh dynamism into other sectors, or even contradiction between policies of deflation/reflation followed by major trading partners) and to prevent them from reacting together and thus effectively to outside events (for example, the world rise in interest rates); this situation also makes the consolidation of a European Monetary System very hazardous, since that system must be based on a minimum of economic cohesion and consistency.

¹Parliament considers that the four medium-term programmes laid down up to 1981, have failed. (Resolution on the Fifth Programme, paragraph 39); the Commission leaves it to the national experts in the Economic Policy Committee to draw up the Fifth Programme and fails to propose any programme containing specific figures; the Council fails in practice to adopt any programme, remarking on 'the different views of the Member States as to the relative priority of objectives'.

64. The Union must therefore make considerable progress in this sector, whilst taking into account the diversity of structures and habits and the difficulty of effectively controlling the short-term economic situation; the following may for example be envisaged:
- the progressive development of common means of intervention (budget and lending/borrowing);
 - the more precise and more binding establishment of quantified objectives by the Member States in the key sectors (budgetary deficits, interest rates and so forth);
 - the provision of a mechanism to 'monitor' national measures based on that laid down within the context of the EMS or even of the International Monetary Fund which would be accompanied by possible penalties for example in the grant of loans or even of budget appropriations;
 - the giving of a wider and more autonomous field of competence to the executive body of the Union as regards the appraisal of the requirements of the economic situation, whilst leaving the legislative body the power to oppose certain decisions by a majority vote.

3. Monetary and financial policy

65. This term covers the common mechanisms for the regulation of exchange rates (EMS) and for recourse to the capital markets (borrowings/lendings). These two aspects will be examined in turn.

The European Monetary System

66. The problems of the EMS from the creation of the 'snake' in 1969 until the present 'system' was set up in 1979, are sufficiently well-known to make it superfluous to repeat the background here.

67. Nor is it necessary to insist on the reasons which make such a mechanism essential in an economic area in the process of integration such as the Community: links between the stability of exchange rates and economic growth, free movement of capital, equalization of conditions of competition, functioning of a system of common agricultural prices and so forth.
68. It is however a fact that monetary union has developed not on the basis of specific provisions of the Treaties but under the direct pressure of international monetary events, which have by turns fostered and disrupted it.
69. The present system is often considered to be one of the fundamental achievements of the Community not only because of its purely technical merits but also because of the political symbol which it represents, in relation both to Community public opinion and to the outside world. In fact it has functioned satisfactorily in sometimes difficult conditions and has preserved some stability in Community exchange rates thus allowing the pursuit of economic integration.
70. This system is however vulnerable because it has both limits and ambiguities. Considerable progress will have to be made within the context of the Union to ensure that it is strengthened and made permanent.
71. The EMS is in fact incomplete: the achievement of the first stage (margins of fluctuation, financial assistance and common monetary unit) can only be safeguarded by the speedy adoption of the second series of measures (known as 'institutionalization' measures) the objective of which is in essence to strengthen the structure by the creation of a real European Monetary Fund administering an increasing proportion of the reserves of the Member States, a common system of intervention in relation to other currencies, wide use of the ECU and so forth. It will also be necessary to strengthen the parallel undertakings relating to economic policy to be given by Member States in case of monetary disequilibrium: in this way it will be possible to consolidate the essential link between the monetary policy and economic policy of the Union.
72. The present 'political' status of the EMS is ambiguous: it appears to be more in the nature of a temporary technical (and therefore revocable) agreement between the central banks rather than an authentic common policy

decided by responsible and representative political institutions and administered by a permanent autonomous central institution; the deliberate non-participation of one Member State in the present system is probably not the only cause of this situation which has chiefly been brought about by the political reticence of certain other Member States.

73. To summarize, the task of the Union in the monetary field will therefore be as follows:

- the adoption of 'technical' measures which determine the transition to the second stage of the EMS (a system of progressive phases may be envisaged provided that each of them is irreversible and that the transition to the next is automatic except where majority decisions to the contrary are taken by the Union's political bodies;
- the unreserved integration of the EMS into the institutional (and decision-making) framework of the Union by the creation of a specific body (of European Monetary Fund) which will have some autonomy but be accountable to the political authorities of the Union;
- the participation of all Member States of the Union in the system is necessary according to detailed rules adapted to certain special situations.

The financial mechanisms

74. The Community has at present several autonomous mechanisms for collecting and lending capital on behalf of some of its policies. They have either been established by the Treaties (EIB, ECSC) or on the basis of them (Euratom), or have been created subsequently (support for balance of payments, NCI). They represent a not inconsiderable total financial cost (4.5 thousand million ECUs in 1980 or almost 20% of the EEC budget) principally intended for the financing of measures of common interest in the energy sectors (40%), infrastructure sector (30%) and production sectors (30%). They are clearly a valuable intervention instrument of the Community in support of its economic activities and the institutions unanimously hope that they will be developed further.

75. These instruments nevertheless suffer from certain shortcomings which have been emphasized on many occasions, particularly by Parliament, and one of the tasks of the Union will be to make the necessary improvements, which may be summarized as follows:

- rationalization of financial policy by amalgamating the various mechanisms under a single authority so as to encourage a coordinated approach to the capital markets and a more comprehensive financing policy (this amalgamation might perhaps be carried out under the aegis of the EIB insofar as its activities and structures would be more closely associated to those of the executive body of the Union);
- development of the effectiveness of financial policy on the one hand by a gradual but appreciable increase in the total volume (an amount of 10,000 million was proposed by Parliament for 1985) and on the other by increased use of a flexible but uniform system of aid towards the payment of interest borne by the Union budget;
- increase in the autonomy of the institution of the Union responsible for the administration of this system by the abolition of the present system of ceilings and successive amounts decided by the Council and by freer access to the capital markets within the Union; at the same time overall political control of the financial management of that institution will be ensured by the Union's budgetary authority;
- extension of the role of this mechanism in the field of the short-term economic policy of the Union (particularly for monetary and loans policy) and the possibility of a direct issue of loans to the public.

4. External economic relations¹

76. The EEC Treaty is a solid basis not only for the establishment of a customs union but also for 'implementing a common policy in the field of external trade' (Article 111 (1)). In fact, Community competences in this field have gradually developed and diversified: the establishment of the common external tariff, participation in multinational trade

¹ The theme of the international economic relations of the Union is also developed (excluding the purely commercial aspect) in Mr PRAG's working document (PE 80.381)

negotiations (GATT), signature of association agreements (Mediterranean countries) and of economic cooperation agreements (Canada), signature of specific international agreements (multifibre), commencement of harmonization of certain instruments of commercial policy (export credits).

77. Even if real problems still exist (the harmonization of customs legislation and the maintenance of national quotas in relation to certain countries), the European Community has been able to create a common trading system which has enabled it to assert its position as the foremost world trading power.
78. It is clear however that it has not succeeded in enlisting this strength on behalf of a genuine common commercial strategy adapted to the modern situation in international trade; there is hardly any cooperation as regards the active promotion of exports of the various Member States and the failure of the European Export Bank has clearly shown the hesitancy on the part of the Member States in this field; above all, the EEC plays practically no part in the development of the major international cooperation agreements concluded by Member States, each on its own behalf, and relating particularly to their energy supplies and to their industrial activities.
79. Therefore, the task of the Union with regard to commercial policy will be twofold:
- on the one hand, rapidly to establish common trade arrangements by using methods analogous to those advocated above for the completion of the system of internal freedom of movement (see paragraphs 48 and 49);
 - on the other, to start to develop a genuine common commercial policy which organizes the cooperation of the Member States in all sectors of international economic relations in which this proves to be profitable: it is therefore necessary to state clearly the field of competence of the Union in this field, to adopt legislatively the broad lines of the measures envisaged and to entrust the executive body with their administration.

B. THE CARRYING OUT OF COMMON SECTORAL POLICIES

80. The unification of the economic area of the Union is necessary but not sufficient. It must also provide a basis for the development of active cooperation between economic operators in the various countries. This cooperation takes the form of common policies to be carried out in all sectors in which the Community dimension makes national measures more effective.

81. Five major sectors in which the Union should pursue or initiate such policies may be distinguished:

- energy;
- research/development/innovation;
- industry/technology;
- transport/telecommunications;
- agriculture¹.

1. Energy

82. Thirty years after the signature of the ECSC Treaty and ten years after the beginning of the oil crisis, there is still no common energy policy, although the nature and the seriousness of the energy problem make it, on the contrary, a policy which should take priority for Europe.

83. The original cause of this situation is the fact that the Treaties do not provide for any general competence of the Community in this field; this gap has been made worse by the failure of the Commission to take steps; the Commission has been unable to propose in due time the necessary basic regulations to create a comprehensive Community policy; the Member States, which were put under pressure and taken by surprise by the crisis, formulated, with difficulty, different or even divergent national policies without reference to common solidarity or interests.

¹The other common policies of the Union which are not linked to a specific economic sector (regional, social, environmental and cultural policy) are analysed in Mr Pfennig's working document on 'policy for society' (PE 80.245).

24. The Community patrimony is therefore very limited

- coal : since the creation of the internal market, achievements have been limited to financial aid (for coking coal, for research and for certain forms of investment); trade outside the Community remains to a great extent under the sole jurisdiction of the Member States; no common strategy corresponding to the new market conditions has been determined and specific proposals for common action are stagnating in the Council (contingency reserves, coal exchanges for power stations, and so forth).
- nuclear energy : the activities of EURATOM are still totally marginal to the development of the nuclear potential of the Member States except for the (considerable) aid to the financing of investments which have not however had any coordinating effect; certain Community competences, although formally laid down in the Treaties, have been little exercised or not at all because of the hesitancy of certain Member States (particularly as regards control and supplies); a modest aid programme for uranium prospecting has not had any noticeable effect;
- oil and natural gas : numerous studies made and resolutions adopted since 1973 have been unable to organize comprehensive common action to deal with external pressure, which has however been dramatic; declarations of solidarity at a political level, have not led to any Community policies with regard to supplies, prices or the use of these fuels. If there were a fresh oil crisis the Member States would be as lacking in common means of defence and adaptation as they were in 1973.
- new energy sources and energy-saving : in the absence of common strategies in this sector, which will be crucial with regard to the future energy situation in the Community, some specific measures have been taken with great difficulty with the aim of supporting national financing efforts in certain sectors (private and 'demonstration' projects); the decision-making procedure used in this instance (unanimous the majority votes by the Council at each stage of the grant of this aid and rigid imposition of ceilings on loans) augurs ill for the effectiveness of these new measures.

85. It is clear that the Community 'patrimony' in the energy sector does not therefore constitute an adequate basis of action for the Union. This is a typical case in which a revision of the Treaties is necessary so as to establish clearly the legitimacy and the principle of the competence of the Union in the whole sector to delimit the areas of exclusive and concurrent competences, to organize the detailed ways and means of the common policy to be implemented and to determine the responsibilities for taking initiatives, decision-making and administration of the various Institutions.

86. On these political foundations, once they have been laid, it will be possible actually to implement, gradually but according to plan, the various aspects of an 'energy strategy'¹ for the Union. On this new basis the Union will be able to deal with the financing problems (by means of the budget or loans), of coordination with other policies (industrial, research and commercial) and of 'varying participation' (see paragraph 26 above) from one Member State to another, and so forth.

2. Research, development/innovation

87. One hesitates to state that there is a 'common research policy', still less a 'common development policy'. Expressed in financial terms, Community activities in this sector represent only 1.5% of the total public expenditure of the Member States and only 16% of the appropriations which they allocate to international cooperation in the field of research². These activities are concentrated in the energy sector (72%), in particular the nuclear energy sector, the industrial sector (19%), the environment sector (8%) and the raw materials sector (2%).

¹ See the Memorandum of the Commission of the European Communities drawn up in 1981 in connection with the mandate (development of an energy strategy for the Community).

² See the Memorandum of the Commission of the European Communities drawn up in 1981 in connection with the mandate (scientific and technological research in the Community - proposals for the 1980's)

88. Although it is an objective of the Euratom Treaty which takes priority (Article 2), only the ECSC Treaty lays down detailed rules for financial aid to research. Research is not mentioned in the EEC Treaty (except by reference to the agricultural sector, Article 41) and it was not until 1974 that a very general Council resolution¹ made it legitimate, on the basis of Article 235, to formulate specific, limited measures, as shown by the figures quoted above.
89. In this sector one is therefore confronted with a situation analogous to that of energy: the lack of a general legal basis and the hesitancy of Member States genuinely to take part in common action; however, research, in the same way as energy, constitutes one of the conditions for economic progress, the advantage and even the need for cooperation are just as clear in this case, as all the official statements have, moreover, acknowledged, and the procedure for common action does not seem to present insurmountable difficulties.
90. As in the energy sector, the prerequisite for a genuine common policy of the Union in the field of research is a revision of the Treaties and the adoption of a fresh legislative framework: this common action must, on the one hand, be made legitimate and its authority established and, on the other, the tasks and competences must be clearly divided between the Member States and the Union; finally, it is necessary to ensure that the competences conferred upon the Union are exercised in accordance with rapid, effective procedures.
91. On this basis it will be possible progressively to establish a genuine 'European scientific area' in which the Union will provide information, guide and coordinate activities and provide corresponding financial support.

¹It should be noted that this resolution provided that no field of action concerning science and technology may be excluded a priori.

3. Industry and technology

92. At Community level, industrial policy may be defined as all measures encouraging the organization and operation of industry on a European scale; these measures may be grouped together as follows:
- creation of the 'Community industrial area' (internal market, competition, public contracts, etc.);
 - development of applied research and technology;
 - common commercial policy for the import/export of industrial products;
 - taking into account industrial requirements in regional and social policies;
 - action with regard to production strategies and structures.
93. Although this generic concept of industrial policy is not found anywhere in the Treaties, a more or less express legal basis may be found therein for each of the components listed above, with the notable exception of action with regard to production and structures¹.
94. The actual implementation of an overall industrial policy is still at the drafting stage: the various policies which might be included in it are incomplete and it is not envisaged that they will be combined for industrial purposes. Above all, active and direct intervention by the Community in industrial activities is strongly contested by certain Member States for reasons based both on economic doctrine and on economic nationalism.
95. For this reason the Community patrimony in the field of industrial policy in the strict sense is limited to a few specific measures in the data processing, textile, and boot and shoe sectors, and so forth, which are moreover chiefly intended to promote research in these sectors. It is moreover well-known that a proposal for a regulation on Community intervention in the reorganization and reconversion of industrial sectors affected by the crisis (1978) was rejected by the Council.

¹ Only the ECSC Treaty provides for aid for the reconversion/reorganization of the coal and steel industries.

Community 'strategies' have, it is true, been outlined by the Commission in certain specific sectors (textiles, chemicals and automobiles) but they do not seem to have led to actual industrial cooperation projects.

96. These uncertainties are in strange contrast with the seriousness of the crisis which has affected Europe for 10 years or more: the distressing loss of whole industrial sectors is accompanied by the laborious appearance of new sectors faced with the superior, aggressive power and competitiveness of Japan and the United States; the risk of deindustrialization or industrial colonization of the most vulnerable Member States is a threat to the whole Community.
97. Industrial policy must therefore be a pillar of Economic Union.
It will first of all be necessary to establish the need for and the legitimacy of such a common policy, possibly by revision of the Treaties. Next, it will be necessary rapidly to strengthen the various measures contributing to its implementation, particularly 'the industrial area'.
98. Above all, it will be necessary clearly to give the Union power to initiate, coordinate and possibly give financial assistance to supra-national cooperation, reorganization and amalgamation projects, whilst observing the principle of subsidiarity and having regard to the autonomy of undertakings; national industrial strategies in the various sectors (whether they originate with the State or major private groups) will be compared with one another and their compatibility/complementarity will be verified. This type of action will necessarily be very flexible and very varied so as to correspond to the actual facts of industrial life: however, it is essential that genuine active industrial cooperation is organized at Union scale and under its aegis.

4. Transport and telecommunications

99. Article 3 of the EEC Treaty provides that 'the activities of the Community shall include ... the adoption of a common policy in the sphere of transport'. A specific title of that Treaty¹ contains

¹Only the agricultural sector is likewise the subject of a special title.

11 articles (Articles 74 to 84) which restate the objectives of the formulation of a common policy 'applicable to international transport to or from the territory of a Member State' and establish the principles of the openness of the Market and of non-discrimination (by tariffs, conditions of transport or State aid); these provisions are applicable to transport by rail, road, and inland waterway but may be extended to sea and air transport.

The ECSC Treaty prohibits all discrimination through prices and other conditions in the transport of coal and steel.

100. Although the High Authority (afterwards the Commission) has to a very great extent succeeded in applying the provisions of the ECSC Treaty, the same does not apply to the Council of the European Communities which has not only failed to take any specific measures with a view to creating a common transport policy but has only implemented very partially the provisions relating to the opening-up of the market and non-discrimination, while sea and air transport has remained almost entirely outside the field of Community action.
101. This failure to act¹ is certainly the most spectacular of all the shortcomings of Community integration. The reasons for it are first of all of a legal nature: the EEC Treaty does not lay down specific objectives for a common transport policy (apart from the question of non-discrimination) and its whole development is dependent upon the agreement of the Council, which must sometimes be unanimous; however, they are also of a political and economic nature: the direct or indirect involvement of the public authorities (railway and airline companies and so forth), the very different characteristics of national situations and systems, sectoral protectionism and so forth.

¹By resolution of 16 September 1982 Parliament decided to bring an action against the Council for failure to act (Article 175) in the matter of the lack of a common transport policy.

102. A common transport policy is however clearly an essential further element of the unification of the European economic area: great differences between or discrimination in national conditions of transport may have a more dissuasive effect on trade within the Community than tariff barriers. The transport sector has, moreover, considerable economic importance (on average 6% of the GNP of the Member States); it is an integral part of the production process and has a strong influence on the latter's competitiveness; it is directly linked to the industrial and agricultural sectors which are or will themselves be subject to a common policy.
103. At the stage of Union, a common transport policy must therefore be formulated and put into effect with as much speed as is compatible with the necessary adjustments: an amendment to the Treaties may be envisaged, in particular to define precisely the objectives and the scope of such a policy. However, the institutions of the Union must above all determine precisely the respective competences and fields of activity of the States and the Union and ensure that, once the task of the Union has been clearly defined, the latter performs it diligently.

Telecommunications

104. The 'telecommunications' sector, understood here as a means of transport of information, relates at the same time to classical activities (post, telephone and so forth), to modern activities (radio, television and so forth) and to revolutionary activities (satellites and telematics).
105. This sector is not mentioned in the Treaties and is only directly affected by the provisions relating to freedom of movement and non-discrimination (openness of public contracts). The Community patrimony merely consists of a 1980 Commission recommendation on the harmonization of standards and the procedure for public contracts.
106. This is however a sector, which, by its very nature, is the subject of very intense cooperation between the Member States and world-wide in the form of bilateral or multilateral agreements which are in some cases very long-standing (for example, the postal conventions);

these activities are most often controlled or administered, directly or indirectly, by the national authorities which are themselves contracting parties to these international agreements.

107. It is remarkable to note that the Community is not a preferential or even a privileged area as regards cooperation between Member States; international agreements are concluded and administered without reference to the Community context even though the telecommunications between Member States are more intense than with the rest of the world and even though the industrial aspect of these activities (infra-structures, production of equipment and research) is considerable and its cultural importance (notably television) is clear.
108. It would therefore be advisable to provide for the gradual development, within the context of the Union, of a common telecommunications policy which would enable the activities of the Member States in this field to be organized more rationally and therefore more profitably, still on the basis of the principle of subsidiarity. An express reference to this policy in the Treaty of the Union might be envisaged and, on this basis, the Union's legislative body could, at the appropriate time, draw up the general outlines of the cooperation project envisaged.

5. Agriculture

109. This sector has two advantages: a solid legal basis (the Treaty and regulations) and the fact that results of its activities are on the whole positive (food security, growth in productivity and so forth); the achievements in this sector are considerable even if certain aspects of them are contested. Therefore the problems which arise in this connection, as far as the Union is concerned, relate more to the adjustment of the policy which has been implemented than to the extension of competences.
110. These adjustments have been the subject of recent reports by the Commission and Parliament¹ and they may therefore be referred to without going into the contents.

¹Resolution of Parliament of 17.6.1981 on possible improvements to the common agricultural policy (OJ No. C 172/32).

111. In certain cases, such adjustments could be made rapidly within the framework of the existing mechanisms of the Common Agricultural Policy (control of costs and of surplus production, fixing of production targets and making producers responsible for output in excess of these targets, special protection for farmers in difficulties, taxation of imported oleaginous products, and bringing agriculture in the Mediterranean regions up to standard).
112. In other cases, on the other hand, these adjustments are linked to the development of other policies which are at the moment only embryonic (improvement of production structures, development of agricultural exports either within the context of a common commercial policy or within that of a policy of food aid, and development of agri-foodstuffs industries).
113. Finally, in certain cases organizations of the market in certain specific sectors must be completed or set up (fisheries, forests, potatoes/alcohol).
114. More generally, a more varied approach and one which is better adapted to the different characteristics of the various kinds of production should be taken. It is for example clear that the milk and milk products sector (which has no notable external outlets) raises problems which are very different from those of the cereals sector (where there is a vast world market). It will therefore be necessary to try in particular better to adapt European production to the world agricultural situation (prices, quality and quantity) whilst achieving the internal objectives of the CAP (Community preference, stability of prices and incomes of producers, availability of supplies).
- 115.. It is clear that these adjustments, albeit necessary, raise difficult problems for the Community and that there are no comprehensive negotiations at present in view, which would enable them to be resolved. The role and the task of the Union will be specifically to resolve this situation and to make it possible to reform and strengthen the common agricultural policy without risking calling in question the foundations of its achievements.

II. THE ECONOMIC COMPETENCES OF THE UNION

116. Having defined the general outlines of the tasks which the Union will have to pursue or initiate in the economic sector, it is now necessary to enquire as to the nature and extent of the competences necessary in order to carry out these tasks.

For this purpose the following will be analysed in turn:

- the division of fields of competence between the Union and the Member States
- the respective role of the various institutions in the exercise of these competences.

It should however be noted that the issue of competences is analysed in detail in two other working documents drawn up by the Committee on Institutional Affairs: from the legal point of view in Mr De Gucht's document and from the institutional point of view in Mr Zecchino's.

The rapporteur of this working document could therefore do no more than restate the outlines drawn (or envisaged) by the two other rapporteurs and try to situate the economic competences of the Union within them.

A. THE DIVISION OF FIELDS OF COMPETENCE BETWEEN THE UNION AND THE MEMBER STATES

117. In accordance with the principle of subsidiarity (see paragraphs 31 to 34) the Union will exercise only the competences conferred upon it: all tasks with which it is not expressly entrusted will continue to come under the jurisdiction of the Member States.

It is therefore necessary to determine first of all the Union's own field of competence.

118. The variety of the economic tasks of the Union (see paragraphs 8 and 25) means that the Union should have, in order to exercise its competences, many different means of action which in particular correspond to the different degrees of integration in the sectors concerned.

It will therefore be necessary, secondly, to specify the various procedures by which the Union may exercise its competences.

1. The Union's field of competence

119. The principle of subsidiarity is the basis for the definition of the overall powers of the Union but it also enables the extent of the mutual competences of the Union and of the Member States to be measured in the various sectors of activity.

120. In fact, according to the sector in question, the Union will have power:

- either to act alone ('exclusive' competence)
- or to act in cooperation with the Member States ('concurrent' competence)
- or to take no action as long as its competence has not been established ('potential' competence).

On the basis of this threefold distinction, an attempt may be made to determine the nature of the competences of the Union which are necessary in order to carry out the various economic tasks listed in Part I of this document¹.

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This classification is at this stage only intended to be an indication and an illustration: it will be necessary to decide later on whether it is appropriate to draw up a methodical catalogue of the various competences.

(a) exclusive competences

121. There are fields in which in order for action to be effective the Union must act instead of the Member States, in other words it must itself take the necessary decisions which will subsequently be implemented by the Member States. These are generally fields in which it is essential that the rules or activities should be uniform or those in which integration has reached a stage at which they must be managed at Union level.

The following fields might be involved:

122. . free movement of goods, persons and capital: the Union must have exclusive competence with regard to all measures concerning the openness of the internal market, even where those measures have repercussions on the national economic activity of the Member States (for example technical and public health standards); this power to adopt legislation in no way prevents the Union from taking into account special difficulties in certain sectors (openness of national civil services or national measures of exchange control caused by the present shortcomings of the EMS).

This exclusive competence seems in fact to be the only means of guaranteeing genuine and lasting market unity: despite 25 years of effort, the Community has only obtained unsatisfactory, poor results owing to the resistance or passivity of the national authorities.

123. . competition policy: it is advisable for all legislation on competition (relating to the private and public sectors) to be entrusted exclusively to the Institutions of the Union, since experience has shown that legislation which was too incomplete or too general was not sufficiently effective. The implementation of the sole legislation of the Union may be gradual so as to allow economic operators to adjust themselves to it.
124. . common commercial policy: the regulation of trade outside the Community will be under the exclusive jurisdiction of the Union; this concerns not only customs duties and tariff quotas but also the mechanisms linked to international trade such as commercial

credits, guarantees and insurance, insofar as these mechanisms might distort the conditions of competition between Member States.

International commercial negotiations will be exclusively conducted by the institutions of the union which will also be responsible for signing or ratifying agreements on behalf of the Member States; the Union will represent and bind the Member States at international meetings or organizations of a commercial nature.

125. . organization of the agricultural (and fisheries) markets: the exclusive nature of the competences of the Union in this field is dictated by the Community legislation already adopted as much as by the principle of subsidiarity. The present state of integration of the agricultural markets as well as the results which have been obtained lead to strengthening and confirming the unity of action of the Member States through the Union; this strengthening will moreover enable the prevention of any setbacks to integration in the form of national unilateral measures adopted for the occasion.

(b) concurrent competences

126. In most economic sectors, the Union must only share the competences and decision-making power with the Member States: the result of the principle of effectiveness will in fact be that a considerable proportion of economic responsibilities will be left at State level (or possibly regional) whilst the Union exercises the general functions of guidance and/or controls certain aspects only of the activities in question.

The fields in which these concurrent competences will be exercised might be as follows:

127. . legal framework of undertakings: the Union will draw up a special statute for 'European undertakings' (which may be used for foreign companies) which will form an optional legal framework for firms wishing to operate at European level; it will proceed with the harmonization of certain provisions of national economic legislation (commercial law, tax law, the law of industrial property and so forth) insofar as such harmonization can facilitate cooperation and trade and equalize conditions of competition.
128. . short-term economic policy: the Union will have power to promote the convergence of the macro-economic regulatory policies (budgetary policy,

credit and prices policy) of the Member States by establishing short or medium-term (quantified) objectives; its permanent task will be to assess the compatibility of national short-term economic policies with these common objectives; it will be able to make any budgetary or financial support which it gives subject to adherence to the common guidelines. Within these limits, and as long as they observe the principle of non-discrimination, the Member States will retain control of the instruments of economic policy.

- 2). monetary policy (EMS): in this field the Union will exercise a partial but developing competence; as the EMS is 'institutionalized', certain instruments and mechanisms of monetary policy (reserves, ECU, interventions in respect of the currencies of third countries) will be managed jointly at Union level; the final objective, which it will be possible to achieve following a series of automatic, irreversible stages, will be that of advanced unity which may go so far as the creation of a genuine common currency which is exclusive or parallel to the national currencies.
- 3). financial policy: the Union will develop its own lending and borrowing activities with the aim of financing certain specific common policies (in particular the encouragement of productive investments); this development will necessitate greater cooperation between the national public financing bodies and some transfer of their transactions to the level of the specialized institutions of the Union.
- 4). external economic relations: (excluding purely commercial relations, see paragraph 124 above): the Union will play an increased role in the field of economic cooperation with third countries, particularly insofar as this cooperation is an extension of the common internal policies of the Union (energy, industry, agriculture and so forth); it will be able for example to encourage outline cooperation agreements between the Union and certain major States or groups of States and ensure that special agreements signed by Member States are in accordance with those guidelines. Ultimately, the Union may have sole power to sign certain types of agreements.
- 5). energy: an overall competence will be conferred upon the Union in the field of energy policy, but it will be exercised according to rules which will vary from one sector to another as to the degree to which they are specific and binding (coal, nuclear energy, oil and so forth) and from one problem to another (exploration, exploitation, reserves, energy-saving and so forth); this is one of the cases in which the principle of subsidiarity must be applied pragmatically, the Union chiefly performing a coordinating function but having the power to take common action in certain cases.

133. . research: the Union must also have a comprehensive competence in this sector and perform a general function of coordination of the national programmes. However the Union will also have power to initiate specific programmes, control their progress and provide part of the finance for them, especially where they exceed scientific or financial means at national level; the Union will also be able directly to administer specialized research centres where this proves to be more effective.
134. . industry: the Union will first of all have a wide or exclusive competence to create the common 'industrial area'; for this purpose it will, as far as necessary, harmonize the legal framework (internal market, competition, public contracts, taxation and so forth). It will however also have power to develop an active industrial policy, in other words to initiate or coordinate common action by the Member States or industrial groups in relation to investment, production or reorganization strategies; ultimately the Union will be able to draw up, by major industrial sectors, cooperation plans which will provide points of reference for national operators.
135. . transport: the Union's competence, which has already been laid down and even programmed in the EEC Treaty, must be confirmed, specified and extended to the sea and air sectors. In addition to the issues of harmonization and non-discrimination which come within the exclusive competence of the Union (see above, internal market), the Union will have power to coordinate infrastructure policies and policies for the regulation of traffic between Member States and in relation to third countries; it will be able to develop and give financial assistance to specific projects of common interest on the basis of overall or special plans and programmes.
136. . telecommunications: the Union will exercise a competence analogous to those laid down in respect of the industrial and transport sectors; the openness of national public contracts will be particularly necessary in this case. In the same way, it will be able to initiate or participate in common programmes in certain peak sectors.
137. . agriculture: the agricultural guidance policy remains within the joint competence of the Union and the Member States but the Union will have more direct means of giving incentive to national reorganization measures, for example by linking guarantee mechanisms to the conversion/adaptation of production structures in accordance with common guidelines.

(c) potential competences

138. In certain fields the ultimate conferring upon the Union of more extensive competences may be envisaged but this must be the subject of a special decision by the representatives of the governments (possibly of the European Council) at the appropriate time. By the very nature of the Union, there are however very few economic sectors which could fall, even for an interim period, outside at least its partial competence.

139. It might however be envisaged that after a certain period of time the Union should acquire, in some sectors, a direct regulatory competence where the size of the problems is such that total unity of action by Member States is clearly desirable.

This competence could be exercised by Agencies linked to the Community executive body but exercising their activities autonomously under the control of the Union's political authority. Such Agencies might be set up in the transport, telecommunications, aircraft, space and nuclear sectors, for example.

2. Detailed rules for the exercise of the Union's competence

140. It is essential that there be a variety of suitable means of action corresponding to the different types of competence of the Union in the economic field. It is not a matter of legal categories but of actual procedures which will enable the Union to play a more or less direct and complete part in the various sectors.

141. Briefly listed by ascending order of integration, those means will be as follows:

- (a) exchange of information between the Union and the Member States and among the Member States themselves: it must be a matter of course in all sectors in which the Union has any competence at all;
- (b) formal consultations: explanations and comparative assessment of intended national measures;
- (c) coordination: formal consultations with the aim of making national measures compatible and complementary;
- (d) cooperation: advance fixing of a common objective and active coordination of national measures with the aim of achieving it; if necessary, the Union may share in financing;
- (e) common action: the carrying-out by the Member States of specific limited action decided at Union level; the Union may share in financing or exclusively finance it;
- (f) common policy: carrying-out by the Member States of a series of coordinated activities decided by the Union; application of the principles/rules fixed by the Union; the Union may share in financing or exclusively finance it;
- (g) direct action/policy of the Union: formulated, carried out and financed by the latter with its own means (institutions, staff and budget).

142. Apart from these classical means for the exercise of its competence, the Union might envisage two new types of activity which are more flexible and therefore likely to be better adapted to specific circumstances:
143. - 'flexible' action or action in which the participation of the Member States varies (see paragraph 26 above): the Union will be able to take part in certain activities or policies in which one or several Member States will however be unable to participate or will participate at different levels because of serious objective difficulties. This action would remain fully integrated within the institutional and decision-making framework of the Union; it would be exceptional and temporary; the Member States which were not participating would undertake to join the others within an agreed period and would, in the meantime, refrain from adopting any measures incompatible with the smooth functioning of the 'flexible action'.
144. - 'related' action: the Union will be able to authorize and, if necessary, join in European or international ventures undertaken by certain Member States outside the strict legal framework of the Union (for example, Ariane, Airbus, CERN and so forth) (see para. 34 above) insofar as that action does not replace a formal competence of the Union; if the common interest and the principle of subsidiarity justify it, that action may subsequently be integrated in a common policy of the Union.
- However, it is necessary carefully to appraise whether it is appropriate to make a distinction between these two types of action as new legal categories; it may in fact prove preferable to use general provisions (perhaps modelled on Article 235 of the EEC Treaty) for this purpose.

B. DIVISION OF POWERS BETWEEN THE INSTITUTIONS OF THE UNION

145. Without prejudice to the legal and institutional structure which will be proposed by the other committee rapporteurs, it may be useful to anticipate the general framework of the division of powers between the executive body and the legislative body as regards the exercise of the economic competences of the Union.
146. As stated above (paragraphs 22 and 23), present Community organization lacks the necessary dynamism and effectiveness to carry out more numerous, bolder and more extensive economic tasks and to ensure that this is done rapidly and permanently.
147. A fresh decision-making procedure is therefore proposed below which emphasizes the political function of the legislative body and the 'governmental' role of the executive body.

1. Powers of the legislative body

148. This body must perform a purely political function centred around the concept of authorization and control; it must:
- (a) decide the general rules - for example in the form of 'outline legislation' - which define the objectives and the means of action/policies to be followed. These rules may be more specific in the case of new policies (for example, energy) or where the subject-matter is of particular political importance (for example the EMS). This role is performed chiefly in the fields of 'concurrent competences'.
 - (b) control the implementation of these rules by the executive body and particularly ensure that the objectives and the decisions implementing them are in conformity with one another. For this purpose the legislative body may have the following:
 - . a power of veto over the implementing decisions (and, by way of exception, a right to substitute itself for the executive body);

- . a power of political sanction (censure) over the executive body.

2. Powers of the executive body

149. This body must be the real 'government' of the Union, in other words the authority which frames and proposes the general outlines of policies and ensures as a whole that they are implemented by virtue of wide autonomy of action; it must therefore:

- (a) draft and propose the general rules for the legislative body (in certain cases, the latter may have its own power of initiative) - chiefly in the fields of 'concurrent competences'.
- (b) implement these rules by virtue of its own autonomous decision-making power. In the fields of 'exclusive competences', the freedom of action of the executive body is particularly extensive (for example, internal market and commercial policy) and it is not necessarily linked to rules of the legislative body.

CONCLUSIONS

150. The purpose of this working document has therefore been to outline the economic tasks and competences of the Union.

A clear need has emerged from this analysis, 25 years after the signing of the Treaty of Rome, for the Community's economic machinery to be adapted to the new nature and demands of the world economy; it is also clear that, because of the grave difficulties now facing the European economy, this adaptation will have to be as far-reaching and rapid as possible.

All this involves, on the one hand the revival, reorientation, or creation of sectoral policies with a view to a more voluntarist and more diversified approach to the problems under consideration.

However, changes to the decision-making process, within a new institutional framework, also seem necessary; the rapporteur therefore hopes that the foregoing will help the Committee on Institutional Affairs in its consideration of the constitutional field proper.

EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

WORKING DOCUMENT

on

the European Union's powers in the
area of policy for society

Rapporteur: Mr G. PFENNIG

21 March 1983

I. INTRODUCTION: concerning method

1. General survey

1 The six draft reports deal, with varying emphasis, with the political substance and the institutions of the future Union. A summary of these documents contained in a general report will then give the overall view of the proposal submitted by the Committee on Institutional Affairs. This summary is necessary because it provides the required connection between opinions on substance and institutions. This connection is again essential for several reasons:

- 2 (a) We cannot expect Community citizens to enthuse about a purely institutional project or support it without knowing what policies, and the substance thereof, will be implemented by institutions of the future Union. This connection between institutions and policies works both ways. Without policies to be implemented there is no need for institutions, while the policies cannot be implemented without efficient institutions.
- 3 (b) A further reason for the need to describe the substance of the aims of the Union, and here, in particular, its objectives relating to policy for society, may be found in the negative manner in which proposals for closer cooperation between the nations of Europe have hitherto been promoted: it has always been submitted that Europe must face up to old and new challenges: threats from the East, partnership with the USA, technological and economic competition from the USA and Japan, from the newly-industrialized nations and even from Third World countries. Even the reason given, that a Europe capable of speaking with one voice gains in power and importance is an element of reaction to challenges originating outside Europe. This negative description cannot suffice as an incentive for creating a European Union. If our citizens are to be won over to the Union cause, they have a right to know the values and objectives which will be given priority in this Europe.

The criticisms and the frequently effusive professions of faith in Europe may be assessed against a positive description of the future Union. We may hope to be able to put an end to a certain disingenuousness on the part of political powers in the Member States in this way.

(c) Nonetheless, we must admit that a positive description of the policies aspired to cannot include many practical details if it is seen as part of a venture designed to result in the drafting of a text which could serve as a constitution. Concrete policies can only be described by the institutions set up on the basis of the powers allotted to them. Although the delineation of powers must therefore of necessity remain brief and abstract, the background documents used in drafting the text of the constitution must clearly show the image which the authors have of the Union. In the concise and clear draft constitution to be drawn up, the definitions of political objectives will be set out principally in the preamble, the introductory articles and the articles setting out the various competences.

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The theme of a policy for society is - together with that of economic policy - the most suitable for demonstrating what the future Europe will look like.

The image which arose in Western Europe during the Enlightenment of the State as a free, constitutional, parliamentary democracy is the common political legacy of the democracies which have evolved in Europe and the USA. Their basis was and remains the conviction that every individual has inviolable and inalienable basic rights. The fundamental expressions of these are human dignity, the right to life, freedom from bodily harm and protection from arbitrary decisions by the State, the free development of personality, equality before the law, freedom of speech, opinion, belief and religion, the right of assembly and association, the right to own property, freedom of movement and the right to a fair trial. From the recognition of these freedoms derives the obligation of each individual and the obligation of the community to enable everyone to live a decent life, an obligation which, since the last century, has been attributed to the State to a greater extent in Europe than in the USA. Freedom from need and from

fear nevertheless was and remains similarly the aim and basis of democracy¹.

8 The above values are at the heart of the common basic conviction of the citizens of the European Union. The different emphases and forms given to them in the programmes of the political forces is an expression of pluralism, democratic legitimation, the institutional division of powers and the recognition of the majority principle in the race for the spiritual and political leadership of society.

9 Common to all these programmes is that they have extended the concept of freedom from fear to the whole of Western Europe with the support of their citizens. In other words, the association of the Member States in the Union guarantees peace between them and is based on the renunciation of any armed aggression. At the same time, it offers all European countries the opportunity to accede if they accept the Union's values. Closely connected with that is the conviction that in future the common values can only be realized within the framework of a European Union.

10 A new political value in the European Union, the concept of federation, has thus been added to the conventional values of democracy as understood in Western Europe and North America. Linked to it is the concept that the citizen's freedom, awareness of performance and responsibility should develop in a Union which provides answers throughout its territory to the new economic and social challenges existing in all the Member States. The European Union also has the opportunity to ensure that it is recognized by the people living within its borders by virtue of the fact that it opens up new avenues of social peace and social justice throughout the Union. The objective is an internally and externally peaceful society of free, responsible people enjoying equal opportunities and acting together in a democratic European Union.

¹ See the Preamble to the US Constitution: 'promote general prosperity, maintain the blessings of freedom' and the Four Point Declaration made by President Roosevelt in 1941

In the long term the Union can only achieve internal peace if it ensures that living conditions are more or less comparable in all the Member States. Where the Member States, or areas thereof, are capable of acting effectively, they should take on this task. Where the performance of the areas - local authorities, district associations, regions - and then of the Member States is inadequate, the Union must assist (subsidiarity principle).

The spheres in which this will be necessary are described below. They form the constitutional framework for a future Union policy. The sectors are social affairs, regional policy, environment, consumer protection, education and research and cultural affairs.

In each case, after the description of the positive objectives which will be set out in the specific fields below, it must also be demonstrated why the objectives described can only - or more efficiently - be carried out at the level of the Union as a whole, and why a corresponding division of competences between the Union, the Member States and subordinate levels (for example, regions) is proposed. Since we wish to draw up as brief and as clear a draft constitution as possible, we must place the emphasis for the field of policy for society in the description of the objectives. A very detailed description of how these objectives will be translated into concrete policy cannot be given here, as is the case, for example, in the existing Treaties for the areas of coal and steel, agriculture, transport and nuclear energy. On the one hand, this would involve a mixture of constitutional norms and individual practical provisions - as is typical, moreover, of the existing Treaties - and on the other, it would be impossible to comply with the requirement to be clear and concise¹. There must also be a certain amount of flexibility, since the text must be such that active policies can be pursued within this framework for some time to come.

¹See motion for a resolution Doc. 1-301/82

2. Definition of the term: 'policy for society'

14 The term 'society' cannot be defined in the traditional sense. It can therefore only be evolved and described and not be arbitrarily fixed for the sake of supposed clarity¹. If by 'policy' we understand a conscious influencing or directing of social processes, then it becomes clear that even the compound 'policy for society' cannot be terminologically defined.

Recognizing the need to approach it by description, we may take one of several starting points:

15 The Tindemans report² states that Europe 'must build a type of society which is ours alone and which reflects the values which are the heritage and the common creation of our peoples'. Some later paragraphs set out in greater detail what form the 'minimum consensus of opinion between the democratic forces in Europe on the nature of the changes required' will take, but in the context of the task we have undertaken here, this seems too all-embracing.

16 It therefore appears necessary to break down the term 'policy for society' into subdivisions which are normally subsumed in it. These individual policies will therefore be considered in as systematic a manner as possible. The sum thereof, with all the details illustrated, can be regarded as 'policy for society'.

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¹ Theodor W. Adorno in 'Evangelisches Staatslexikon', Kunst, Herzog, Schneemelcher (Ed.) Second Edition, 1975

² Bulletin of the European Communities, Supplement 1/76, p.12

II. BASIC FRAMEWORK AND OBJECTIVE

1. Framework

17 - The European Union is the democratic, constitutional and social
federation of the states indissolubly united in the Union with
a corresponding constitutional system.

18 - The subsidiarity principle implies on the one hand 'that the
Union shall only undertake those tasks which can be executed
more effectively in common than by the Member States separately,
or those, the execution of which requires a contribution from
the Union', and on the other 'that the Union shall act only in
clearly delineated areas'¹.

19 - 'The Community patrimony - comprising the existing laws and policies
of the Communities, political cooperation and the European Monetary
System, as well as all bodies or institutions set up within the
Community context - shall remain in force unless and until altered
by new laws or policies of the Union'².

20 Since it is expressly stated that the Community patrimony will
remain in force, the following sections will not summarize the current
body of legislation in the Community but take it as read. It will only
be referred to in exceptional cases where the need for amendments or a
further development can be understood only in relation to its historical
background.

¹ Doc 1-305/82/A, resolution on the European Parliament's position
concerning the reform of the Treaties and the achievement of European
Union, OJ No. C 238, 13.9.1982, p.25 ff.

² idem.

2. Human relations

(a) Aims of social policy¹

For a long time, social policy² was regarded as a list of additional measures taken to supplement the more or less successful economic policy. And it is true that the number of tasks undertaken by social policy depends on the success or failure of the economic policy. The social well-being
21 of the citizens of the Union depends essentially on common economic prosperity guaranteeing full employment and the sharing out of its benefits³. Even in the Union the principle will still apply that it is impossible to distribute more than has been produced and that no one may live at the expense of the subsequent generation.

An independent social policy of the Union, the value of which has been recognized since 1972 as being equal in importance with the objectives of the free market economy, is based on the principle that if the sharing out of the benefits of jointly generated economic prosperity is undertaken solely by the Member States, in the long run - as far as the whole Community is concerned - this
22 will lead to a socially unjust distribution and to a breakdown of internal solidarity in the Union, and even worse to distortions of competition, because of the differing social policies pursued by the Member States. The implications of this new approach are considerable and largely exceed the basic concept. The declaration made on behalf of the EEC at the Paris Summit of 1972 that 'vigorous action in the social field is as important as the achievement of the Economic and Monetary Union' applies to the Union insofar as it must pursue an independent social policy in addition to an independent economic and monetary policy.

¹ For an overall summary of social policy priorities, see Parliament's resolution, OJ No. C 287, 9.11.1981 p. 87 (tabled by Mrs Cassanmagnago Cerretti with request for urgent debate)

² For a survey of the Community's current social policy see 'The Social policy of the European Community - European Documentation - 3/1981

³ Tindemans report, Bulletin, Supplement 1/76, p. 24

The constant improvement of the living and working conditions for all the citizens of the Union, as set out in the Preambles to the ECSC and EEC Treaties, Article 2 of the EEC Treaty and Article 1 of the EAEC Treaty, is one of the more general objectives of the Union's social policy. This task may be broken down into the following three categories :

- (aa) the establishment of a European framework for social security and working conditions,
- (bb) the establishment of a European framework for the social dialogue between employers and employees in the Union
- (cc) the securing of worker participation in decisions affecting working life.

(aa) Social security and working conditions

(1) Social security

The Union requires a consensus on social justice, based on the fight against poverty¹ and a uniform system for minimum social welfare.

That includes the abolition of any discrimination between employees from the countries of the Union on the grounds of nationality. The Union must also ensure that when a citizen of a Union country moves house and settles in another Member State, he is granted the same basic rights for himself and his family in his legal and social life and the same working conditions which apply in that Member State - either on the basis of its own or of the Union's legal system. That applies, for example, to accommodation and to social and educational care.

The right of residence for citizens of the Member States must not depend on evidence of employment. Efforts must be made to create full Union citizenship, to be conferred on nationals of the Member States, which, on the basis of Union law, grants certain rights to every citizen of the Union.

Comprehensive cooperation and collaboration in the field of social welfare must contribute to the abolition of discrimination between men and women. Corresponding rules must be laid down for the protection of the family² and to cover sickness, maternity, invalidity, old age, death

¹ See the Boyes report, Doc. 1-386/82; Parliament's resolution, OJ No. C 292, 8.11.1982, p. 47

² See the Cassanmagnago Cerretti report, Doc. 1-1196/82

and unemployment. The upholding of claims established in the country of origin and the possibility of cumulating social security periods and pension insurance payments must be guaranteed. Thought might be given to the introduction of systems for pre-retirement pensions and unemployment benefits on a common basis.

27 Citizens of countries not belonging to the Union should receive equal treatment exclusively in accordance with Union law, especially on the basis of agreements concluded by the Union with other countries.

(2) Health¹

28 The basic objective of enabling all citizens to live as full a life as possible at work and at home also entails tasks for the Union in the health care field, still on the basis of the subsidiarity principle.

29 The Union must contribute to the improvement of health care in the Member States. That involves mutual help in the event of disasters, major catastrophes, epidemics and other exceptionally serious illnesses.

30 A Union-wide campaign must be waged against the abuse of substances harmful to health, especially drugs, tobacco and alcohol. Information campaigns to prevent illnesses caused by poor nutrition must be coordinated. Improvements must be made to the protection of employees against occupational diseases of all kinds (noise, dangerous substances, etc.) by effectively preventing or controlling the dangers.

31 The harmonization of measures to protect workers and the public against ionizing radiation of all kinds, on which a start has already been made, should be continued.

32 Joint criteria must be laid down in respect of the rights and protection of the disabled. At all events, disabled people must be offered the possibility of rehabilitation and, wherever possible, employment.

¹See in this context the Clwyd report, Doc. 1-868/80; Parliament's resolution, OJ No. C 77, 6.4.1981, p. 27 ff.

(3) Working conditions

Employment

33 Full employment¹ is the most urgent objective of social policy. Success in the fight against unemployment will be decisive for the survival of the existing democratic social system².

¹Doc. 1-305/82/A, resolution on the European Parliament's position concerning the reform of the Treaties and the achievement of European union, OJ No. C 238, 13.9.1982, p.26

²See in this context the Salisch report, Doc. 1-164/81, Parliament's resolution, OJ No. C 260, 12.10.1981, p. 48 ff.; the Calvez report, Doc. 1-365/81, Parliament's resolution, OJ No. C 260, 12.10.1981, p. 63 ff.; the Ceravolo report, Doc. 1-425/81, Parliament's resolution, OJ No. C 260, 12.10.1981, p. 54 ff., and the Papaefstratiou report, Doc. 1-646/82, OJ No. C 292, 8.11.82, p. 43.

34 A basic distinction may be drawn between the creation of new jobs and the maintenance and possible redistribution of existing jobs :

35 In periods of low or even negative economic growth rates, not enough new jobs are created without the introduction of specific political framework conditions or incentives to replace jobs lost by rationalization or plant closures. That also applies to jobs required to cope with increased demand resulting from demographic trends or as a consequence of increasing emancipation. An active employment policy must be pursued to combat this trend. It must combine every measure imaginable, since any restriction would result in the overall target not being met. The creation of stable, i.e. competitive, jobs must be given top priority, in particular in backward areas. At the same time, the geographical and vocational mobility of the workforce must be encouraged. The establishment of new undertakings to manufacture new products and provide services (e.g. environmental technology, energy and micro-processors), preferably in the form of small and medium-sized undertakings, must be encouraged. Special attention must be given to local initiatives which create jobs.

36 The maintenance of existing jobs and production capacity must not lead to the ossification of the current economic structure. On the contrary, it should facilitate the requisite structural adjustments. That presupposes that the undertakings are organized on a competitive basis. The policy pursued by the Union must provide framework conditions for restructuring.

37 In the case of the redistribution of existing jobs, several possibilities come to mind which must be investigated and assessed as instruments for improving the employment situation : the distribution

of labour, in the form of job sharing, the adjustment of and reduction in working hours (flexible age limits and/or early retirement, temporary work, part-time employment, reductions in the working week), depend on the ultimately inescapable premise that they must not jeopardize competitiveness. Although social policy is not a simple function of economic policy, in this case their objectives are closely dependent on each other.

38 In the allocation of jobs, special priority must be given to the frequently underprivileged groups such as young people¹, women², migrant workers, the disabled, older employees and the long-term unemployed.

39 Vigorous efforts must be made to abolish overtime, unrecorded economic activity and the excessive recruitment of temporary employees.

Vocational training

40 The importance of proper vocational training is constantly increasing. It is a prerequisite both for the attainment of individual equality of opportunity as regards access to the labour market and for the satisfaction of the increasing demands made in professional life. The Union's future depends on young people being properly trained and qualified. The Union must therefore ensure that all young people have access to proper practical vocational training linked to the work experience. Initial training, selected in accordance with job counselling which takes account of prospective market requirements, should lead to a job which is as appropriate as possible to the individual's capabilities. In particular, it is in this area that the Union should concentrate a large part of its currently modest financial resources for social expenditure.

41 Adjustment to new technologies and other reasons will always make retraining and further training necessary. In-service training, further training and Union-wide recognition of diplomas and certificates are important for appropriate productivity in competitive jobs and for easier reintegration after the loss of a job.

¹ See in this context Parliament's resolution on youth unemployment, OJ No. C 125, 17.5.1982, p. 74 ff. (Resolution tabled by Mr Brok and others with request for urgent debate)

² See in this context the Maij-Weggen report, Doc. 1-829/80; Parliament's resolution, OJ No. C 50, 9.3.1981, p. 35 ff.

Jobs and remuneration

The humanization of working conditions initially includes measures to combat the risk of accidents at work and occupational diseases. Campaigns to make workers safety conscious and further progress in occupational medicine will bear fruit at the workplace itself.

42

The introduction of new safety techniques to prevent accidents and improve the working environment must involve the employees because it is they who are using the new technologies.

The implementation of equal pay for men and women and the abolition of discrimination (for example in systems of professional classification and career structures) have not been achieved and must therefore be pursued further. The recognition of the right of employees to institute legal proceedings in cases of discrimination is one of the instruments required.

43

(bb) Framework for the social dialogue

The transfer to the Union of some powers of decision in economic policy matters reflects a step which large firms took long ago. The Union must therefore ensure that the social dialogue between employers' and employees' associations on the one hand and Union institutions on the other takes place at Union level¹. That implies that the Union will establish framework conditions which enable Union-wide autonomous collective agreements to be concluded and also give employers' and employees' organizations the opportunity of conducting Union-wide negotiations on working conditions, reductions in working hours, holidays and other matters.

44

The collective participation of the social partners in the socio-economic decision-making progress of the Union must be improved. That implies not only aid for their information and training establishments at European level, but also a consolidation of the practice of consultation between the Economic and Social Committee on the one hand and the European Parliament and representatives of the Member States on the other. The social dialogue would also be improved if regional interests were directly represented on the Economic and Social Committee.

45

¹Tindemans report, Bulletin, Supplement 1/76, p. 25

(cc) Worker participation

46 Efforts to create a more humane and just society call for solutions at Union level to the problem of worker participation. The practical expression of this includes procedures for informing and hearing employees. That applies in particular to transnational undertakings. It will also take the form of rules on worker participation in decisions affecting working life and on the statutes of the undertaking. It is essential for the Union to create equivalent legal provisions for the implementation of worker participation which, as a result of divergent political, historical and philosophical viewpoints, has not developed in the same way or to the same extent in all the Member States.¹

(b) Aims of regional policy²

47 The elimination of regional imbalances³ is referred to in the Preamble to the EEC Treaty as an objective of Community policy and was recognized as long ago as the early 1970s as a priority task in attempts to achieve European unification⁴. Regional policy is a touchstone for genuine and effective solidarity between nations⁵. Its aim is a comprehensive structural policy based on planned promotion of investment and infrastructure projects. Appropriate living, working and market conditions must be created in the less-favoured regions to combat the concentration of migrant workers in traditional industrial areas and to fill the Union's peripheral areas with new life by helping them to help themselves (self-made development).

48 It is clear from a consideration of regional problems and of the impact of the policy to be pursued that the people concerned and the bodies representing them at regional and local level must be actively involved in regional policy.

¹ See the Geurtsen report, Doc. 1-862/81; Parliament's resolution of 11 May 1982 in OJ No. C 149, 14.6.1982, p.44 ff.

² See in this context the comprehensive survey and list of regional policy objectives contained in the De Pasquale report, Doc. 1-61/82

³ Doc. 1-305/82/A, resolution on the European Parliament's position, OJ No. C 238, 13.9.1982, p. 26

⁴ Final declaration of the European Summit in Paris on 19/20 October 1972, Bulletin of the European Communities 10/1972

⁵ See in this context the Tindemans report, Bulletin, Supplement 1/76

The regional disparities noted in the 1970s have by now increased even further, despite the efforts made by the Community since 1975. It is thus more necessary than ever before for the Union to have its own independent regional policy¹. All the regions must be guaranteed an adequate and balanced degree of development. The new methods used to reduce the prosperity gap between the various regions must contribute to a more efficient territorial utilization in line with the Union's social policy assumptions. The Union will provide a framework for European regional planning. This will play a prominent role in the common basic assumptions, the harmony and the links between the future plans and measures which will continue to be largely differentiated and decentraliz

The elimination of regional imbalances is a sine qua non for a continuation of and increase in the degree of economic integration. To this end, an exact analysis of regional information must first be made so that an inventory of the resources and needs of the various regions may be drawn up². With permanent account being taken of the regional impact of other policies (such as the agricultural, industrial and research policies), and with Community aid being concentrated on the most backward areas³, the priority will be the creation of new

¹ See the Commission's report on European Union, Bulletin, Supplement 5/75

² See the Delmotte report, Doc. 1-825/81, Parliament's resolution, OJ No. C 66 15.3.1982, p. 34 ff.

³ See the Faure report, Doc. 1-648/81, Parliament's resolution, OJ No. C 66, 15.3.1982, p.21

productive jobs¹. Prudent management of the labour market at regional level and the joint utilization of all the promotion instruments - funds, loans, national incentives - will be geared towards maximum employment. Loans should be made more available than in the past to provide financial resources. All financial resources, wherever possible, should be given directly to the investors. Apart from the services sector, encouragement should be given to economic sectors with labour-intensive modern technologies which are suited to local development potential and the exploitation of local resources. Positive adjustment measures (restructuring, adaptation, innovation) should have priority.

5 1 The European Community of the 1950s and 1960s was a large Mediterranean 'country'. Following the enlargement to include Greece, and with the prospective accession of Spain, the Union must take greater account of the specific situation of the Mediterranean countries than was the case in the original conception of the Community². The Union's regional policy will therefore take account of these specific problems of the Mediterranean structures.

5.2 The respective growth potential and adaptability of the regions must be mobilized and utilized in individual regional development plans. Above all, the knowledge and skills of the indigenous population, alternative energy sources, environmental resources, the latent capacity of undertakings (in particular, small and medium-sized undertakings, craft trades and tourism in rural areas) must be utilized. They must be provided with the requisite software in the field of information, research, technical aid, market research, etc.

¹ See in this context the chapter on regional policy in the report drawn up as a follow-up to the Mandate of 30 May 1980: A new impetus for the common policies, Bulletin, Supplement 4/81

² See the Pöttering report, Doc. 1-736/81, Parliament's resolution, OJ No. C 66, 15.3.1982, p. 26 ff.

(c) Aims of consumer policy¹

53 Consumer policy also includes matters which concern the quality of life of every single citizen of the European Community. The protection and perception of consumer interests are therefore a matter of concern for all.

The Union will increasingly implement the fundamental rights of the consumer already laid down by the Community. These are.

- 54 (aa) protection of the consumer's health and safety,
(bb) protection of the consumer's economic interests,
(cc) improvement of the consumer's legal position - assistance, advice, redress in the case of damage,
(dd) the Union will also promote consumer information and education and hearings of consumers.

Ad (aa)

55 Common standards forming a basis for the control of the quality and marketing of goods will provide genuine protection against possible abuses and dangers. This also involves the rapid exchange of information on dangers arising from the use of certain products.

Ad (bb)

56 The abolition of non-tariff barriers to trade and the harmonization of the conditions of competition for manufacturers and dealers will improve the consumer's economic position. In particular, the harmonization of rates of tax - without involving a general increase - will make it possible to draw up reliable price comparisons. A campaign will be waged against any misleading of the purchaser as regards the nature, identity, quality or composition of products. Minimum standards will be laid down in respect of guarantees for consumer durables.

Ad (cc)

57 The establishment of rules governing liability for defective products and misleading advertising and general protection against fraudulent contracts will improve consumer protection in the Union as a whole.

¹ See the O'Connell report, Doc. 1-450/80, Parliament's resolution, OJ No. C 291, 16.10.1980, p. 39 ff.

A greater number of consumer information offices will be made available.
Information in the media (especially on television) must be improved.

58 Technical measures, such as better rules governing labelling, will make it easier for the consumer to select goods from the wide range available.

59 Account will always be taken of the point of view of the consumer - and of other pressure groups - when decisions are taken within the framework of other policies. Consumers are involved in the market economy by virtue of the decision which they take as purchasers or customers and which consequently determines their living conditions. In addition, consumers will be represented in a pressure group at Union level.

3. Man and Nature

(a) Aims of environmental policy¹

60 The content and objectives of the Community's action programme on environmental protection will also be valid for the Union's environmental policy. Responsible conservation and rehabilitation of the natural environment and of natural resources in order to achieve sustainable development² are thus to an increasing extent the concern of a sensible environmental policy.

61 Since the environment of one country is necessarily also the environment of its neighbours, efforts to maintain a decent environment is the task of the Union in so far as it involves protection against damage or subsequent re-generation which (a) might occur in a similar manner throughout the Union or (b) might occur in more than one Member State or (c) is transported from the Union or into the Union. That also involves cooperation within international organizations concerned with environmental problems.

¹See in this context the two reports by Mr Alber, Doc. 1-276/81, Parliament's resolution, OJ No. C 327 14.12.1981, p. 83 ff. and Doc. 1-219/82, Parliament's resolution, OJ No. C 182, 19.7.1982, p. 90 ff.

²Doc. 1-305/82/A, OJ No. C 328, 13.9.1982, p. 26

The practical value of environmental protection will always be assessed in the Union as part of a detailed overall view and in relation to other - possibly competing - objectives. Environmental policy will therefore be
62 closely linked to other sectors - industrial and agricultural - because economic development and protection of the environment must contribute together towards improving the quality of life.

In the past, insufficient account was taken of environmental interests because the value of the environment was not properly recognized. If
63 we regard man, nature and the environment as a single entity; then each component has its value. The Union will therefore do its utmost to make good any damage already caused and to restore and maintain healthy living conditions. For the making good of any damage caused, the 'polluter pays' principle will be applied from the outset as far as possible. Uniform penalties based on Union law will be imposed on those damaging the environment.

Past experience teaches us that the purely defensive nature of a policy of making good any damage caused is inadequate, partly because in some cases the damage caused is irreparable, partly because even temporary damage is unacceptable, and finally because the subsequent restoration of nature and natural resources is generally more expensive than preventing damage. A preventive environmental policy and plan will therefore be drawn up. The possible impact of other political and technical decisions must be taken
64 into account from the outset. This applies to many aspects, such as structural planning, regional planning and the granting of authorization for industrial construction. To this end, the instruments for assessing technological effects, testing compatibility with the environment¹ and environmental approval certificates will be utilized.

The Union's environmental policy also covers provision for the utilization of available resources. Top priority should be given to the
65 rational and protective use of space and natural resources. The utilization of renewable raw materials and the recycling of waste products are vital.

Environmental policy is a structural policy which must be pursued further,
66 irrespective of short-term economic fluctuations. Differences in

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See the Weber report, Doc. 1-569/81/rev., Parliament's resolution, OJ No. C 66, 15.3.1982, p. 78 ff.

environmental requirements result in barriers to trade and distortions of competition and, for that reason, if for no other, must be harmonized.¹ The pursuit of a conservationist and preventive environmental policy is part of industrial innovation and creates additional jobs. In this way, it coincides with social policy objectives.

Environmental nuisances and dangers are not confined to one particular country, nor do they stop at the Union's external frontiers. Consequently, the Union will cooperate actively at international level. Apart from acceding to existing international agreements, it will vigorously pursue the conclusion of more far-reaching conventions and take up and solve specific problems with the neighbouring countries concerned.

(b) Animal protection

The Union will pursue an independent animal protection policy to the extent necessary for reasons relating to trade and competition or on moral grounds.

4. Man and culture

(a) Aims of education and research in the field of human and moral sciences

It is essential for the Union to pursue a policy on education and on research in the field of human and moral sciences for three reasons:

- (aa) in order to assist citizens to become aware that the Union has its own identity,
- (bb) in order to enable citizens to select freely their type of employment, a job or a training centre anywhere in the Union, and
- (cc) in order to guarantee research of Union-wide significance in the field of human and moral sciences.

Ad (aa)

In the courses taught in all schools and colleges, a common core must be embodied

¹ See the motion for a resolution tabled by Mr Mertens and others on behalf of the Group of the European People's Party (Christian-Democratic Group), Doc. 1-239/82

70 showing the history of European civilization and the European Union, whose educational objective is to demonstrate the common cultural values of all citizens and, beyond that, the specific political values of the Union.

Ad (b)

71 The freedom of all citizens of the Union to select their type of employment, which also entails freedom of establishment and genuine freedom of movement, are mutually dependent.

72 It presupposes the Union-wide validity of diplomas, certificates and other evidence of formal qualifications and the recognition of periods spent in school, higher educational institutes and in training which exceeds that laid down in Article 57(1) of the EEC Treaty (mutual recognition). Efforts should also be made to establish a minimum standard for training (see Article 128 of the EEC Treaty on vocational training).

73 The basic principle should be that every certificate of formal qualifications which is recognized in the home country for admission to a training course or a profession will also be accepted in another Member State, unless Union law lays down other provisions.

74 In order to ensure a Union-wide minimum standard for professional training, the training institutes (universities, trade corporations, etc.) should be required to develop, in conjunction with the Union, common or comparable training programmes which also lay down mutual recognition of periods spent studying or training. In the school sector, these tasks will be the responsibility of the appropriate ministries in the Member States.

75 In addition, Union policy on education should contribute to other Union tasks such as

76 (1) the guarantee of equal opportunity for all citizens of the Union and their children as regards unrestricted access to all types of education and training;

- 77 (2) the securing of an awareness of national identity among migrant workers;
- 78 (3) equal job opportunities for women;
- 79 (4) promotion of multilingualism;
- 80 (5) preparation for new cultural developments in the Union in professional life (microelectronics, data processing);
- 81 (6) satisfaction of information requirements in educational and training matters of Union-wide significance;
- 82 (7) promotion of exchanges of schoolchildren, students, apprentices and young workers within the framework of a European Youth Organization¹.

Ad (cc)

The technical research sector falls within the terms of reference of the rapporteur on the Economic Union, Mr Moreau. Research in the human, moral and social sciences, however, is covered by the policy for society and is particularly important for the character of the Union's concept of social policy values.

In this context, advanced educational establishments such as the European University Institute in Florence, the European Foundation in Paris, the European Schools and the Centres in Berlin and Dublin will lead the way in the formation of European awareness, in the Union-wide recognition of diplomas and other evidence of formal qualifications and hence in the implementation of the individual's freedom of establishment and freedom to select his type of employment. In so doing, they will cooperate with comparable national institutions.

It is essential to incorporate the aforementioned institutions entirely into the Union's organizational structure, although the requisite academic freedom must be guaranteed for the European University Institute and the European Foundation.

In the sphere of education and the promotion of research of Union-wide significance, it is recommended that the executive heads of the Union and the Member States cooperate on a formal basis.

¹See Mr Bocklet's draft report, PE 74.871/rev.

(b) Aims of information policy

The guarantee of Union-wide freedom of information is essential for democracy in the Union. The qualitative variety of information, opinions and ideas is essential for balanced development in the Union which is based partly on the principles of pluralism, freedom of decision and individual participation. The Union must facilitate an extensive, Union-wide exchange of information and access to information for its citizens. In this connection, it has a responsibility to guarantee a comprehensive supply of information and maximum competition by means of a variety of organizational forms¹.

Appropriate Union regulations must be introduced to eliminate obstacles to the circulation of information throughout the Union. That entails the abolition of all barriers erected on monopolistic grounds (e.g. in telecommunications), fiscal grounds (e.g. newspapers) or for reasons relating to tariffs, transmission, frequency or satellite technology. The Union could promote cooperation between radio and television companies on a Union-wide programme².

(c) Aims of cultural policy³

88 The cultural unity of Europe predates its fragmentation into nation states.

89 For centuries, cultural development transcended national boundaries and similar obstacles as a matter of course and linked cities and centres of culture with each other despite all divisive influences.

90 The undisputed European dimension of cultural affairs draws its wealth partly from the variations in as well as from factors common to national and regional aspects. Ethnic and cultural diversity⁴ within a common European civilization will be maintained and protected.

91 The task of ensuring this devolves principally on the Member States which are already working together in the Council of Europe for the maintenance of the European dimension in cultural affairs. In addition, the Union could take action in the following areas:

¹ Final Declaration of the European Summit in Paris, paragraph 1, Bulletin 10/1972: Free movement of ideas

² Tindemans report, Bulletin, Supplement 1/76; see also the Hahn report,

³ Doc. 1-1013/81, Parliament's resolution, OJ No. C 87, 5.4.1982, p. 110 ff.

See in this context the resolution tabled by Mr Broeks, Doc. 542/75, Parliament's resolution, OJ No. C 79, 5.4.1976, p. 6; the Amadei report, Doc. 325/78, Parliament's resolution, OJ No. C 39, 12.2.1979, p. 50 ff.

⁴ and 'Activities of the European Community in the Cultural Sector', 3/1980

See Doc. 1-305/82, Parliament's resolution, OJ No. C 238, 13.9.1982, p. 26

(aa) Representation of both inward and outward-looking cultural development within the Union and promotion of cultural exchanges. This task should be the responsibility of the European Foundation working in conjunction with comparable institutions in the Member States. Exceptionally, it might be possible to grant aid for the maintenance of cultural assets of Union-wide significance. The Foundation should also promote cultural cooperation beyond the Union's borders, for example, with the ACP States.

(bb) The promotion of cultural understanding between the citizens of the Union.

For this purpose, the establishment of a European youth exchange programme¹ is particularly to be recommended.

(cc) Improvement in the situation of persons active in the cultural sector in the Union.

The major aspect here is the harmonization of copyright law in the Union and freedom of movement for the cultural assets thereby created².

ee Mr Bocklet's draft report, PE 74.871/rev.

ee the Prout report, Doc. 1-558/80, Parliament's resolution J No. C 28, 9.2.1981, p. 82 ff.



EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

WORKING DOCUMENT

ON THE COMPETENCES OF THE UNION
CONCERNING INTERNATIONAL RELATIONS

Rapporteur: Mr Derek PRAG

14.1.1983

PE 83.326/fin./C.

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INTRODUCTION

As the end of the 20th century approaches new centres of power are emerging in a world that is becoming both increasingly complex and increasingly interdependent. The various aspects of external relations (political, economic, diplomatic, security, etc.) are closely interwoven.

At the same time the main divisions that have characterised world relations since the second world war - between the Eastern and Western 'camps' and between North and South have certainly not been reduced by the oil crisis, and in some respects have widened. The European Community is in a unique position to contribute to the attenuation of these divisions, and thus to the safeguarding of peace.

In the field of North/South relations, Europe's trade with the Third World displays a higher degree of interdependence than does that of any other power in the industrialised North. The Community exports more to the Third World than to the USA, the Soviet Union and Eastern Europe combined, and absorbs some 40% of the Third World's exports. Its economy depends on the solvency and development of the Third World. In building on this convergence of its interests, and given its moral obligations towards its former colonies, the Community can contribute towards the establishment of a more just international order.

In East/West relations the Community, through its geographical situation and its trade links, again occupies a key position, and its ability to play an effective role in East-West relations could be crucial for the preservation of peace.

In other areas too, Europe's legitimate interests require it to play a key role on the world scene. This is particularly true of the Community's interest in maintaining a stable world monetary system and in preserving an open trading system.

In such fields, Europe is becoming increasingly aware of what these interests are and of the need to work together to attain them. The development of European political cooperation and the use of the Community's economic instruments of foreign policy testify to this. As this process develops, the effectiveness of Community action in the world, and the degree of influence that Member States will be able to exert, will depend on their ability not only to work together but also to use to maximum effect all the instruments of foreign policy at their disposal in a coordinated and coherent manner within a common framework of decision-taking. This is the subject of this working document.

I GENERAL PRINCIPLES AND OBJECTIVES

1. A common policy

(1) A common foreign policy covering both political and economic aspects, which are becoming increasingly difficult to separate must form an integral part of the European Union. In a union of states and peoples sharing common values, and common economic and political interests, and faced with similar external challenges, the presentation of a united front to the outside is an invaluable asset.

(2) Moreover, it is inconceivable, in the long run, that a Community of peoples with common trade policies and a common foreign policy should not have a common policy for at least some aspects of security. Security policy and foreign policy are inseparable, and in a union the security of each Member State intimately affects the security of the other Member States and of the Union as a whole.

(3) In applying the principle of subsidiarity to external policy, competences and powers should be attributed to the Union's institutions in areas where the Member States acting alone cannot have as effective a voice as would the Union acting as one, or where the absence of a common policy would make it impossible for the Union to pursue the objectives of its internal development or to contribute to international actions of interest to the Union.

(4) The Union's competences in dealing with the outside world must therefore be adequate to deal with the external aspects of all policies that are attributable to it internally, and also certain fields where a joint policy would be justified even if there were no compelling reason for establishing a common policy internally within the Union.

(5) This clearly implies the adoption of a common position and the carrying out of joint action, not only in trade questions but also in those political fields of foreign policy in which joint diplomatic efforts, common representation in international organisations, and joint action, - in conjunction

or severally - are necessary to allow Europe to play a role in the world commensurate with its potential.

2. Unity

(6) For all matters within its competence, the Union must be able to speak with one voice. There should be no question of separate actions by Member States that would undermine the policy adopted by the Union as a whole. If a matter falls within the competence of the Union, it must be conducted by the Union as such. The instruments and mechanisms for carrying it out must accordingly be available to the Union.

3. Coherence

(7) The various instruments of external policy must be organised as a coherent whole. This implies that there must be common decision-making bodies for all aspects of external relations (economic and political) for which the Union has competence, ensuring that they are conducted in a complementary manner. The Union must be represented externally by spokesmen accountable to it.

4. Effectiveness and Accountability

(8) The decision-making bodies of the Union's external policy must be able to act promptly in the interests of the Union as a whole. At the same time, decisions must be taken by politically responsible bodies, with clear lines of accountability. The distribution of tasks and powers among different Union institutions must be clear and precise. Decisions must also be subject to democratic, parliamentary control.

II CRITICAL ANALYSIS OF THE CURRENT SITUATION

(9) Two quite distinct methods of foreign policy coordination have been developed - one covering matters subject to the three Community Treaties, which are governed by Community procedures and come under the competence of Community institutions, and the other covering all other foreign policy matters and known as European political cooperation.

1. Matters under Community competence

(10) A number of articles in the EEC Treaty¹ give certain competences to the Community for dealing with external relations, notably in the field of trade and commerce, where exclusive competence is given to the Community for establishing customs tariffs, conducting a common commercial policy towards third countries, and, in all matters concerning the common market, concluding agreements with third countries and acting within international organisations.

(11) In practice, these articles have been put into operation with a considerable degree of success in which the Commission, in its executive and negotiating roles, has played an important part. A common customs tariff has been established; the Community institutions have assumed their responsibilities for participation in international economic organisations; and the Community has adopted agreements with third countries which, over the years, have developed from being purely commercial to encompass wide areas of economic cooperation (for instance, the agreements with Mediterranean countries and ASEAN). Also, delicate issues such as steel exports to the USA have been handled by the Community.

(12) This development was greatly facilitated by the decision² of the Court of Justice in 1971 stating that the external aspects of all matters regulated by internal provisions of the Community are also subject to Community competence.

(13) The Community's external role has also developed as a result of its responsibilities for fisheries under the CAP. When territorial waters were extended throughout the world to 200 miles, the Community found itself dealing with a major proportion of traditional fishing grounds. Its

¹ Articles 3, 113, 116, 228, 229, 230, 231 and 238

² AETR Case 22/70 ECR 1971, 263

action in protecting them, negotiating agreements on their use with third countries and bargaining for access to other fishing grounds is itself an important aspect of external policy and has, inter alia, forced the Soviet Union into de facto recognition of the Community's existence and the reality of its negotiating powers.

Achievements

(14) Since the Community has exclusive competence in most of these areas, it plays a leading role on the world scene. It is the world's largest trading bloc¹; it defines its autonomous policies, not only in the commercial field, but also in some other fields of economic policy; it has concluded agreements with countries on all continents; through its borrowing and lending activities, it has a major influence on world capital markets; and it enjoys growing prestige in international organisations, where its actions as a single unit have become increasingly effective. It has begun to develop a European 'economic diplomacy', in which the Commission has been able to play an effective part. This has at the same time reinforced the position of the Community institutions, and the importance of the Community internationally. Through instruments such as the Lome Convention, the Community has been able to exert an incontestable influence on international relations and make an original contribution to solving a number of world problems.

Shortcomings

(15) Nevertheless, the Community's economic instruments of foreign policy are inadequate in a number of ways. Financially they are limited to a fraction of the amounts at the disposal of Member States, which, in using their resources separately, often compete and undermine each others' policies through, for instance, competitive credit policies. Moreover they have not been applied as the treaties intended. Member States have also continued to sign their own cooperation agreements with third parties, (most notably with the state trading countries, many of whom refused to recognise

¹34% of total world trade is accounted for by the Community or 19.1% excluding intra-Community trade (1980)

the Community for a long time). On occasion Member States have continued to follow divergent policies that undermine those of their fellow Member States and the Community as a whole.

(16) In addition, the Community's position in the world is weakened by its inability to develop common policies within its borders, in matters such as energy, industrial policy and, above all, monetary union. The European Monetary System has not yet developed the capacity to enable the Community to pursue effective policies in the world context on such matters as interest rates and the re-cycling of petro-currency.

(17) Last, but not least, although there is in principle a relatively clear division of responsibilities between the Commission and the Council, this division has been blurred in practice and the Council has retained responsibilities that should properly belong to the Commission. The powers of the Parliament have been insufficient to guarantee democratic accountability and control, notably regarding the ratification of agreements with third countries, and control over certain financial operations. This is particularly apparent in the failure to include the European Development Fund in the Community budget, and the lack of political control on the policy decisions over European Investment Bank loans to third countries.

Development

(18) Development policy is one of the more strikingly political aspects of the external policy matters under Community competence involving high-level negotiations with many developing countries on important aspects of the North/South dialogue, and includes instruments such as financial aid, food aid, special disaster aid, credits to certain non-governmental organisations, development programmes, stabilisation of export earnings, and other policy instruments that cannot possibly be considered as purely economic or technical. It illustrates the difficulty of any attempt to separate 'economic' and 'political' matters.

(19) A development policy of adequate volume and quality should be an essential part of the Community's role in the world. Few major industrialised countries today fail to recognise that they not only have a moral responsibility towards people whose material conditions are immensely inferior to their own, but that an effective development policy is in the interests of

the developed world. This is particularly the case for the Community, which buys almost half of the Third World's exports, and sells more of its own exports to the Third World than to the USA and the USSR combined. This interdependence must provide the stimulus to build an effective development policy which will be a safeguard of peace and an assurance of the best prospect for the return to growth and prosperity in the Community.

(20) The Community's development policy has a number of achievements to its credit. Its centrepiece, the Lomé Convention, is the most far-reaching agreement yet between industrialised and developing countries. The opening of Community markets not only to commodities but to manufactured products from ACP countries, the STABEX system for stabilising the export earnings of developing countries, the European Development Fund (EDF), and other aspects open the way not only to cooperation but to genuine partnership.

(21) The Community's competence to establish tariffs means that it, rather than the Member States, is already responsible for an important aspect of North/South cooperation. However, the bulk of development aid is provided by the Member States separately. Official development aid and loans under the Lomé Convention amount to less than one-eighth of the Community countries total official aid, and, as much of this national aid is 'tied' to contracts with the donor country, the common market for goods and services is distorted, the recipient country is unable to take full advantage of the aid granted and the formation of a common development policy is retarded.

(22) Even those instruments which come under Community jurisdiction suffer from a number of deficiencies - in particular the inadequacy of their funding. For example STABEX resources ran out half-way through the year in 1982. In addition, the EDF is not part of the Community budget and thus escapes any effective parliamentary control.

(23) In order to play a role in this area consonant with the size of its economic resources and to express its common interest effectively, the European Community needs a comprehensive common policy for development. Such a policy would be a major element in a common European foreign policy.

2. European Political Cooperation

A measure of success

(24) Outside the areas of commercial policy, development policy and fisheries policy dealt with by the Community institutions, lie the other fields of foreign policy. Gradually¹ a looser parallel framework known rather curiously² as European Political Cooperation has grown up to deal with them. Consisting of cooperation at an intergovernmental level among the Member States, it is separate from the institutional framework of the Community, though the meetings of Foreign Ministers often take place in conjunction with meetings of the Council. In addition the Commission participates in meetings and a dialogue with the Parliament is maintained through the presentation of an annual report, quarterly colloquies with the Political Affairs Committee, and Parliamentary Questions.

(25) EPC has allowed the Community to adopt joint positions on a number of important issues, (such as the conflict in the Middle East) and has strengthened Europe's voice in the world. Member States have developed a habit of working together. In the words of Douglas Hurd (Minister of State for Foreign Affairs, UK):

'Now in some areas of diplomacy our policy is formed wholly within a European context; and in no area is the European influence completely absent. The flow of information between the foreign ministries of the Ten is formidable.'³

¹ EPC was developed in successive stages starting with the Luxembourg report adopted by the Foreign Ministers on 27 October 1970 ('Davignon I') followed by the Copenhagen report adopted on 23 July 1973 ('Davignon II') and, finally, the London report adopted on 13 October 1981 ('Carrington').

² The main components of foreign policy are external economic relations and security. The former, itself increasingly 'political', is dealt with by the Community, not EPC. The latter has only recently been included in EPC, and only as far as its strictly political aspects are concerned.

³ Article in International Affairs Vol.57, No.3, Summer 1981.

Only a beginning

(26) However, although cooperation has improved slowly, and has undoubtedly achievements to its credit, it has not led to the creation of an effective European foreign policy in all areas where the Member States have common interests. It has remained a system through which the Member States coordinate and harmonise those aspects of their foreign policies concerning which there is consensus among them. There are no common instruments to carry out agreed policies. There is no common secretariat to provide continuity and prepare dossiers and neither the Commission nor even the Council secretariat has been asked to carry out this task (though there have been proposals for a separate political secretariat which would be no more likely to give the Community a single voice in foreign affairs than any other purely advisory intergovernmental group has been able to do in the past, and would maintain - or even strengthen - the confusing separation of competences that now exists). Only recently has a procedure for speedy action been adopted. EPC procedures are:

... operated by Foreign Ministers and their officials, who in spite of their European vocation, are conditioned to furthering their own country's objectives and interests in foreign affairs. This fact imposes a fundamental limitation on the potential degree of coordination which is possible in the interests of the Ten or the Community. Even if the political will to achieve coordination exists on the part of several Member States, the whole operation of the procedure leads to decisions achieved on the basis of the lowest common denominator of national interests, largely as interpreted by foreign ministry officials.'

Since coordination is so frequently very difficult EPC has therefore tended to react to events rather than try to shape them consciously or take initiatives, and to deal with difficult questions only when it can no longer ignore them.

(27) Moreover, on matters being dealt with jointly in EPC, Member States continue to take major foreign policy initiatives by themselves, often without the prior consultation with fellow Members of the Ten to which the Member States committed themselves when adopting the Copenhagen report. Such actions not only undermine the particular policy in question, they lessen the effectiveness of EPC as a whole and encourage third parties to try to divide the Member States from one another on other policies.

¹BLUMENFELD report on EPC, para.7, Doc.427/77

(28) At present, despite its undoubted achievements, EPC is insufficient to stem the continued decline of Western Europe's influence in the world, or to allow the Community effectively to define and pursue its common and increasingly specific interests. In the words of Douglas HURD:

'We have made a start; we have made declarations of principle; but declarations of principle are not enough unless you have the resolution and wherewithal to back them up in actual practical diplomacy'.

3. Inseparability of the two frameworks

(29) Of the two frameworks within which the Ten deal jointly with external matters, the Community method has in practice had greater success than EPC. However, this separation of so-called 'political' matters and 'economic' matters, is impossible to maintain. The recent history of the Community abounds with examples of overlap between the European Community and EPC frameworks: trade relations with the Soviet Union following the invasion of Afghanistan and the imposition of martial law in Poland; commercial relations with Israel, the Arab States, ASEAN, China, Argentina; financial aid to third countries; embargoes and sanctions; security of supplies of raw materials; the CSCE follow-up conferences; and dealing with the American embargo on European suppliers for the Siberian gas pipeline.

(30) One particularly striking success of the use of Community instruments to achieve a political end was the role played by Sir Christopher Soames, Vice-President of the Commission in Portugal in 1975 where the economic aid he negotiated on behalf of the Community in a difficult situation was crucial in strengthening the forces of democracy at a critical stage of the Portuguese revolution.

(31) The impossibility of separating the two frameworks from each other was demonstrated, most recently, in the case of the economic sanctions imposed by the Community against Argentina following its armed invasion of the Falkland Islands. In this instance a decision adopted in the EPC framework to impose trade sanctions on Argentina had to be implemented in the Community framework by legislation based on a Commission proposal to ban new contracts for imports from Argentina. The only joint instruments of foreign policy are in the Community framework. EPC has no instruments of its own; it must use either those of the Community institutions, or those of the individual Member States.

(32) The time has surely come to end the separation of the two frameworks for action by the Ten, as urged in the Tindemans report. EPC and the Community's responsibilities should be brought into a single framework, thus providing a degree of nationalisation and coherence lacking in external relations so far.¹

4. Security

'No foreign policy can disregard threats, whether actual or potential, and the ability to meet them. Security cannot therefore be left outside the scope of European Union'.

(Leo Tindemans, Report to the Council on European Union, 1975).

(33) Security is not only a matter of military defence: security also depends, crucially, on developing international structures and creating an international climate in which conflict between nations can be solved peacefully. The Community, in bringing together former enemies and creating a new system of law among nations, sets an example to the world in this respect. The development of trade and cooperation particularly with Third World countries, forms an integral part of security policy in this wider sense.

(34) With regard to the military aspects of security, it must be remembered that the Member States are not at present in the same situation as regards

¹This would make sense without prejudice to the powers that the Union would have in the field and the method by which decisions would be taken in the Council.

existing defence organisations. Ireland, for instance, is a Member neither of the Atlantic Alliance nor of Western European Union (WEU). Denmark and Greece are not members of WEU. France, a member of NATO, no longer participates in its integrated military command structure and Greece is currently reviewing its position in NATO.

Cooperation on security so far

(35) Nevertheless, Member States have already cooperated on security questions for a number of years, notably in the preparation of the Conference on Security and Cooperation in Europe, which dealt in considerable detail with military aspects. In the framework of EPC it has been impossible to maintain a distinction between 'political' and 'security' aspects of foreign policy, when discussing, for instance, the Middle East, Afghanistan, or the Falklands crisis. The need for cooperation in certain aspects of security was recognised first in the Declaration on European Identity of the summit meeting of 14 December 1973 in Copenhagen and secondly in the report of the Foreign Ministers adopted in 1981 (the 'London' report) in which it was agreed to continue to discuss 'political aspects of security'.

(36) Under the Euratom Treaty, the Community already deals with the sensitive issue of the supply of nuclear material to third countries.

It has always been recognised that, as the process of European integration developed, the need would arise to deal jointly with security issues. In the words of the White Paper presented to the Irish Parliament by the Irish Government in April 1970:

(37) 'It is recognised that, as the Communities evolve towards their political objectives, those participating in the new Europe thereby created must be prepared to assist, if necessary, in its defence'.

(38) Member States have not only cooperated on external aspects of security but also on its internal aspects. The European Council at its meeting in April 1978 agreed that 'high priority must be given to intensifying co-operation among the Nine to defend our societies against terrorist violence.' Ministers of Justice have met, both within the EPC framework and informally, setting up working groups and exchanging information on the respective

efforts to deal with a common problem: terrorists not infrequently prepare their activities in one Member State, carry it out in another, and retreat across an internal Community frontier. A joint approach and common resolve to face up to this threat are essential. The basis for further cooperation in this field was laid down in the 1979 Dublin Agreement on the application between Community Member States of the Council of Europe Convention on the Suppression of Terrorism and in the 1980 Convention Concerning Cooperation in Criminal Matters. These have yet to come into force, lacking agreement by one Member State each. The French President, M. MITTERAND, proposed that the Community should examine further possibilities of cooperation in combating terrorism, following the bomb outrages in Paris in the summer of 1982, and this was begun at a meeting of Justice Ministers in the Council in Luxembourg on 24 - 25 October 1982.

Pressures for closer cooperation

There are indications that Member States are now feeling the need to discuss further aspects of security together. There are a number of reasons for this:

(1) Europe is becoming increasingly conscious of its own interests in the world and the fact that these do not always coincide with those of its partners. Security policy is now discussed within EPC not just because it is virtually impossible to separate it from other issues, but from a growing awareness that, if they are to avoid being mere spectators of superpower politics, Europeans must discuss these issues together.

- (39) (2) Member States have discovered the potential dangers of competing with each other in arms exports. At present, the arms industries of the Member States compete with each other in selling abroad, particularly to Third World countries. This not infrequently proves a reckless and unsound way of making money and winning friends.¹ But restraint and care in this form of trade cannot take place unless there is a common policy or at least common guidelines. In their absence, any restraint or caution exercised by one Member State on arms sales to particular countries or sensitive regions can be simply undermined by other Member States anxious to develop a new export market. Pursued without regard to the interests of other

¹ See draft FERGUSSON report on arms supplies and arms sales, currently under preparation in the Political Affairs Committee. This mentions, inter alia, the example of Argentina, to whom several Member States had supplied weapons (for instance two destroyers and 9 Canberra bombers from the UK, an aircraft carrier from the Netherlands, two submarines from Germany, 32 Mirages and Super-Etendard aircraft, 42 helicopters and missiles, including Exocet, from France)

Member States, arms exports could become a major source of friction in the Community. If Europe is to play a role in controlling and ending the arms race, it must be able to act as one in this area, and to reach effective agreements with the USA and the USSR. If the Union were to have a common arms sales policy without the capacity to negotiate agreements on common categories of clients, it would risk seeing other powers take over the markets it relinquishes. With such capacity, it could become a major factor in limiting the arms race.

(3) There is a pressing need for standardisation in armaments. Unfortunately the practical achievements in this field have been negligible, given the magnitude of the problem. Arms production forms, for better or for worse, a major part of industrial production and is an important source of employment. As such it cannot be ignored in formulating a Community industrial policy. At present, lack of standardisation involves both a very great waste of resources (thus inflating defence budgets) and excessive dependence on sources outside the Community for military and paramilitary equipment. The frequent calls for the establishment of a European Arms Procurement Agency testify to this need.¹

(40) Furthermore, the lack of a common market and common procurement within Western Europe is one reason why arms manufacturers in the Community seek export markets in third countries to cut unit costs by longer production runs, often a vital means of meeting the cost of national defence. Specialization within a common procurement policy would produce economies of scale that would minimise dependence on exports. In the words of the DANKERT report on Arms Production²:

'... together, the European countries of the Atlantic Alliance provide an arms market large enough for economic production that would be independent of exports to the Third World, thus enabling such exports to be terminated or limited to those deemed to be in the interest of Europe according to a commonly defined external policy.'

¹ See Tindemans report, and numerous Parliament reports (Normanton, Klepsch, Blumenfeld, Elles, Fergusson)

² Report to WEU in 1977

This would reduce the pressure upon Member States to compete with each other in seeking to increase arms sales in Third World countries. Consequently in the words of the draft FERGUSSON report¹.

(41) 'It might be possible for the Community to adopt a detached and more influential position in respect of lowering tension in sensitive areas of the world, and in contriving the reduction - the 'de-escalation' - of local conflicts and disputes.'

(42) So far security has been brought into the scope of EPC in a piecemeal, almost surreptitious way. Sooner or later it will be essential for the Member States to recognise openly that the security of each of them is inextricably linked with that of the others just as it is also inextricably linked with other aspects of foreign policy, and that at least some aspects of security must be the subject of a common policy.

III PROPOSED COMPETENCES AND POWERS

(43) A comparison of the above analysis of the current situation with the principles and objectives outlined in section one shows a number of areas where changes are necessary if coherent and effective policies are to be drawn up and applied. These changes outlined below are intended to form the basis for the proposed changes to the Treaties to be drafted in the third phase of the work of the Committee on Institutional Affairs. For some of these changes, as indicated below, a transition period - of five or ten years - will be required.

1. Coherence

(44) The two existing processes for dealing with external relations should be brought together in the European Union into a single framework. The same set of institutions should be responsible for decision-taking in all spheres of external policy even if the exact distribution of power between them and the procedures by which they take decisions will vary from one sector

¹ Draft FERGUSSON report, currently under discussion in the Political Affairs Committee

of policy to another, as a function of the degree of integration reached and the relative importance of the role of the Union and of the Member States in that sector. This will require Treaty articles bringing the various aspects of external policy into the competence of the Union and defining the powers of each institution with respect to the different policy areas.

2. Types of competence

(45) The Union should exercise different levels of responsibility according to the nature of each policy sector. Broadly, three types of competence can be defined: 'exclusive', 'concurrent' and 'potential' competences. These terms were used in the Commission's 1975 report on European Union.

(46) In areas subject to exclusive competence policies are determined by the Union. In areas of concurrent competence both the Union and the Member States deal with the matter in question, with the Union as such dealing only with certain aspects of the matter or defining a framework within which Member States would act separately. Areas subject to potential competence are those which could in due course, following a decision by Member States be assigned to the Union, but which it is not felt appropriate to entrust to the Union from the outset.

By way of illustration, the Community at present has:

- (47)
- exclusive competence in the field of tariffs (though with a unanimous decision required for permanent changes in tariff levels),
 - concurrent competence in the field of regional policy,
 - potential competence in the field of sea and air transport.

3. Competences of the Union concerning the predominantly
economic aspects of external relations

(48) The articles of the EEC Treaty concerning the common commercial policy, tariffs, and trade agreements are largely sufficient as they stand now. They attribute exclusive competence in these areas to the Community, which should also be attributed to the Union. However, in certain fields of external economic policy, the Member States have failed to observe the spirit of the Treaties and have undertaken individually tasks which the Treaty clearly intends to be undertaken jointly. Additional articles should make clear beyond all doubt the exclusive competence of the Union in the following fields:

- trade credit policy, including international negotiations and the possibility of establishing a European Export Bank,
- the negotiation and conclusion of trade and cooperation agreements with third countries.

(49) At the end of the transition period development should become a common policy, i.e. there would be Union competence, and all aid, whether for Lomé Convention or other developing countries, would be given in the framework of a common development policy. The Union should adopt common positions in the 'North-South dialogue' (eg. UNCTAD and other bodies).

Powers of the Institutions

(50) In all these areas, the Commission¹ should be responsible for the general management and execution of the policies of the Union, should participate in its own right in all international conferences and organisations which it deems to be appropriate, and propose new initiatives.

(51) External agreements and treaties should be negotiated by the Commission on the basis of a mandate given by the Council on a proposal of

¹ For simplicity the current names of the institutions are used in this report. This does not prejudice the future institutional structure of the Union.

the Commission, after consultation with the Parliament. Should the Council wish to depart substantially from the opinion given by the Parliament, either institution should be entitled to open a conciliation procedure.

(52) Agreements and treaties should be concluded by the Commission and ratified by the Council, acting by a qualified majority, and the Parliament. This procedure should come into operation following a transition period of ten years.

(53) Parliament and Council should, as budgetary authority and as part of the budgetary procedure, be responsible for the voting of the necessary credits including the European Development Fund, that shall be part of the budget of the Union. Parliament should monitor and supervise the work of the Commission.

4. Competences of the Union concerning predominantly political aspects of external relations

(54) New treaty articles are necessary to give competences to the Union in this area. They should bring into the framework of the Union the 'acquis' of EPC and strengthen it so as to permit its development into a common foreign policy, in accordance with the following guidelines.

(55) Concurrent competences should be attributed to the Union and the Member States in all matters of foreign policy. All major areas of foreign policy involving a clear and direct Union interest should be subject to a common policy carried out by the Union.

(56) The Union should endeavour to establish a common position on all issues being dealt with in the United Nations, CSCE follow-up conferences, or other large international fora; and on international conflicts and disputes. The Union should be able to formulate proposals for the resolution of world conflicts and take initiatives contributing to world peace.

(57) However, in accordance with the principle of subsidiarity, there does not have to be a Union position on all topics. Matters which involve exclusively the interests of a single Member State should remain the responsibility of that Member State. In all areas where the interest of more than one Member State is involved but where the Union does not have a common policy, or is in the process of working one out, the minimum obligation placed on Member States should be a requirement to consult the Union and the other Member States before taking any new initiative; where, however, immediate action was required it would be sufficient for a Member State to inform the Union and the other Member States before taking such action.

Powers of the Institutions

(58) Foreign policy conducted by the Union should be administered by the Commission acting on policy defined by the Council¹ and under the supervision of the European Parliament. The Commission may act as spokesman of the Union for all matters where there is Union interest and shall do so in matters dealt with as a common policy.²

(59) The Council, acting on a proposal from the Commission, the Parliament, or at least three Member States, should lay down policy guidelines and give mandates to the Commission. This should apply not only for particular policies but also for determining competences. If a consensus is not achieved within a reasonable or necessary time, decisions should be taken by a qualified majority. However, in order to defend a vital national interest relevant to the subject under discussion, a Member State may request that voting be postponed, giving its reasons both orally and in writing, such reasons to be published. Abstentions should not prevent a decision being taken. Alternatively, in order to reach agreement on specific

¹ Which will, of course, be influenced in determining this by the desiderata of national parliaments.

² Others (eg. the Tindemans report) have suggested that, as well as the Commission, individuals or specific Member States could be asked to represent the Union. The tendency for policy to be implemented by 'a person empowered to do so' rather than by a Community institution is dangerous to the extent that no single person or government can replace an institution, particularly the Commission as an objective honest broker of Community affairs.

matters, the Council may with the agreement of the other Member States, grant exceptional exemptions to the Member State or States concerned. The Council may act as spokesman of the Union for all matters subject to joint competence or may designate the Commission to carry out this task.

(60) The decisions of the Council taken in accordance with these procedures, will form the basis of the foreign policy of the Union. The European Parliament may, at any time, put forward proposals to the Council for new policies or for changing existing policies. The Council shall be obliged to consider Parliament proposals, and after hearing the Commission, to take a decision. In cases of divergent viewpoints, a conciliation procedure may be opened at the request of either institution.

(61) In international political organisations such as the United Nations - as in international economic organisations - the Commission should coordinate the action of the Member State's delegations for all matters in which the Union has a common policy, and should act as the spokesman of the Union on such matters. Diplomatic activity in capitals of third countries should be coordinated. In capitals where there are Commission delegations, they should be responsible for the work of coordination, and they should continue to represent the Union for all matters subject to its competence. In many capitals, and in particular those where not all the Member States are represented, it will be advantageous to establish joint embassies to deal with matters of common interest.

(62) Financial resources necessary for the implementation of foreign policy should form part of the budget of the Union.

5. Competence of the Union concerning security aspects
of External relations

(63) In the articles of the new Treaty concerning the political aspects of external relations, there should be a section which recognises the interdependence of the Member States in the field of security and laying down that they may attribute competences to the Union in this area as they see fit. The Union would thus have potential competence for security¹.

(64) The new Treaty should incorporate into articles the terms of the Agreement on the application of the European Convention on the Suppression of Terrorism, and the Convention on Cooperation in Criminal Matters.

(65) The role of the various institutions and the distribution of powers among them shall be the same as described above for political aspects of external policy. The individual ministers sitting in the Council will vary accordingly, and may include ministers responsible for security.

¹ Matters for which the Union could, under this procedure, be given concurrent competences include:

- the adoption of common positions in CSCE follow-up conferences, and all other multilateral talks and negotiations on security, cooperation, arms control and disarmament, as well as within international frameworks to which all or many Member States belong;
- the standardisation of armaments and the possibility of establishing a European Arms Procurement Agency;
- the establishment of a European Disaster Relief Unit;
- coordination of naval patrols protecting the fishing grounds, raw materials supply routes, and seabed resources;
- the granting of a European Union label when two or more Member States provide troops as part of an international peace-keeping force.

6. Accession and Association

(66) Dealing with applications for membership constitutes an essential function of external relations. The accession of new Member States to the Union should be conditional upon the applicant states fulfilling the essential requirements of pluralist democracy and respect for human rights.

(67) Accession treaties should be negotiated with the applicant state by the Council and the Commission. They should require ratification by the national parliaments of all the Member States and by the European Parliament.

(68) One would like to pose similar conditions on human rights for Association Agreements but this would clearly be impractical. A political judgment as to whether countries qualify for Association would thus have to be made by the institutions of the Union in each individual case.

EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

WORKING DOCUMENT

ON

THE FINANCES OF THE UNION

Rapporteur: Mr M. JUNOT

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I. PRINCIPLES AND OBJECTIVES

1. Finances are merely a means of carrying out the tasks assigned to the Union; they are therefore predetermined by those tasks.
2. They must also be adapted to the principal features of the Union and in particular to the proposed level of political and economic integration.
3. At the same time, the finances of the Union must comply with certain specific standards derived from a number of basic principles and objectives such as: democracy, independence, equity, efficiency, control, etc.
4. We must therefore formulate a kind of 'doctrine' for Union finances whose application to the various elements of the financial system¹ is dealt with in the second part of this document.
5. This doctrine is derived from a certain deductive, political concept of the 'Union' but is also based on experience gained in 30 years' operation of Community finances and from subsequent analyses and proposals for reform put forward in various quarters².
6. It is not possible to give detailed consideration to every analysis and proposal in the framework of this document. We should, however, refer to the work carried out by Parliament in the field of budgetary reform since 1970:
 - Spénale (1970) and Lange (1975) reports on the revision of the Treaties
 - Cointat reports (1976, 1977 and 1978) on the interinstitutional dialogue on certain budgetary questions
 - Lange report (1979) on convergence and budgetary questions and Pfennig report (1981) on the future of the Community budget
 - Spinelli report on the Community's own resources
 - (- Joint declaration Parliament/Council/Commission (1982) on improving the budgetary procedure)

¹The 'finances' of the Union are taken to mean all the mechanisms contributing to the financing of its activities: resources, expenditure, budget, budgetary procedure, planning, implementation of the budget, control, implementing provisions, borrowing and lending.

²In this context see the following documents, which are contained in the collection of texts relating to European Union pp 393-415

1. Democratic finances

7. This is the basic principle underlying all public financing systems. The Union's finances will be levied from its citizens and will be used in their interest: their representatives must therefore maintain the greatest possible degree of control over these finances.
8. If the Union is granted financial independence from the Member States, democratic control can only be exercised by the Union's Parliament.
9. The role of the European Parliament must therefore be predominant where the authorization collection of revenue and expenditure is concerned and the decision-making procedures will have to be adapted accordingly.

2. Autonomous finances

10. The specific and independent nature of the tasks/terms of reference of the Member States on the one hand and the Union on the other must be reflected in distinct and separate financial systems.
11. It is impossible to conceive of any form of direct supervision of Union finances by the Member States. However, the institution representing the Member States within the Union must work with Parliament in regulating joint finances.
12. This independence does not exclude all forms of coordination in the regulation of national and Union finances. If the Member States and the Union intend to pursue a common economic/conjunctural policy, it should be possible to base it, in particular, on a coordinated budgetary/fiscal policy.

3. Finances adapted to the tasks of the Union

13. The definition of the tasks assigned to the Union will determine the volume of its finances - and not the other way round. For example, if the Union is given major responsibility for structural policy (investment) and/or conjunctural policy (campaign against unemployment), it should have adequate financial resources at its disposal.
14. If the (progressive) allocation of tasks to the Union and the Member States is set out clearly and precisely, there should be no problem in the subsequent allocation of finances. It would therefore be useful to make provision for a periodical and systematic review of the allocation of responsibility to the states and the Union respectively - joint measures may sometimes complement national measures, and sometimes be separate or specific.

15. A clear-cut allocation would also enable finances to be used more rationally, thereby avoiding all duplication both in policies and appropriations. In most cases, the transfer of responsibility from the Member States to the Union would be accompanied by a corresponding financial transfer and there should be no increase in the citizens' overall tax burden.

4. Responsible finances

16. The Union will not develop in a perfect world cut off from economic reality. On the contrary, it will have to take account of market trends (monetary, social, etc.) in all the Member States - hence the need for some coordination of national and Union finances referred to above. The vital economic principles of budgetary austerity - or indeed revival - at national level should be reflected in the finances of the Union.

17. In view of the progressive nature of the construction of the Union, it must retain a certain degree of independence in order to make provision for the financing of the new tasks which are assigned to it.

5. Equitable finances

18. Equity is another basic principle of all public financing systems involving either a group of states or a large group of citizens.

19. The relative economic wealth of the Member States of the Union will remain equal - for a time at least - and the financing method chosen must not aggravate existing disparities. It might possibly help to reduce them, in particular by weighting the transfer of resources from the citizens of different Member States.

20. Furthermore, the direct or indirect effect of important measures implemented by the Union will create the conditions needed for greater convergence of the levels of economic development in the various Member States.

21. However, Union finances should not be used as an instrument for purely financial equalization between the states as this would have no lasting effect on structural economic convergence. Any constrictive and arbitrary system based on the principle of a fair return would be contrary to the fundamental objectives of the Union.

22. The Union should ultimately ensure that the principles of equity and progression in tax matters are extended to the regional level and to each citizen so that everyone contributes to the joint undertaking according to his or her means.

6. Efficient, transparent and progressive finances

23. The Union must have at its disposal a first-class financial system suited to its specific needs.

24. Firstly, the system should be efficient: the productivity of expenditure will depend above all on the quality of the policies which are implemented, but bad financial rules (inflexibility, slowness or laxity) could compromise the implementation of good policies. Furthermore, the Union should limit unproductive expenditure, e.g. administrative expenses. A systematic analysis (of the cost-benefit type) of expenditure should be carried out in the context of the budget and the measures in question changed or abolished where necessary.

25. The system should also be simple and transparent: the levying of resources and the allocation of appropriations should be as transparent as possible to secure the understanding, confidence and support of the people. Financing procedures must also make it possible to avoid all obstruction (particularly as a result of inter-institutional rivalry) both in the adoption and in the implementation of the budget.

26. Finally, the system should be flexible and progressive: it should enable various formulae to be applied (e.g. recourse to borrowing/lending). Its development must not be hampered by pre-set, restrictive and arbitrary limits, whether in the form of ceilings on resources or the indexing of expenditure. However, some form of framework would be useful in helping to control the increase in overall financial resources.

7. Finances under control

27. It is essential to exercise control over the implementation of finances (coupled with precise and plausible sanctions) in order to ensure that expenditure is regular and management sound and to gain the confidence of public opinion. This implies, for example, that the Union's supervisory bodies must have direct access,

whenever necessary, to all relevant operations/accounts not only within the institutions and other bodies of the Union but also within the national agencies which collect revenue or disburse expenditure on behalf of the Union.

28. Political control over finances should ultimately be exercised by the institution which represents the citizens within the Union. Technical control should be exercised by an independent body but one which could be made to answer to the institution responsible for political control.

II. ANALYSIS OF THE VARIOUS ELEMENTS OF THE UNION'S FINANCES

29. Under the new system, the Union's finances will comprise in practical terms a corpus of rules, mechanisms and procedures which will be formulated and subsequently applied by various bodies.
30. It is therefore important to determine how these rules, mechanisms, etc. will satisfy the principles and objectives outlined above. Since our first concern is to establish a constitutional framework for the development of the Union's finances, this analysis must remain fairly general except that particular attention must be given to the division of responsibilities between the Union and the Member States and between the various Institutions within the Union.
31. This analysis will be based, either strictly or loosely according to each individual case, on the existing Community financial system and will therefore take the form of overall proposals for reform or innovation. Some of these proposals which apply at the 'constitutional' level (e.g. powers regarding the creation of own resources, arrangements for voting on and adopting the budget, etc.) and will be taken up in the general resolution submitted by the Committee on International Affairs before being incorporated in a form still to be determined - in the new draft Treaty.

1. Resources

32. (a) Creation and modification: The existing Treaties (viz. Article 201 of the EEC Treaty) stipulate that the creation of new own resources (or substantial modification of existing resources) is decided by the Council, acting unanimously, (after consulting the European Parliament) and subsequently ratified by the Member States. The current system of own resources is governed by the Decision of 21 April 1970 taken on the basis of this procedure. Any modification of this decision would have to be ratified by the Member States.
33. This system is scarcely compatible with the Union's need for independence and democracy. The system governing the Union's finances can only be decided by its own institutions. Financial independence is a vital pre-requisite for the genuine independence of any organization or grouping. Furthermore, the last word on this matter must be given to the body which represents the democratic consensus within the Union, i.e. Parliament.
34. Parliament has expressed this opinion on many occasions¹ and in 1969 and later in 1973 the Commission presented formal proposals for the revision of the Treaties to ensure this independence and democratization.
35. The creation and basic modification of the Union's resources - i.e. its tax system - could therefore be decided in accordance with the following procedure:
- the Commission² draws up a proposal when it deems fit (this proposal could be timed to coincide with the five year programme referred to in paragraphs 89 to 96.
 - The Council gives its opinion on this proposal, acting by qualified majority - modifications rejected by the Commission may only be adopted unanimously;

¹ The last occasion was its resolution of 9 April 1981 on the Community's own resources (OJ No. C 101 of 4.5.1981 - Spinelli report).

² In order to simplify matters, the current names of the institutions have not been changed in references to the Union. This does not, of course, prejudice the future institutional structure of the Union.

- Parliament takes the final decision and acts by qualified majority - furthermore, all amendments rejected by the Commission of the Council must receive at least half the votes of the Members of the Assembly. No amendment may be adopted if the Council expresses its unanimous opposition.

- decisions taken by Parliament are binding on the other institutions and on the Member States¹.

36. (b) Freeing of Revenue: It is essential that Union resources should be able to develop freely so that they can be adjusted to the level of required expenditure.² The Union must therefore have at least one type of 'free' revenue at its disposal to enable it to ensure the balance of revenue in its budget at all times. The choice of this revenue will have to be made by the Union institutions: it could be, for example, the current system of VAT without the ceiling and subject to various improvements³

The freeing of own resources will be coupled with the introduction of a new procedure aimed at improving the planning of measures and policies to be implemented by the Union on the basis of a common agreement between the Union Institutions and in conjunction with representatives of the Member States (see paragraphs 86 to 96 below). It could be introduced gradually in stages and involve transitional measures.

37. (c) Type of resources: It will be the task of the Union institutions to take any decisions either according to the procedure referred to in paragraph 35 above or the normal legislative procedure to modify the resources which it may inherit from the present system and to create new resources. We might, for example, consider introducing new levies - or transferring national levies to the Union - in conjunction with the creation of new policies (in the energy or industrial fields, for example).

38. Finally the Union could examine the possibility of levying a portion of direct taxes on natural persons - harmonized in advance - in order to adapt the tax burden more effectively to the financial capacity of the taxpayer.

¹This proposed voting procedure is given by way of example at this stage. It must in particular, take account of the suggestions made by the rapporteur on the Union Institutions.

²Under the present system, some resources are determined by external factors and therefore cannot develop in line with financing requirements (as in the case of customs duties and levies); others are adjustable in theory but are restricted by a pre-set ceiling (e.g. VAT).

³See resolution of 9.4.1981

39. However this may be, it is essential that Union revenue take the form of genuine own resources, i.e. levied directly from natural or legal persons and be independent of the decisions of the Member States. Their scope should be as wide as possible, they should offer a continuous, high level of return and they should exhibit an adequate degree of transparency and administrative simplicity.¹
40. (d) Weighting: Own resources are currently based on economic activity (on imports in the case of customs duties/levies and on production for VAT). This means that there is no element of progression whatever the relative wealth of the individual Member State may be. In certain circumstances (high level of investment and/or exports), this system could even favour the most prosperous Member States.
41. The principle of equity referred to above leads us to consider a system of tax weighting based on the actual contribution capacity of the Member States. In this connection, we might propose that transfers of VAT payments be linked to a scale derived from each country's per capita GNP². This kind of modification to the current system would have to be decided by the Union institutions in accordance with the procedure referred to in paragraph 34 above.
42. However, the limits of this weighting must be clearly specified:
- this should not be a system of redistribution: the main purpose of Union resources will be to finance its activities - economic convergence must be achieved by the implementation of common policies;
 - the direct and independent nature of Union resources must not be tampered with: there must be no return to the system of national contributions based on specific shares.
43. The future constitution of the Union should be able to encompass this weighting principle whilst leaving the task of defining it to the appropriate institutions.

¹ Commission Memorandum of 23.11.78

² Commission proposal of 23.11.78 on the Community's own resources and Parliament's report of 9.4.1981 (see above).

44. (e) Other features: Without going into the details of all the features of Union resources at this point, it is possible to specify two features derived from the principles set out above:

45. - All resources paid immediately, directly and in full to the Union: the present system is unsatisfactory in this respect since in some cases Community resources pass through the national budgets and are, in all cases, entered in the accounts of the national treasuries to be made available to the Community as and when they are required.

The Union must have more independence in this field, e.g. by setting up a specific 'treasury department'.

It should also be established that, contrary to the present system, any annual budget surpluses remain the property of the Union (and are not repaid to the Member States).

46. - The specific nature of resources: It would be desirable for any possible future revenue paid to the Union to be identified as such by its citizens (as is the revenue of local or regional authorities in some Member States) - even if the type of assessment (e.g. VAT) is already used by the states/national authorities.

2. Expenditure

47. (a) Controlling increases: Under the Community system, increases in expenditure are subject to two restrictions: the ceiling on available resources and the maximum annual rate of increase in non-compulsory expenditure.

Such limitations are inconceivable in the context of the Union, which should have free use of the funds needed to finance the tasks allocated to it.

However, the principle of financial independence must be applied with a clear view of the objectives to be achieved and the economic constraints to be observed. Three measures will be applied in this context:

48. - the distribution of tasks and corresponding financial burdens between the Union and the Member States will be carried out at intervals according to the arrangements discussed below: in this way, the medium-term increase in Union expenditure can be covered by overall estimates to be used as a guideline for the annual budgetary decisions;
49. - all proposals for Union decisions (operation of existing policies or introduction of new policies) should be preceded by detailed financial estimates to ensure a good return on investment and correct planning of expenditure in cases where the financial implications are very considerable, the Union must ensure that this new expenditure is compatible with the multiannual financial programme;
50. - a guideline figure for the overall increase in expenditure will be established at the beginning of each financial year to provide a yardstick for decisions relating to the budget for the following financial year; this rate will be fixed with reference to the multiannual objectives but also to the economic and financial situation in the Member States. The legislative authority will take this rate into consideration before reaching decisions which have financial implications for the financial year in question.
51. (b) Efficiency: The Union must not only control the overall increase in expenditure but must also ensure that financial resources are used efficiently, i.e. it must ensure that the aims of the policies implemented are achieved at the lowest possible cost. In order to do this, it must begin by introducing a modern cost-benefit analysis system to enable it to measure efficiency with precision.
52. Furthermore, the annual budgetary procedure must include a detailed examination of all items of expenditure and not merely of new items added to the budget.
53. Last but not least, the main expenditure programmes corresponding to the major common policies must include a periodic revision clause making it possible to re-examine, at regular intervals, not only the political advisability of expenditure but also its efficiency. These programmes will have to undergo fairly radical modification, being either continued with a different level of expenditure or suppressed, on the basis of the results of this re-examination.

54. (c) Operational nature: Without wishing to prejudge the tasks to be assigned to the Union, we can assume that its main role will be to formulate, direct and finance policies whose day-to-day management will be chiefly undertaken by the national administrations. These may include cyclical measures (e.g. in the agricultural and social fields) or structural measures (as in the industrial or energy sectors).
55. Union expenditure will, generally speaking, be operational in nature, i.e. it will be used to finance the measures which are implemented and not the human and material infrastructures needed to carry out those measures. Administrative expenditure will very largely be borne by the Member States and/or the territorial authorities concerned.
56. The Union budget will therefore be essentially an intervention budget whose administrative expenses must be reduced to a minimum (probably around 5%, as in the Community budget).
57. (d) Specific nature of Union expenditure: With the (notable) exception of the EAGGF Guarantee Section, most of the Community's expenditure currently takes the form of co-financing with the national budgets (Regional Fund, Social Fund, EAGGF Guidance Section, etc.); the Community's share in these joint financing projects is generally a minority one and is occasionally less than 10%. This often leads to the originality of the joint policy in question being weakened and its aims 'diluted' as a result of the - possibly very different - priorities of the national policies.
58. The Union should therefore make every effort gradually to take over majority or even exclusive financing of the tasks assigned to it under the principle of subsidiarity. This will probably involve greater specialization and concentration of some joint measures but it will enable us to ensure that the policies pursued by the Union are more specific and more efficient.

59. (e) Distribution: One of the Union's main objectives will be economic convergence, i.e. the reduction of the disparities in development between the various Member States and the various regions. In order to achieve this, specific policies will be implemented and these will influence the development of economic structures. The financing of these policies will be arranged by means of transfers of resources to the less-favoured states/regions. The combined impact of these transfers and the weighting of own resources (see above) should normally enable these states/regions to show a budget surplus.
60. It will therefore be unnecessary to have recourse to budgetary equalization/compensation mechanisms such as those which have been in existence in the Community since 1975/80 (financial mechanism and supplementary measures).
61. If a persistent budgetary disparity were to occur between the budgetary contributions paid by citizens and the overall benefit derived from their membership of the union, it would indicate that convergence policies were not operating correctly and these would then have to be stepped up or revised. However, correction by means of the budget alone should be avoided as it would make no lasting contribution to reducing disparities in development

3. Budget

62. (a) Overall volume: The volume of the Union budget will, of course, be determined by the nature and the scope of the tasks assigned to it. The suppression of all arbitrary ceilings on resources and expenditure would enable this automatic adjustment to be made whilst certain mechanisms (see paragraph 80 below) will enable us to control increases in expenditure.
63. The Union budget will inevitably be more substantial than the Community budget, which currently represents only 2.7% of the total of the Member States' budgets¹.
64. This inevitable growth will be limited by the fact that some of the Union's new responsibilities will be primarily concerned with coordination and harmonization (e.g. on short-term economic policy, foreign policy, protection of human rights, etc.).
65. Furthermore, this growth will largely be offset by the fact that the Union's new expenditure will largely replace national expenditure, the Member States being relieved of the burden. In some cases, transfer of expenditure to Union level will make it possible to reduce overall expenditure considerably by eliminating duplication, by rationalizing and by economies of scale (e.g. in the research, energy and industrial sectors).
66. The budgetary burden will only be increased if the Union enters completely new sectors in which the level of Member States' activities is low or negligible. This could also apply to Union expenditure which is used to reduce disparities in development between states/regions.
67. The total increase in the volume of the Union budget should not lead to an increase in the overall tax burden - direct or indirect - on its citizens. This condition is in line with the concern expressed by the governments of the Member States that the current level of public levies on production (roughly 50% on average) should not be exceeded.

¹ EEC budget for 1982 =

21,600 m ECU

or

2.7 % of the total of the national budgets

1.5 % of total national public expenditure

0.88 % of the total of national GDP

68. Bearing these factors in mind, we can estimate that in the ten years following the creation of the Union, its budget could expand gradually until it represents a sum equivalent to roughly 10% of the total of the Member States' budgets¹.
69. It should be noted that this increase will be set in the framework of the multiannual financial planning mechanism referred to below and in which all the institutions and all the Member States will have a role to play.
70. (b) Main features: The Union budget must, of course, comply all the more strictly with the basic principles of public finances (transparency, genuineness, annuality, specificity, etc.) as it will effectively be independent.

Two of these principles are of particular importance for the Union budget:

71. - Balance of revenue and expenditure: Article 199 of the EEC Treaty stipulates that 'the revenue and expenditure shown in the budget shall be in balance', which excludes a priori any deficit to be financed by borrowing. This rule offers obvious financial and political advantages (particularly as regards public opinion in the Member States and the international capital markets which lend money to the Community) but under certain circumstances it is an inflexible element which proves too restrictive. It is perhaps not equitable to finance the whole of the Union budget using resources 'proper': i.e. exclusively fiscal resources whereas the budgets of all the Member States are forced to make use of the mechanisms of the national debt. It would therefore be appropriate to make provisions enabling the Union to complement its tax revenue by means of borrowing under precisely defined conditions.

It should be noted that this type of budgetary borrowing should remain separate from the Union's other borrowing and lending activities which are intended to finance specific measures outside the scope of the budget as such (see paragraphs 106 to 109 below)

¹In this context see the 1977 estimates of the McDougall working party

72. - Unity of the budget: All Union revenue/expenditure will be grouped together in a single document and will be subject, under identical conditions, to a single authorization procedure. This principle has gradually become established within the Community (with the exception of the finances for the ECSC and EDF). It must be fully confirmed at Union level to ensure the transparency and clarity of presentation necessary for sound financial management .
73. A third essential feature of the Union budget will be coordination with the Member States' budgets: An information/consultation procedure will be set up between the appropriate authorities of the Member States and of the Union to ensure coordination in the preparation of their respective budget documents. This will form a basis for a harmonized budgetary policy (cyclical measures) for the Member States and will also ensure compatibility between the overall increase in national finances and that of the Union budget. Finally, it will facilitate the practical application of the principle of the subsidiarity of Union expenditure, in that progressive transfers of financial burdens from the national budgets to the Union budget will thus be made clearer and simpler.
74. (c) Political role: The budget will play a central political role in the life of the Union since it will provide an unparalleled opportunity for giving an overall assessment of and drafting a comprehensive action programme on common policies. Above all, the volume and distribution of financial resources will determine the rate of completion of various measures specified in Union legislation/regulations. The vote on the budget could also provide an opportunity for introducing certain ad hoc measures or for modifying the development of certain policies.
75. The problem of subordination between budget decisions and legislation (a particularly controversial issue in the Community) will be resolved by the fact that the legislative and budgetary authority will be one and the same. The same institutions will exercise jointly and with comparable decision-making powers the power to enact regulations and enter appropriations.

4. Budgetary procedure¹

76. (a) Unity of expenditure: The distinction between compulsory and non-compulsory expenditure, on which the whole of the EEC budgetary procedure is based, must be abolished. It essentially provides a basis for the allocation of the respective budgetary powers of the Council and Parliament and is not based on any objective criterion.
77. There will be only one type of expenditure at Union level. The allocation of powers to all the institutions concerned will be organized in the form of successive majority conditions to be applied in exactly the same way to all budget items.
78. However some expenditure will continue to be unavoidable as a result of existing legislation or rights acquired by third parties (rents, automatic guarantee mechanisms, international agreements, etc.) and the budgetary authority must authorize them to avoid legal proceedings.
79. (b) Annual rate of increase: Under the Community system, a statistical maximum rate sets an automatic ceiling on the increase in a given category of expenditure (non-compulsory). This rate may only be exceeded with the formal consent of the Council and Parliament.
80. The annual increase in the Union budget will not be subject to this type of limit. However, a guideline figure for the overall increase in the budget will be established prior to the start of each budgetary procedure by the Commission in conjunction with the Council and Parliament². This rate will take into account not only the statistics relating to previous financial years but also the forecasts for the economic and financial situation in the Member States and the financing needed to proceed with the implementation of the Union's existing/new projects.
81. It will therefore constitute a target figure for the average rate of increase and will be essentially statistical and non-binding. The draft budget must not exceed this rate, which will also be used as a guideline for the deliberations of the budgetary authority without having an over-riding influence on its political decisions (see also paragraph 86 below)

¹The procedure for the adoption of the budget must be governed by very precise mechanisms which we can only outline at this point.

²See footnote 2 on page 8.

82. (c) Draft budget: The initiative and responsibility for drawing up the draft budget will lie with the Commission. The budgetary authority will therefore have to establish its position vis-à-vis the proposals submitted by the body which seems best placed to understand the precise nature of the Union's chief interests and to defend them impartially.
83. (d) Vote on the budget: The budgetary authority will be able to amend the draft budget under the following conditions:¹
84. - the Commission's draft budget will be submitted to the Council, which may amend it by simple majority, provided that such amendment does not result in a net increase in expenditure, and otherwise by qualified majority. The Council must in all cases vote by qualified majority when adopting an amendment to which the Commission is opposed;
85. - the draft budget amended by the Council is referred to Parliament, which may amend it by simple majority, provided that such amendment does not result in a net increase in expenditure, and otherwise by qualified majority. Parliament must, in all cases, vote by qualified majority and by half of its Members when adopting an amendment to which the Commission is opposed. An amendment may not be adopted if the Council votes against it unanimously:
86. - if the overall total of expenditure voted by Parliament exceeds the annual rate of increase laid down by the Commission, the Council may oppose the adoption of the budget by a unanimous vote; Parliament will then modify the draft budget accordingly;
87. - on completion of the procedure, Parliament finally adopts the budget and arranges for its publication;
88. - representatives of the three institutions will join to form a permanent budgetary conciliation body for the duration of the procedure (i.e. from the fixing of the guideline figure to the adoption of the budget);

¹See footnote 1 on page 10

5. Multiannual financial planning

89. (a) Objectives: In order to ensure the conscious, deliberate and coherent development of the Union, it will be desirable to introduce a system of medium-term planning for its activities.¹
90. This planning will chiefly be concerned with the progressive division of tasks/responsibilities between the Union and the Member States. It will therefore be essentially political and further consideration will be given to it in another section of the report by the Committee on Institutional Affairs. However, the financial aspects of such planning must be outlined in this document.
91. Medium-term forecasts for the activities of the Union should be combined with financial estimates providing useful information for the budgetary authorities of the Member States and the Union on the volume of resources to be made available and the amount of expenditure to be injected into various sectors in which the Union is active.
92. These estimates will also be used as a 'flexible' reference framework when establishing the budget each year throughout the period in question. On the political level, this type of framework would facilitate the agreement of the budgetary authority and contribute to the process of taking 'responsible' decisions on the financial level.
93. (b) Practical arrangements: The plan could cover a period of five years and, it would be desirable for it to correspond to the period of Parliament's mandate (and that of the Commission)².
94. The 'outgoing' Commission would gather together the basic data in the form of a statement covering the preceding five years and suggestions for the following five years. This document, which would be submitted to Parliament at the end of its mandate, could be used by the political groups when drawing up their programmes for the campaign preceding fresh elections to the Assembly.

¹ See paragraph 9 of the resolution of 6 July 1982:
'9. From time to time - at intervals which shall be laid down, and in accordance with appropriate procedures involving the Union and the Member States - the tax resources shall be apportioned between the Union and the States according to the Union's tasks and obligations. Within the limits of this apportionment, the Union and the States shall independently assess their resources and draw up their budgets.'

² See footnote ² on page 9

95. On taking up its duties, the new Commission would immediately draw up a proposal for the five years ahead on the basis of this data. The main task of this proposal would be to assess the financial impact of the programme, taking each policy in turn, and thereby to determine the total volume of financing required.
96. The five-year programme would be the subject of consultations with the Member States and particularly with the relevant bodies in the national parliaments. Once any changes have been made, it would be submitted to the Council for its opinion before being adopted by the newly elected European Parliament.

6. Other aspects of Union finances

97. (a) Implementation of the budget: Once adopted, the Union's budget will be implemented independently and diligently by the Commission, which will be responsible to Parliament for its management - and indeed the whole of its operation.
98. The budget rules and the various policies will enable appropriations to be used freely and quickly. The other institutions will not attempt to intervene in budget management. Only the budgetary authority may be asked - if necessary - to authorize any substantial changes to the initial expenditure authorizations.
99. The permanent inter-institutional budgetary conciliation body (see paragraph 88 above) could be consulted by the Commission should any particular difficulties arise. There will be a constant and mutual exchange of information between the Commission and the specialist budgetary groups within the Council and Parliament.
100. (b) Monitoring implementation: Broadly speaking, the arrangements for budgetary control in force in the Community may be retained. However, the Court of Auditors' investigative powers (either at its own initiative or at the request of the discharge authority) should be made more precise and be strengthened both in relation to the other Union institutions and the national authorities delegated by the Commission to manage certain Union funds.
101. The annual implementation of the budget by the Commission will be the subject of an annual report by the Court of Auditors to determine whether its management is regular and sound. On the basis of this report and the recommendations attached to it, the discharge authority will act under the following conditions:¹
102. - the Council approves the discharge and adopts recommendations addressed to the Commission by simple majority (a vote by qualified majority is required if the Commission declares its opposition); the Council may refuse to grant a discharge, acting by qualified majority;

See footnote 1 on page 10

- 103, - Parliament has the final say; it grants a discharge acting by simple majority or by qualified majority if the Council refuses to grant a discharge; it confirms recommendations adopted by the Council and/or decides on new recommendations acting by simple majority (a qualified majority is required if the Commission declares its opposition). Parliament may refuse to grant the Commission a discharge acting by qualified majority, with at least half of its members taking part in the vote; the resolution accompanying this vote will explain the reasons for the refusal and, where appropriate, will indicate the conditions for a subsequent vote on the discharge.
104. (c) Financial arrangements: The Union must have at its disposal a coherent body of rules and mechanisms, in the form of a single Financial Regulation, governing its operation in general and its finances in particular. These rules should be sufficiently detailed to avoid uncertainties and/or conflicting interpretations but they should also be flexible enough to enable the Commission to adapt its management in line with particular circumstances; the mechanisms used should be simple and clear to enable decisions to be taken quickly.
105. The Union's Financial Regulation will be adopted - and amended - in accordance with the decision-making procedure applicable to all official regulations; however, it may - under certain circumstances - be necessary to make provisions for an ad hoc procedure ensuring that Parliament has the last word. In view of its particular responsibilities in the budgetary field.
106. (d) Borrowing and lending: The Union will have at its disposal a unified mechanism for borrowing/lending to provide financing for certain measures in conjunction with the budget. The Union will thus be in a position to collect capital under much more advantageous conditions than those granted to national organizations and will be able to use them to finance productive investment in the context of the policies pursued by the Union. ¹

¹This mechanism will therefore be quite separate from borrowings used to cover budget deficits as described in paragraph 71.

107. These operations will be covered by the Union Budget; their scope will be determined each year in the context of the budgetary procedure having regard to both their financial suitability and the Union's overall debt burden. The budget may also be used to authorise and finance interest subsidies for certain types of investment.
108. Capital could be collected either outside or inside the Union. In the latter case, 'Union bonds' could be widely circulated among the general public, who would thereby be directly involved in this enterprise.
109. The management of these borrowing and lending activities could be assigned either to the Commission or to the EIB which will act independently within the framework of annual budgetary authorizations and the supervision arrangements pertaining to the ordinary budget.

EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

WORKING DOCUMENT

on the

INSTITUTIONS OF THE EUROPEAN UNION

Mr O. ZECCHINO

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I. GUIDELINES AND GENERAL PRINCIPLES

1. The present document will seek to explore, in an open, though not exhaustive manner, and on the basis of the guidelines contained in the resolution adopted by the European Parliament on 6 July 1982, a number of possible working options connected with the system of rules designed to govern:

- (a) the method of constitution and structure of the constitutional bodies of the European Union;
- (b) the terms of reference of these bodies¹.

2. The mandate given by the European Parliament to its Committee on Institutional Affairs² is based on the premise that it is politically necessary to strengthen the links between the Member States of the Community through the creation of

¹ The adoption by the European Parliament of the by now well known resolution of 6 July 1982 has so far done nothing to quell the debate as to whether it is either useful or appropriate, at the present stage in Community relations, to raise the question of revising the Treaties with a view to re-designing the institutional structure. In fact, as discussions within the Committee on Institutional Affairs have shown, there is no sign of a lull in the argument between those, on the one hand, who believe that progress towards integration and the easing of the Community's current ills cannot be achieved without a new institutional order, and those who, on the contrary, see this proposed remedy as the product of an abstract, ahistoric, Enlightenment-style vision, and point instead to the need for a renewed political will geared to the real problems of society, and bringing the institutions into line only at a later date with the degree of integration already attained through the common resolution of problems.

In reality, this argument arises from a misleading failure to understand, if not a desire to spread confusion. It is undeniable that at the bottom of the Community crisis lies a political problem or, to be more precise, a weakening of the political will (for familiar reasons connected with the economic crisis etc., which cannot be dealt with here) and that a political revival of the European idea is therefore urgent. However, the real question is the choice of the appropriate means, or rather the priority themes on which to base this attempted revival. If it is true that the notion of a gradual, almost automatic movement towards integration has proved historically valid only up to a point, and if it is equally true that the current institutional system acts as a brake to progress, then the logical corollary is to stress the need to revive the European idea by means of institutional reforms. On the other hand, it is also true that, although no institutional system is capable in itself of ensuring that the aims of a given political body are attained, the existence of an effective institutional system is still a necessary precondition. In this sense, it can be said that, logically, institutional movement (ordo ordinans) always precedes social movement (ordo ordinatus).

² Consisting at this stage of the task of developing the general guidelines and drawing up 'on this basis a series of proposals' to be submitted to Parliament for consideration (Resolution of 6 July 1982, paragraph 12).

a new supranational entity, a European Union³, which will unite the whole complex of the relations of the Member States⁴ and also⁵ be required by them to undertake only 'those tasks which can be executed more effectively in common than by the Member States separately, or those whose execution requires a contribution from the Union'⁶.

3. In particular, under the terms of the mandate, the responsibilities of the Union must be clearly identified⁷, making clear distinction between the tasks of the Union and those of the Member States⁸, and taking account from the outset of those sectors in which an extension of the Union's powers may prove possible⁹.

³ It seems neither useful nor easy to attempt a definition of the European Union, which is intended in the same way as, and to a greater extent than the present Community, to be a unique experiment without precise points of reference. Nevertheless, the Union must be an autonomous subject of international law with legal personality in the internal systems of the Member States. It will not be a federation, for the fundamental reason that the Member States will retain their sovereignty, but it will have important federal characteristics such as the complexity and subdivision of the institutional system (with a directly elected parliamentary body) and the possibility of taking legal action which, in given cases, may be of immediate concern to the citizens of the Member States.

⁴ In the words of the Communiqué of the Paris Summit of 21 October 1972.

⁵ The Community's competence will therefore represent only a part of the Union's competence. In accordance with paragraph 10 of the resolution, provision must be made, as a temporary measure, for all the acts of the present Community to remain in force until such time as modifications are introduced by the Union.

⁶ Resolution of 6 July 1982, paragraph 5(a).

⁷ op. cit., paragraph 5(b).

⁸ op. cit., paragraph 5(c).

⁹ op. cit., paragraph 5(d). This is 'potential competence', in the terminology now current in the debate on institutional reform.

4. On the basis of this premise, the abovementioned resolution anticipates the outline of the institutional framework, in line with a number of guidelines and general principles, which should be stressed initially because they provide a particularly clear and effective statement of the philosophy of the project as a whole:

(a) the use of the Community's institutional model, readjusted so as, on the one hand, to eliminate the existing shortcomings and, on the other, to enable the Union to shoulder new tasks¹⁰.

5. With regard to this first guideline, in itself very clear, it is necessary only to underline the clearly expressed need to eliminate the existing shortcomings - a task which naturally presupposes that these can be promptly identified.

6.(b) the principle of the separation of powers¹¹, seem not only in terms of Montesquieu's original, abstract concept, but also in what has come to be the established, practical meaning of the expression. This implies that the institutional order must be founded on a stable and rational balance between the various powers (legislative, executive and supervisory) with the execution of these powers distributed between the constitutional bodies in relation to their legitimacy and composition;

7.(c) the principle of democratic legitimacy, which requires the direct or indirect involvement of the people in the constitution of the bodies and the political control of their activities¹²;

8.(d) the principle of participation by the Member States, which means the need to institutionalize the representation of the Member States themselves¹³, constituted in practice by two existing Community bodies, the Council¹⁴ and the European Council¹⁵, which will be retained with appropriate modifications in the organization of the future Union;

¹⁰ op.cit., paragraph 8. This guideline is already formulated in the second part of paragraph 7.

¹¹ op.cit., paragraph 7, first and second parts.

¹² op.cit., paragraph 7 first part.

¹³ op.cit., paragraph 7, first part

¹⁴ op.cit., paragraph 8(c)

¹⁵ op.cit., paragraph 8(f)

9.(e) the criterion of efficiency, viewing as essential the need to redefine the institutional system in such a way as to ensure capacity for action, prompt decision-making and, in short, the harmonious functioning of all the bodies. This criterion is formulated first in general terms¹⁶ and then stressed with particular reference to the Council¹⁷.

10. Although much of the resolution frequently referred to is devoted to institutional problems, with both general and, as we shall see below, specific guidelines for each body, the possible options are still numerous and of great political significance.

11. In what follows, we shall attempt to complete the picture already outlined in Parliament's resolution, with the proviso that at this stage it has not always been possible to put forward definite options for every aspect with all their possible implications. In some cases, involving matters which depend on decisions not yet taken, we have had to confine ourselves to brief observations, pending agreement on the proposed solutions to these preliminary questions.

¹⁶ op.cit., paragraph 7, first part

¹⁷ op.cit., paragraph 7, second part

II. LEGISLATIVE POWER

12. Paragraph 8(c) of the resolution calls explicitly for legislative power to be exercised jointly by the Council and the Parliament.

1. The Parliament

13. The resolution provides no specific guidelines in respect of the parliamentary body and merely states (paragraph 8(c)) the obvious fact that the Parliament derives its mandate from the citizens of the Union.

14. In fact, the present Community Parliament presents no problems or difficulties, and the constitution, composition and period of office of the Union's Parliament could be based entirely on those of the existing model.

15. The subject of electoral procedure will remain outside the scope of the Treaty, as it already is at present.

2. The Council

16. With regard to the Council, however, the resolution lays down a large number of fairly explicit principles and guidelines of both a general and specific nature.

17.(a) Method of constitution

The most important considerations as regards the constitution of the Council are the first part of paragraph 7, which lays down the principle of the participation of the Member States, examined above, and paragraph 8(c). which points out that the Council derives its mandate from the Member States. However, account must also be taken of the general principle expressed in paragraph 8(c) that the Community's present institutions shall be readjusted so as ... to eliminate the existing shortcomings.

18. It is well known that the Council is the Community body which is the subject of most discussion and the target of most criticism, not only because at present it is the sole holder of legislative and, in practice, of executive power, but above all for the way in which it exercises (or fails to exercise) the vast powers vested in it.

19. Without wishing to digress into lengthy analyses beyond the scope of the present document, it is worth giving a brief outline of the major obstacles which need to be overcome if reforms are to be achieved.

20. It must be remembered that the Council is a body lacking in identity as a result of the constant changes in its members (a situation which exacerbates its members' disaffection with their duties, with consequent unfavourable effects on the institution's vitality); because its activity is always broken down into sectors of competence, it lacks unity of purpose and thus a global vision of the problems facing it; by its very nature, it is ill-suited for the inter-governmental role assigned to it and for the procedures on which its action is based as a result.

21. The fact that on 1 September 1982, 369 Commission proposals with opinions by Parliament were pending before the Council is, to some extent, an eloquent and succinct pointer as to how the Council should be judged¹.

22. In the light of these considerations, there is an initial step which must be taken without hesitation: notwithstanding its function as the representative organ of the States, the Council of the Union must consist of permanently appointed members.

23. A more delicate problem, however, is the task of determining a system for the appointment of members by the States. Realistically, the only solutions possible are to allow either the executive or the legislative authority of the States to appoint the members², or to assign the power to settle the matter independently to the States³.

¹ Commission of the European Communities, SEC(82) 1337 final, Brussels, 7 September 1982.

² Also feasible is a system of appointment involving both the executive and the legislative authority of the States at the same time. This could take the form either of a division between the executive and legislative authority of the number of appointments to be made (this is the proposal put forward by the institutional affairs committee of the European Movement) or a joint participation in the appointment by both bodies.

³ This is the system used in the Swiss Confederation for electing members to the upper chamber.

24. The first option is perhaps more in keeping with the present state of relations between the States and would reflect an approach of gradual reformism.

The adoption of this system, however, would raise other questions:

should members of the Council be government delegates (and as such, subject to recall, bound by instructions, and with their term of office dependent upon the fate of their government)⁴, or should they be representatives, vested with a power of free decision and appointed for a pre-established period? If the option of government appointment were chosen, it would seem more consistent with the reasons behind that choice for the members of the Council to be regarded as government delegates.

25. The option of having members appointed by the national legislative authorities, or at least with their consent, seems more in line with the overall approach of the project as outlined in the resolution. Although it reserves an important role for the States in the decision-making process, the institutional model anticipated is nevertheless geared towards a greater degree of integration between the Member States and a higher standard of democracy in the system concerned. In addition, the formal inclusion of the European Council within the organization of the Union with autonomous and precise functions would already allow the governments a say in the life of the Union, through representation at the highest level.

26. Given the political problems involved in the issue, it seems appropriate to recommend an open solution, leaving the Member States a free choice and avoiding possible conflicts, but at the same time leaving the way open for subsequent agreement on uniform solutions, by not laying down any strict provisions in the Treaties.

27. (b) Distribution of votes between the States

The selection of a criterion for the distribution of votes in the Council between the States must be based on the considerable differences in the demographic size of the various Member States.

28. This factor should argue against the criteria either of parity (which would put the large States at an unacceptable disadvantage) or of proportionality between votes in the Council and size of population (which on the contrary would mortify the smaller States).

⁴ As is the case for members of the German Bundesrat.

29. What is needed, therefore, is an agreed criterion which will cater for the needs of all the States (for example, a suitably modified version of the weighted voting system provided for by Article 148 of the EEC Treaty).

30. (c) Numerical composition

It was made clear above that the Council needs to be composed of permanent representatives; it should now be added that it is also vital for its effectiveness that the Council of the Union should abandon the system of individual representation for each country in favour of a system which ensures a wider numerical presence. To ensure differences in personal approach, more effective use of individuals and the necessary division of duties within the institution, there needs to be equivalence between the number of members and the number of votes allotted to each State.

3. Powers of the Parliament and the Council

31. Paragraph 8(c) of the resolution states expressly that the Parliament and the Council shall jointly;

- (a) exercise legislative power on the basis of the Commission's proposals or on their own initiative;
- (b) ratify treaties concluded by the Union;
- (c) adopt the budget of the Union.

32. The repeated use of the adverb jointly clearly excludes a rigid division of competence by sector between the Parliament and the Council; more precisely, it means that the power to act of one or other of the two bodies cannot be restricted to specific sectors, as this would preclude its effective participation in arriving at a final position.

33. As for the actual arrangements for power-sharing, however, two possible systems can be envisaged: either perfect identity of functions or differentiation of functions, though within the guidelines laid down in Parliament's resolution.

34. In principle, the second option seems preferable, although its adoption would depend on how the problem of the relationship between the executive and the legislative authority is to be resolved (if the Parliament alone were given the power to pass a vote of confidence - and thus of no confidence - in the executive

on the basis of its programme, it would be difficult to reduce the Parliament's power vis-à-vis the Council, even if only on certain matters⁵.

35. In any event, to resolve any conflicts which may arise between the two bodies, provision should be made for conciliation systems (joint committees), compatible with the institutional structure finally adopted and requiring a substantial majority in one of the two bodies to overrule a contrary vote by the other. Provision could be made for this facility to operate differently according to the subject concerned.

36. With regard to the procedures for establishing the will of the Parliament and the Council (a matter which is again to some extent dependent on the eventual division of functions between the two bodies), it seems appropriate for this to be governed as a general rule by the respective Rules of Procedure of the two bodies. The Treaty should include a number of general principles concerning the minimum requirements for sittings and debates to be valid and the need to avoid paralysis of the entire institutional system as a result of failure to act on the part of one of the two bodies, in cases where decision-making powers are shared.

37. On this last point, and in the light of previous negative experience, paragraph 8(e) of the resolution states explicitly, in relation to the Council, that it must be enabled, by means of appropriate procedures, to take promptly decisions which lie within its powers. Here again, the problem is connected with, and to a certain extent dependent upon, the abovementioned question of the eventual division of functions between the Parliament and the Council in exercising the powers relating to particular sectors. In general, to avert the dangers of failure to act, a provision could be introduced to the effect that the Council would not be allowed to delay beyond a given time limit over certain proposals⁶.

⁵ In systems under which a vote of confidence or no confidence is passed by one of the two branches of the legislature (usually the lower chamber), it is this body which takes clear precedence over the other. In the United States and Switzerland, where the executive is independent from the legislature, a balance is struck between the two branches of the legislature (in the United States for example, the lower chamber takes precedence on fiscal matters and the upper chamber on matters of foreign policy).

⁶ Similar to the provision existing, for example, in the German Bundesrat (concerning proposals by the executive - Article 76(2) of the Basic Law of the Federal Republic of Germany), although the latter has considerably more limited powers in matters of general legislation than the Bundestag.

4. Legislation

38. Legislative initiative should be the prerogative of the Commission and of every Member of the Parliament and the Council. As for the passage which each draft law must follow (whether one or other of the two bodies should necessarily have priority in examining it and whether or not there should be perfect identity of functions between them), it is worth repeating the remarks already made in connection with the relationship between the Parliament and the Council, which depends on the overall political role to be assigned to each of the bodies and the role to be given them in the constitution of the executive⁷.

39. The specific procedures for examining draft laws should be laid down by the respective Rules of Procedure.

40. The Treaty could allow the general possibility for draft laws to be adopted in committee, except in cases of delegated legislation, ratification of treaties and adoption of budgets.

41. The bodies exercising legislative power could be given the possibility of instructing the Commission - on specific subjects and with indication of guidelines - to enact decrees having the force of laws. The Commission itself should be empowered, without instruction and in urgent cases only, to enact decrees having the force of laws, with an obligation to submit these immediately to the legislative authority for ratification (in cases where such decrees are not ratified, any legal relationships arising from them should nevertheless be covered).

⁷ In Germany, where only the Bundestag can pass a vote of confidence in the executive, it is this body which takes precedence in examining draft laws (Article 77(1) of the Basic Law), while the Bundesrat has only powers of veto which can be overruled by a vote by a qualified majority in the Bundestag.

III. EXECUTIVE POWER

42. The executive and initiatory function of the Union is assigned to the Commission, as the pivotal institution of the Union¹. The conciseness of the resolution on this point leaves no room for doubt as to the central role which the Commission will be required to play².

43. 1. Method of constitution

The resolution provides two guidelines on the difficult problem of how the Commission should be constituted:

- its statute shall be revised as regards the manner of its appointment and structure³
- Parliament ... shall participate, in appropriate ways, in its constitution⁴.

44. The implication of these guidelines is that unlike the present system, under which the governments of the Member States have sole responsibility for appointing the Commission⁵, in the Union, the Parliament will be required to participate in this process.

45. The logic on which the Union is based would dictate that such participation could only be achieved by means of collaboration between the Parliament and one of the two bodies which represent the Member States directly - the European Council and the Council. Two different systems are possible:

46. (I) the power to appoint the Commission could be assigned to the European Council, with the Parliament being required to pass a vote of confidence on its appointment (in this eventuality, the vote of confidence by the Council would be considered automatic).

1 Resolution of 6 July 1982, paragraph 8(b)

2 op.cit., paragraph 7, second part

3 op.cit., paragraph 8(b)

4 op.cit., paragraph 8(d)

5 Article 158, EEC Treaty

47. (II) the Commission could be elected by the Parliament and the Council⁶. There are various ways in which this collaboration could work, but in the event of a joint election, steps would have to be taken to ensure a proper balance between the votes cast by the Parliament and those cast by the Council.

48. The two systems have differences which are of the utmost political importance in terms of the relationship between the executive and the legislative authority, and the choice must be based on an assessment of the political situation, which it must reflect.

49. The first option would mean that the executive would, of necessity, be accountable to the Parliament, as the length of its mandate would be dependent on the Parliament's will.

50. Under the second option, however, the executive would be elected for a pre-determined period - generally commensurate with the term of office of the lower chamber - and would not be in a position of dependence vis-à-vis the legislative authority.

51. Under the first option, the executive would always be the expression of a political majority, and its survival, like its original appointment, would be linked to the interplay of political forces. This would mean a high degree of politicization, coupled with a danger of instability and all its attendant implications.

52. The second option involves no risk of instability, but would produce a less politicized, more bureaucratic executive. From this brief and inevitably superficial account of the abstract features and possible advantages and disadvantages of the two systems, it is easy to see how the choice between them depends to a large extent on an assessment of the underlying political situation.

53. It is no easy task to define the main features of the political situation in Europe in a few words. What is clearly apparent, however, is the considerable dislocation which exists between the political forces. Even when they have a formal structure and organization at European level, the parties reveal internal differences on a great many issues, even their support for Europe.

⁶ Along the lines of the Swiss model, where the executive is elected by a joint assembly formed by the two branches of the legislature.

54. In addition, there are parties at European level, which, although strong in numbers and politically active, are of exclusively national origin and as such not always open to general political agreements. Finally, mention should be made of the existence of a large number of minority parties and of the absence of an effective European public opinion (due in part to the lack of proper mass information instruments), which the parties can claim to reflect or employ as an effective guide. All this makes it extremely difficult to form permanent coalitions or working majorities.

55. Under these conditions, the transition from the present system, dominated by the bureaucratic, intergovernmental ethic and characterized by unpredictable and contingent parliamentary majorities, to a system based entirely on permanent political formations and alliances, is likely to involve serious difficulties.

56. On the other hand, account must be taken of the fact that a mechanism enabling the executive to be appointed by the European Council (which, in political terms, is anything but a homogeneous institution), would be unlikely to produce an executive which accurately reflected the political balance, precisely because the appointment would probably be the result more of a compromise between opposing political positions than of an assessment of the parliamentary strengths and a recognition of political majorities; it should also be stressed that this option would involve a serious risk of conflict between the European Council and the Parliament⁷.

57. It should also be added that in the case of an executive appointed by the European Council and accountable to the Parliament, it would be difficult to provide the mechanisms designed to increase its stability such as a 'constructive no confidence vote'⁸, because - apart from the remarks made above on the political and parliamentary situation in Europe which have a bearing on the issue - the adoption of such provisions would mean in practice that the Parliament alone would hold the power of investiture, to the exclusion of the representative organ of the States.

⁷ In this connection, see the acute remarks made by Mr Scelba (Political Affairs Committee, Working Document, 20.9.1974, PE 37.864, European Union and the Institutions)

⁸ For which provision is made in Germany

58. Finally, it should be borne in mind that in general, the power of a parliament to pass a vote of no confidence in the executive is usually balanced by the latter's power to dissolve parliament - a power for which it would be difficult to make provision in the context of the option under consideration here.

59. With regard to the system involving the election of the executive for a pre-established period by the two organs of legislative power, it must be said that despite the undoubted advantages of stability and greater efficiency, there is a risk that it would not help the life of the Union to develop along lines consistent with a model of parliamentary dialectics.

60. The resolution provides no help in resolving this dilemma.

The stipulation that the Parliament shall exercise political control over the executive⁹ cannot be seen as justifying the option of an executive which is dependent on the legislative authority.

61. In fact, even in cases where the executive enjoys total independence, provision is made for the legislative authority to exercise powers of control over it¹⁰

These, then, are the legal and institutional options arising out of Parliament's resolution in connection with the crucial problem of the relationship between executive and legislative power, together with the political questions which they raise.

62. We hope that the considerations and guidelines set out above by way of an initial approach to the problem will fulfil the usual purpose of a working document and serve as a useful basis for opening a discussion which will further clarify the issue.

63. 2. Structure

The problems of internal structure (whether the President should be primus inter pares or hold genuine powers of political leadership) and of numerical composition (a fixed or variable number, varying in relation to the number of Member States or the number of the Union's sectors of competence) can only be mentioned in passing here, as they depend to a large extent on the method of constitution discussed in the previous section.

⁹ Resolution of 6 July 1982, paragraph 8(d)

¹⁰ This is true of the Swiss model, where the legislature can issue instructions and make recommendations and the executive is obliged to report back to it and submit detailed reports.

64. 3. Powers

In conformity with its executive function and its role as a political initiator, the Commission must have the following powers:

- laying down guidelines for Community action and taking the necessary initiatives;
- performing an executive function proper by enacting the necessary secondary legislation;
- stimulating primary legislative activity by exercising its power of legislative initiative;
- enacting primary legislation in limited and clearly defined areas, subject to prior authorization by and subsequent approval of the legislative authority;
- supervising the correct implementation of the Treaty establishing the Union;
- representing the Union in external relations;
- preparing the draft budget;
- implementing the budget.

IV. EUROPEAN COUNCIL

65. By stipulating that 'the role and powers of the European Council shall be defined' (paragraph 8(f)), the resolution implies that the European Council should be incorporated within the institutional framework of the Union.

It is well known, however, that no provision is made for the European Council in the present Treaties. Without wishing to dwell on the political role it has so far played, it is worth recalling that from a legal and institutional viewpoint, the European Council can be considered at present as no different from the Council of Ministers, in the context of the powers established by the Treaties.

By virtue of this dual possibility of action both within and outside the strict framework of the Treaties, the European Council has been defined as a 'hybrid' body.

66. The profound changes in the role earmarked for the Council obviously mean that the European Council can no longer act as an alternative form of that body, in given circumstances.

67. The inclusion of the European Council within the institutional system of the Union can therefore be achieved only by assigning to it specific functions, which can be defined as follows:

- political mediation, possibly with responsibility for transmitting communications to the other constitutional bodies;
- coordination between intergovernmental cooperation and the activity of the Union;
- promoting the application of the subsidiarity principle at political level;
- fixing deadlines and establishing methods for transforming potential competence into effective competence;
- initiating the procedures for revising the Treaties establishing the Union, on a proposal from the Commission or the government of a Member State, after consulting the Parliament, or on a proposal from the latter;
- possibly, appointing the executive, should this option be chosen in answer to the problem of how the executive should be constituted (and functions similar to those performed by Heads of State in systems of parliamentary government).

V COURT OF JUSTICE

68. With reference to the Court of Justice, Parliament's resolution states that: 'Parliament ... shall participate ... in the appointment of the Members of the Court of Justice' (paragraph 8(d)).

69. Since all matters relating to the powers and terms of reference of the Court fall outside the scope of the present document, it only remains to propose that the number of its Members should be increased (to facilitate the division of work into sections and, in line with the guiding principle quoted above, to establish that the Parliament and the Council share the task of appointing its Members between them).

70. Finally, with regard to the individual requirements for judges and the length of their term of office, the provisions of the present Treaties can be retained.

VI. COURT OF AUDITORS

71. The Court of Auditors will audit the accounts of all the revenue and expenditure of the Union, whether or not it is entered in the budget.

72. It will also be responsible for auditing the accounts of any bodies set up by the Union unless the acts establishing such bodies provide otherwise.

73. The results of the audits performed by the Court will be detailed in annual reports or special reports (the latter to be drawn up at the request of any of the institutions or on the initiative of the Court itself, whenever it sees fit). In all cases, the reports must be made public.

74. With regard to the composition of the Court, the number of Members needs to be increased, although the requirements for appointment should remain as they are at present.

75. As was proposed for the Court of Justice, the responsibility for appointing the Members of the Court of Auditors should be shared between the Parliament and the Council.

VII. OMBUDSMAN

76. Although Parliament's resolution makes no provision for it, it seems worthwhile proposing that the figure of an Ombudsman be created, along the lines of the classical Scandinavian model, responsible for investigating and monitoring the actions of the bodies under the authority of the executive. In order to guarantee the independence of the Ombudsman in the performance of his duties, the appointment should be made by the Parliament.

VIII. ECONOMIC AND SOCIAL COMMITTEE

77. The Economic and Social Committee will be the Union's main organ of economic and social consultation. As far as its constitution and composition are concerned, the provisions of the existing Treaties can be retained, with the following additional stipulations:

- there must be equal representation of employers and employees, and provision must be made for participation by consumers' representatives;

- appointments must be made by the executive from a list submitted by the governments and by social and professional organizations;
- consultation of the Committee must be compulsory in given cases; in other cases, the executive, the Council and the Parliament may choose to consult it;
- the Committee may, under given circumstances, issue opinions on its own initiative.

EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

N O T E

by the rapporteur, Mr SPINELLI
on
some problems of terminology

20.10.1982

DIVISION OF FIELDS OF COMPETENCE BETWEEN THE UNION AND
THE MEMBER STATES

I. COMPETENCE OF THE MEMBER STATES AND COMPETENCE OF THE UNION

The Member States will retain general competence, i.e. responsibility for all areas except those entrusted to the Union by the Treaty of Union.

The Union will have assigned competence, i.e. responsibility for only those areas specified in the Treaty or in legal acts deriving therefrom.

II. SUBSIDIARITY PRINCIPLE

Responsibility is assigned to the union on the basis of the subsidiarity principle: the Union is given only those tasks which the Member States cannot execute independently - or cannot execute as effectively.

(N.B. Consequently, Union action is subsidiary to that of the Member States, and not vice versa.)

III. EXCLUSIVE, CONCURRENT AND POTENTIAL COMPETENCE

The Treaty will specify the areas in which the Union exercises - or may exercise - its competence.

It will distinguish between the Union's exclusive competence, concurrent competence and potential competence:

(a) the fields of exclusive competence are those in which the Union alone has the right to legislate; save in the case of derogation explicitly decided on by the Institutions of the Union, the Member States cannot legislate in these fields; they are bound as and when necessary to adopt decisions implementing Union legislation.

Some fields will fall within the exclusive competence of the Union from the entry into force of the Treaty (these may be fields for which the Community was responsible previously or new areas in which the Union will exercise exclusive competence from the outset).

- (b) the fields of concurrent competence are those in which the Union shares the right to legislate with the Member States. As long as the Union does not exercise such competence, the Member States retain the right to legislate.

To the extent that the Union exercises such competence - within a specified framework - national competence is limited and any national laws are replaced by the law of the Union.

Concurrent competence is exercised:

- as soon as the Treaty comes into force, unless otherwise specified
- as soon as the temporal or other conditions laid down in the Treaty are met
- and in any case when - and to the extent that - the subsidiarity principle requires.

- (c) the fields of potential competence are those in which the Treaty recognises the Union's right to legislate (with concurrent competence) - but in which such competence is assigned to the Union (wholly or in part) only after a decision of the European Council (that is to say, the Heads of Government), adopted on a proposal of Parliament.

These are fields in which the intervention of the Union may be found to be necessary or useful at a subsequent stage of integration.

By way of illustration: the Community has

- exclusive competence in the field of customs legislation
- concurrent competence in respect of the right to legislate in the agriculture guidance field
- potential competence in respect of the right to pursue a common policy in the field of sea and air transport.

EUROPEAN PARLIAMENT

COMMITTEE ON INSTITUTIONAL AFFAIRS

NOTE

by the rapporteur, Mr SPINELLI,

on

the main resolutions adopted by the European Parliament
in the Community's principal areas of activity

7 December 1982

Since the elections in June 1979 the European Parliament has repeatedly expressed its profound dissatisfaction with the way the Commission and the Council - i.e., the Community's executive and legislative bodies - handle Community policies.

Although the European Parliament has only consultative powers with regard to legislation and very limited powers in the budgetary sphere, it has not resigned itself to accepting the modest role assigned to it by the Treaties. On the contrary, it has, on its own initiative, conducted a critical appraisal of virtually all the major policies which should be pursued by the Community and adopted resolutions on each of them, specifying the approach which it considered useful and necessary for the Community.

All these resolutions are listed and summarized in this document.

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There are two interesting political lessons to be drawn from this work.

First, it will be observed that, though slight or even significant differences of opinion, inherent in any democratic debate, became apparent during the discussion of certain particular aspects of the projects under consideration, these resolutions were adopted by very large majorities. Although 'the common political will' is so difficult to achieve when debate becomes stifled in the straitjacket of inter-governmental negotiations, it is nonetheless vigorous, ambitious and imbued with the spirit of European solidarity within and among the political and national groups in the European Parliament.

Second, it must regrettably be admitted that these resolutions have been virtually ignored by the Commission and the Council, both of which have flouted the political authority of the Assembly, the former by continuing its tactics of deliberately putting forward isolated and excessively detailed measures in line with a supposedly 'pragmatic' approach, the latter by confirming its determination to reduce everything to perpetual, and all too often inconclusive, intergovernmental negotiations.

In the light of this flagrant, and paralysing, contradiction between the European political will of the elected Parliament on the one hand and the powerlessness of the Community's present Executive and the stifling of any common European ambition in the Council on the other, the institutional reform demanded by Parliament is fully justified.

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We are therefore convinced that the draft Treaty of Union and the major action programme drawn up by Parliament and outlined below will be the two most effective weapons in the forthcoming election campaign.

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1. HUMAN RIGHTS AND RIGHTS OF THE CITIZEN

Scelba Report on special rights 16.11.77 OJ C299, p.26

This calls for the European Convention on Human Right, the United Nations Covenant on Civil and Political Rights, and the civil and political rights provided for in the constitutions and laws of Member States to be considered through an agreement on the basis of Article 235 of the Treaty as integral parts of the Treaties establishing the Communities. It also calls for various rights to be granted to Community citizens resident in Member States other than their own (after a period of residence) including the right to stand in and vote in elections and to hold public office at the local and regional level, and equal rights to indigenous inhabitants regarding access to jobs in the professional, social and economic sphere, the right to belong to trade unions and the freedom of association. These should be safeguarded with the possibility of individual appeal to the Euroepan Court of Justice.

Scelba Report on the accession of the European Community to the European Convention on Human Rights 27.7.79 OJ C127, p. 69

This calls for the Community to accede to the European Convention on Human Rights, to enshrine the citizen's right of petition in the Community Treaties, and to guarantee in the treaties the individual right of direct appeal to the Court of Justice.

Gonella report on the Commission's memorandum on the accession of the Community to the ECHR

OJ C304, p.253

This report asks the Commission to submit a formal proposal for the accession of the Community to the European Convention on Human Rights. It considers Article 235 of the Treaty as a sufficient legal base. It calls on all Member States to allow the right of individual appeal. It requests the Council of Europe to widen the Convention to incorporate social, economic and cultural rights, notably those listed in Parts I and II of the European Social Charter.

2. EUROPEAN JUDICIAL AREA (EXTRADITION)

Tyrrell Report on the European Judicial Area (Extradition)

9.7.82 OJ C238

p. 83

This report assumes that the creation of a European judicial area will be linked to the establishment and safeguarding of the rights of citizens. It supports the notion of a judicial area (i.e. cooperation in the Community framework in this field). It calls for :

- the establishment of a specialised structure at European level for the centralization of information concerning the fight against terrorism
- dropping the concept of political motive in the context of extradition, but only as concerns terrorist crimes
- Member States to sign and ratify the European Convention on the Suppression of Terrorism or, at least, the Dublin Agreement of 4 December 1979 concerning the application of that Convention among Member States.

It asks the Commission to propose directives establishing common principles for extradition and on mutual assistance in criminal matters.

The Council of Justice ministers, meeting in Luxembourg on 25-26 October, 1982, failed to agree on any of these or other measures.

3. SECURITY

Klepsch report on European arms procurement cooperation

January 1979

Parliament called for the Commission to submit an action programme for the production of conventional armaments within the framework of the common industrial policy.

The Commission has since undertaken studies on this suggestion but not put forward any specific proposals.

Diligent report on the surveillance and protection of shipping routes
for supplies of energy and strategic materials to the countries of the
European Community 14.12.81. 0J C327, p.47

Parliament calls on Member States with naval forces to coordinate their patrols and to strengthen their naval forces, within the framework of EPC.

Haagerup report on EPC and security policy

PE 75.146

Parliament called for a European peace and security policy which aims at stabilizing East-West relations and promoting détente, such a policy to constitute a commitment to limiting arms levels and to the principles of the UN and the 1975 Helsinki Declaration. Parliament supported the decision by the governments of the Ten to include questions related to political security in European Political Cooperation and declared that Parliament itself can play a significant role in this field. It pointed out that the Member States of the Community share a number of vital concerns regarding security, a concept that goes beyond military defence, and called for these to be fully explored and elaborated in EPC. More effective coordination between consultations in EPC and the Atlantic Council were urged.

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4. EUROPEAN MONETARY SYSTEM

Ruffolo report on the European monetary system as an aspect of the international monetary system 17.4.80 OJ C117, p.56

Parliament calls for the full implementation of the EMS and compliance with the original timetable. The EMS should promote the process of economic convergence by reviewing existing policies, introducing new common policies and coordinating monetary policies more effectively in particular exchange policies in relation to the dollar. This must go hand-in-hand with a strengthening of the Community budget by increasing its resources, and with a reduction in the disparities between the economies of the Member States. A European Monetary Fund should be created and should develop gradually into a central monetary authority.

Little progress has been made in strengthening the EMS and the original timetable has been abandoned.

Purvis report on the EMS 17.7.82, OJ C66, p.45

This report urges the setting up of a European Currency Authority with a high level of autonomy, which will be charged:

- to issue and manage the European Currency Unit (ECU)
- to coordinate exchange policies with regard to foreign currencies
- to foster the use of ECU by governments, business, individuals and in international trade, ultimately achieving legal tender status in all Member States.

It asks the Commission to come up with a proposal within 12 months along these lines. It urges the coordination of economic, fiscal and monetary policies of Member States.

5. COMMUNITY FINANCE

Lange report on overseas and budgetary questions

November 1979 OJC309, p.34

The Parliament pointed out that convergence between the economies of Member States can only result from the development of genuine common policies. It is opposed to the concept of 'juste retour'. It calls for a system of financial equalisation based on per capita GDP.

Spinelli Report on the Community's own resources

9.4.81 OJ C101, p.75

This report reiterates the need for new Community policies financed from the own resources. It reaffirms the conviction that in order to allow a more equitable and rational distribution of financial resources it is urgent to bring agricultural expenditure under control. In addition, the progressive transfer of responsibilities from Member States to the Community of those tasks which can be dealt with in common more effectively must go hand-in-hand with a corresponding transfer of resources. This would not increase the overall tax burden. Economic convergence of Member States can in any case only be assured by higher percentage of GDP passing through the Community budget.

The report therefore calls for the raising of the 1% ceiling on VAT, and for the application of a corrective mechanism introducing an element of progressivity by weighting revenue according to the prosperity of Member States. It also calls for a procedure for modifying own resources in the future: after each European election, the European Parliament shall examine the existing allocation of responsibilities and resources between Member States and the Community, and propose changes. On this basis the Commission shall draft a proposal for modifying own resources and creating new resources and, after obtaining the assent of the Council (voting by a qualified majority), shall forward it to the European Parliament for adoption by a three-fifths majority.

The report also calls for the budgetisation of the EDF, the merging of the ECSC budget into the General Budget, the harmonization of the VAT tax base and the issue of European Community bonds denominated in ECUs.

No action has been taken on Parliament's proposals.

This report affirms that the budget should be an instrument for promoting convergence of Member States' economies. It foresees the establishment of a system of fiscal equalisation and calls for the raising of own resources and the budgetisation of the borrowing and lending activities of the Community. It requests a clear and comprehensive system of distribution of taxes and expenditure between Member States and the Community. It confirms Parliament's position in adopting the Spinelli Report.

Coûté Report on the borrowing and lending activities of the Commission

20.4.82 OJ C125, p. 57

This report emphasises that, although not yet fully budgetised, EC borrowing and lending comes under Article 296b of the Treaty and is therefore subject to the powers of control by the Budgetary Authority. It therefore requests that the relevant information and documents for this task be provided to Parliament.

It opposes any delegation of power to the EIB such as would hinder the exercise by the European Parliament of political control and the exercise of the Commission's responsibility for defining investment policy.

6. INTERNAL MARKET

Von Wogau report on the removal of technical barriers to trade in the European Community

16.10.80

The Parliament called on the Commission to give the highest priority to this subject and asked for an internal report on the progress of work. It called for the quarrel between the Council and the Commission over Article 155 of the EEC Treaty to be settled rapidly.

Nybørg report on the removal of technical barriers to trade 16.10.81

OJ C 287, p.137

This report includes Parliament's opinion on four directives proposed by the Commission in this field. Parliament approved the Commission's proposals and also proposed a number of ways of speeding up the removal of technical barriers to trade. It proposed to increase the powers of the

Commission to issue the requisite directives. It called for further consultation of the Parliament and the placing of a time limit within which the Council must reach a decision, failing which the Commission may adopt the directive.

Von Wogau report on the 1981 programme for the achievement of the customs union

17.9.81 OJ C260, p.68

The European Parliament once again called for a Community customs administration to be established at the external frontiers and for a Community supervisory body to be set up as a first step in this direction. The convergence of the VAT rates and certain excise duties, together with a further reduction of MCAs were requested in order to dismantle the barriers at the Community's internal frontiers. The European Parliament reiterated its desire to see a simplification of the administrative provisions and forms connected with the Community transit procedure, and asked the Commission to submit specific proposals to ease customs formalities.

The Commission has put forward proposals to strengthen the internal market, but progress in the Council has been limited.

Beazley report on the 10th Commission report on competition policy

17.12.81 OJ C11, p.73

Parliament emphasised the importance of competition policy and called for the promotion of more intensive cooperation between industrial undertakings and for the Commission to examine the effects of existing industrial structures on competitiveness.

Parliament asked the Commission to apply the rules on competition to air and sea transport and in the financial and insurance sectors. It asked the Commission to review its guidelines on national aids to the textile industry. It regretted that no decision had yet been taken on a regulation on merger control.

In its 11th report on competition policy the Commission took into account a number of Parliament's suggestions for applying competition rules, without going as far as the Parliament had requested.

7. UNEMPLOYMENT

Ceravolo Report on employment and adaption of working time (17.9.81
0J C260, p.54)

This calls for the Community to adopt framework directives undertaking gradually and in a coordinated way (thus avoiding distortion of competition among Member States) reductions to the annual duration of work by means of:

- increased annual holidays
- limits on overtime
- shorter, extra, shifts
- flexible retirement age
- increasing the possibilities for part-time work
- allowing more educational and family leave.

This resolution led only to a Commission proposal on voluntary part-time work.

Calvez Report on Community Labour Market Policy (17. 9.81, 0J C260,p.63)

This report affirms that Member States will only be able to combat unemployment effectively if they do so together and proposes some 30 measures to help tackle the problem of unemployment. It calls for the creation of a European Employment Agency and asks the Commission to bring forward proposals for a directive to harmonize laws governing employment. This resolution led to a Commission communication on the priorities for Community action with regard to job creation.

Brok emergency resolution (22.4.82, 0J 125, p.75)

This calls for a series of measures promoting vocational training, adapting school curricula and promoting investment in areas of high youth unemployment. It calls for a greater use of the Social Fund to these ends. It supports the aim of ensuring that within five years all young people under the age of 18 have either a job or a place in training, work experience programmes or further education.

This report calls on the 'Jumbo' council meeting of November 1982 to provide the impetus for practical measures to combat unemployment. It emphasises the need for a coordinated Community approach to policies for money supply, interest rates, expansion of demand, and exchange rate policy, including the strengthening of the EMS. It insists on the increase and restructuring of the Community budget, with a coordinated application of instruments and a common employment and industrial policy.

The meeting of the 'Jumbo' council failed to agree on any substantial measures.

8. INDUSTRIAL POLICY

Delorozoy Report on industrial cooperation (7.5.81 OJ C144, p.60)

The report calls for the development of a policy on industrial cooperation as foreseen by the 1972 Paris Summit. It deplores the dis-agreements in the Council and the lack of initiatives by the Commission in spite of the fact that most of the necessary legal and budgetary instruments already existed.

It calls for the setting up of a European Fund for an industrial innovation and development, and a variety of specific measures :

- the consistency of national industrial policy measures to be examined in an Industrial Policy Committee under the authority of the Council
- the setting up of ad hoc Sectoral Cooperation Committees with representatives of the two sides of industry and the Commission
- the cooperation of national institutes of economic analysis (failing the creation of a European Institute)
- measures to complete the internal market
- a decision finally to be taken on the European company statute
- the defense of Community industry against unfair competition
- an appreciable increase in appropriations.

It underlines the need for institutional reform resulting in an increase of responsibilities of the Commission and the Parliament.

No action has yet been taken on this resolution.

9. ENERGY POLICY

Percheron draft resolution on the preconditions for an effective energy policy in the Community 26.11.82 PE 78.238/res./rev.1

This draft report asks the Member States of the European Community to work out a common energy strategy to achieve jointly agreed objectives. This strategy must be based politically and symbolically on a formal 'declaration of solidarity' by the ten Member States in the event of a major energy crisis. This new Community energy strategy also involves for the Community the recognition of energy as a new priority requiring substantially increased and better coordinated financial resources.

The draft report asks the Community to inject 'new life' into the European coal Community; 'contracts for convergence' would allow Member States which so wish to expand on nuclear energy programmes in liaison with the Community; contracts for progress between the Community and Member States would permit the speeding up of investment, notably in the field of diversification of energy sources and rational use of energy.

10. REGIONAL POLICY

De Pasquale report on the revision of the European Regional Development Fund

22.4.1982 OJ C125, p.87

The report supports the Commission's proposals for changing the fund regulation in particular the foreseen geographical concentration of the fund, the increase in the non quota section, the coordination with other funds and the proposal to proceed on the basis of programmes and programme contracts. It sees these proposals as the first step towards the elaboration of instruments capable of promoting effective regional policy. It requests that the Commission's proposals be supplemented by, inter alia, powers to grant loans for local development and the right to block funds where a project is not being implemented in accordance with the specified conditions. It asks for greater attention to be paid to frontier regions, and to peripheral, island and mountain regions.

Council has as yet taken no decision on the proposals.

Pöttering report on a Mediterranean plan 16.2.82 OJ C66, p.27

This calls for integrated development programmes for Mediterranean regions and the creation of 'a European Development Fund for the Mediterranean regions of the Community and applicant countries' under the administrative authority of the European Investment Bank.

11. TRANSPORT

Carossino report on the Common Transport Policy 9.3.82 OJ C87, p.44

This report calls on the Council to define the framework for a Common Transport Policy as foreseen in Articles 74 and 75 of the EEC Treaty, and to act on the numerous Commission proposals already put forward to the Council on which Parliament has given its opinion. It threatens to take the Council to the European Court of Justice for failure to act as required under the Treaties.

Seefeld report on the institution of proceedings against the Council for failure to act in the field of transport policy 16.9.82 OJ C267, p.62

In adopting this report, Parliament decided to bring an action before the Court of Justice under Article 175 of the EEC Treaty if Council fails to reply to Parliament within two months. If a reply is received, Parliament will consider taking Council to Court anyway unless the letter demonstrates a will to act on Council's part. A letter to the Council annexed to the resolution spells out Parliament's requirements in this field.

12. AGRICULTURE

Plumb report on possible improvements to the common agricultural policy

17.6.81, OJ C172, p.32

This report asserts that the present instruments of the CAP must be corrected as they are inadequate to provide balanced production and homogeneous regional development. The report calls for the introduction of a global Community 'quantum' for each sector, beyond which co-responsibility would come into play and guaranteed prices would be reduced. It calls for greater adaptation of price levels to market conditions distinguishing between products in surplus and those not in surplus. It supports the formulation of regulatory stocks.

It opposes national aids to agriculture and criticises the Commission for its inability to combat them effectively. It calls for a register of national aids. National aids should be authorised only after consulting the Commission and the Council.

It states that a unified market cannot be fully implemented until an economic and monetary union is created. This should be achieved rapidly. It calls for a coordinated tax system. It regrets that the Commission has lost influence and feels that the Council is excessively involved in policy details.

No action has been taken on this resolution.

13. DEVELOPMENT

Ferrero report on hunger in the world

18.9.80, OJ C265

Parliament requested the Council and Commission to draw up a series of measures for the campaign against hunger, and called for special action to speed up agricultural and rural development, improve Community food aid, and adapt international trade in agricultural and food products to the requirements of developing countries.

The Commission supported Parliament's main conclusions. Council adopted two resolutions confirming the importance it attaches to these issues and its intention to continue its efforts to combat world hunger, and enabling the Community to make multiannual commitments for recipient countries and to use a proportion of food aid to create security stocks.

Michel report on the assessment of Community policy and the role of the European Parliament

17.9.81 OJ C260, p.72

This report calls for greater supervision and evaluation of European Development Fund grants and EIB loans in developing countries, and in particular for an increase in the powers of control of the European Parliament.

Council took note of the European Parliament resolution and approved a series of recommendations on increasing efficiency.

Lezzi report on food aid

20.4.82 OJ C125, p.24

Parliament supports food aid as a temporary solution, whilst pointing out that its current level is inadequate. Food aid should be conducted on the basis of the needs of developing countries, not on the basis of our surpluses. It should be placed in the budget as non-compulsory expenditure, and subject to the conciliation procedure. The Commission's role should be increased. The need carefully to monitor effects and the undesirability of political conditions are emphasised.

14. RESEARCH POLICY

Linkohr report on the common research policy: problems and prospects

18.11.82 Minutes PE 81.217

In this resolution Parliament underlines the need for Europe to increase and render more efficient its research commitment, faced with the enormous challenge of Japan and the US. Member States are invited to increase their research budgets to at least 2.5% of GDP, and to conduct large-scale research in a European framework, thus promoting more efficient use of resources.

The report urges the development of research by the Community in the agricultural sector (eg. soil management, research on animal diseases, genetic research, biomass, etc.) micro electronics, informatics, aeronautics, transport, energy and biotechnology. Several recommendations are made concerning the Joint Research Centre's multiannual research programme. It is recommended that the JRC should also be responsible for coordinating and amplifying national research.

15. ENVIRONMENT

Alber report on the state of the Community environment 20.11.81, OJ C327, p.83

This resolution puts forward an overall concept of environmental policy. It requests the Commission to include cost/benefits statements in future proposals. It defines a number of priorities for the third action programme on the environment and gives a detailed survey of immediate and long-term measures that should form part of a future environmental strategy. It also recommends the creation of a fund for environmental measures.

Alber report giving the Parliament's opinion on the Commission proposals for a third action plan on the environment 1982-86 17.6.82, OJ C182

Parliament welcomed the draft programme but asked the Commission to follow it up with concrete proposals giving details of what should be done, where and with what resources. It requests the Commission to pay attention to the guidelines adopted by the Parliament on 20 November 1981, especially as regards trans-frontier pollution, pollution connected to agriculture, pollution aspects of the Community development projects and the urban environment. It asks the Council to implement policies and finally to take a decision on the numerous Commission proposals pending.

16. EDUCATION

Gaiotti de Biase Report on a Community programme in the field of education

11.3.82 OJ C87, p.90

This calls on the Commission and the Council to initiate and promote Community action in those areas of education policy where cooperation can usefully assist Member States in tackling common problems and in promoting the aims of the Community. It rejects the notion that cooperation in education is a threat to the diversity of cultures, stating that the threat comes from standardisation of technology and consumption patterns. Parallel action is required to counter this threat and foster cultural development. Direct competence will remain in the hands of national governments.

The Community's tasks should be to promote cooperation, coordination and equivalence between educational systems and the common recognition of diplomas (not just academic diplomas). Parliament supports the measures already agreed to in principle in the Council for the promotion of language training in schools, education about the Community and Europe, special measures to assist the children of migrant workers and the development of exchange schemes. It feels these items should get a higher priority in the budget. The low level of action and the infrequency of meetings of the Council of Education Ministers is deplored.

17. INFORMATION POLICY

Schall report on the information policy of the European Community

16.1.81 OJ C28, p.74

The Parliament made a large number of detailed recommendations aimed at improving and expanding the information policy of the Commission and the Parliament so that the public at large can be informed about the objectives of the Community. It called for the necessary budgetary resources to be made available and requested that its committee responsible for information policy be kept informed on the basis of periodic reports.

The Commission has submitted the guidelines for its information policy, which are under consideration in a new sub-committee set up for this purpose by the Parliament.

