

THE EUROPEAN COMMUNITY IN THE 1990's:
WIDENING VERSUS DEEPENING?
College of Europe
Institut für Europäische Integration
Bruges, 4-6/VII/1991

- a. "Programme"
- b. "Liste of participants"
- 1. "Deepening versus widening? : debate on the shape of EC-Europe in the Nineties"/ Wolfgang Wessels
- 2. "Deepening and widening: the institutional dimension"/ Christian Engel, Christian Welz
- 3. "The increase of effectiveness: the problems of implementation in the light of a possible enlargement"/ Kieran St Clair Bradley
- 4. "The European Community and constitutional government"/ John Pinder
- 5. "Some preliminary notes on the economic dimension of widening and deepening"/ Louis Tsoukalis
- 6. "Marché intérieur et élargissement de la Communauté"/ Paolo Cecchini
- 7. "The IGC on political union : some comments on the proposals concerning foreign and security policy"/ Franco Algieri
- 8. "The scope of a Common Foreign and Security Policy and its impact on enlargement"/ William Wallace
- 9. "The institutional and procedural aspects of a Common Foreign and Security Policy"/ Patrick Keatinge
- 10. "L'identité de l'Europe: quelques réflexions d'historien"/ Gilbert Trausch
- 11. "L'Europe en mutation: l'analyse sociologique des convergences et des disparités entre pays européens: une terrain insuffisamment exploité"/ Robert Picht

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BIBLIOTECA	

COLLEGE OF EUROPE
INSTITUT FÜR EUROPÄISCHE POLITIK

in cooperation with the
ARBEITSKREIS EUROPÄISCHE INTEGRATION

and the
TRANS EUROPEAN POLICY STUDIES ASSOCIATION

THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

PROGRAMME



Thursday, 4 July 1991 (Provinciaal Hof, Markt 3, Brugge)

15.00 - 19.00

OPENING SESSION

1. Welcome :
Werner UNGERER, Ambassador, Rector of
the College of Europe, Bruges
2. Opening speech :
Jacques SANTER, Prime Minister of
Luxembourg :
"Europe's New Role in a Changing World"
3. General introduction to the Conference :
Wolfgang WESSELS, Director of the
Institut für Europäische Politik, Bonn;
Director of Administrative Studies at
the College of Europe, Bruges
4. Introduction to the working groups :
Jean-Victor LOUIS, Professor, President
of the Institute of European Studies,
Free University of Brussels (Working
Group 1)

Loukas TSOUKALIS, Professor, Director of
the Hellenic Centre for European
Studies, Athens; Director of Economic
Studies at the College of Europe, Bruges
(Working Group 2)

Simon NUTTALL, Director, Directorate-
General "External Relations", Commission
of the European Communities, Brussels
(Working Group 3)

Gilbert TRAUSCH, Professor at the
University of Liège; Director, European
Research and Study Center Robert
Schuman, Luxembourg (Working Group 4)

19.00

Reception (Provinciaal Hof, Markt 3,
Brugge)

Friday, 5 July 1991 (College of Europe, Dyver 9, Brugge)

9.00 - 18.00 WORKING GROUP SESSIONS

WORKING GROUP 1 : INSTITUTIONS AND PROCEDURES¹

General rapporteur :

Jean-Victor LOUIS, President of the
Institute of European Studies, Free University of Brussels

Background paper :

Christian ENGEL, Institut für Europäische
Politik, Bonn
Christian WELZ, Institut für Europäische
Politik, Bonn

**9.00 - 13.00 The Increase of Effectiveness - The
Problems of Implementation in the Light of
a Possible Enlargement**

Chair :

Blanca VILA COSTA, Professor, Autonomous
University of Barcelona; former Vice-Rector
of European Affairs; Professor at the
College of Europe, Bruges

Introduction :

Kieran BRADLEY, Legal Service of the
European Parliament, Brussels

Comments :

Giuseppe CIAVARINI-AZZI, Director, Secretariat-General of the Commission of the European Communities, Brussels

Nikos FRANGAKIS, Director, Hellenic Centre
for European Studies, Athens

Anders OLANDER, Minister, Swedish Mission
to the European Communities, Brussels

¹ For all working group sessions on Friday, 5 July, there will be coffee-breaks from 11.00 to 11.15 and from 16.00 to 16.15.

14.30 - 18.00

The Institutional Progress Towards
Political Union and its Impact on a
Possible Enlargement

Chair :

Jacques VANDAMME, Professor, Chairman of
the Trans European Policy Studies
Association, Brussels

Introduction :

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the College of Europe, Bruges

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Wolfgang WOLTE, Ambassador, Head of the
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Secretary :

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Politik, Bonn

WORKING GROUP 2 : THE ECONOMIC DIMENSION¹

General rapporteur :

Loukas TSOUKALIS, Professor, Director of the Hellenic Centre for European Studies, Athens; Director of Economic Studies at the College of Europe, Bruges

Background paper :

Loukas TSOUKALIS

9.00 - 13.00

The Completion of the Internal Market and its Impact on Further Countries

Chair :

Jacques PELKMANS, Senior Research Fellow, Centre for European Policy Studies, Brussels

Introduction :

Paolo CECCHINI, Former Director-General at the Commission of the European Communities; Professor at the College of Europe, Bruges

Comments :

Emil EMS, Deputy Director, Economic Affairs, EFTA Secretariat, Geneva

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Karel ZEMAN, Leader of Research Project, Central Research Institute of National Economy, Prague

14.30 - 18.00

The Progress Towards Economic and Monetary Union and its Impact on Further Community Countries

Chair :

Karl-Heinz NARJES, Former Commissioner of the European Communities, Brussels; President of the Arbeitskreis Europäische Integration, Bonn

¹

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Klaus WEBER, Direktor, Deutsche Bundesbank,
Frankfurt

Secretary :

Dirk GÜNTHER, Institut für Europäische
Politik, Bonn

WORKING GROUP 3 : THE DEVELOPMENT TOWARDS A COMMON FOREIGN AND SECURITY POLICY AND ITS IMPACT ON ENLARGEMENT¹

General rapporteur :

Simon NUTTALL, Director, Directorate-General "External Relations", Commission of the European Communities, Brussels

Background paper :

Franco ALGIERI, Tübingen

9.00 - 13.00

The Scope of a Common Foreign and Security Policy and its Impact on Enlargement

Chair :

Philippe de SCHOUTHEETE de TERVARENT, Ambassador, Permanent Representative of Belgium to the European Communities, Brussels

Introduction :

William WALLACE, Professor at St. Antony's College, Oxford

Comments :

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Vladimir HANDL, Institute of International Relations, Prague

Yves MOLLARD la BRUYERE, Counsellor, Commission of the European Communities, Brussels

René NYBERG, Minister, Embassy of Finland to Germany, Bonn

14.30 - 18.00

The Institutional and Procedural Aspects of a Common Foreign and Security Policy

Chair :

Gianni BONVICINI, Director of the Istituto Affari Internazionali, Rome; Trans European Policy Studies Association, Brussels

¹ For all working group sessions on Friday, 5 July, there will be coffee-breaks from 11.00 to 11.15 and from 16.00 to 16.15.

Introduction :

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Background paper :

Gilbert TRAUSCH
Heinrich SCHNEIDER, Professor; Institut für Europäische Politik, Bonn

9.00 - 13.00

The Dimensions of the Historical and Cultural Core of a European Identity

Chair :

Werner UNGERER, Ambassador, Rector of the College of Europe, Bruges

Introduction :

Heinrich SCHNEIDER, University of Vienna; Institut für Europäische Politik, Bonn

Comments :

Nihat AKYOL, Deputy Permanent Delegate of the Turkish Mission to the European Communities, Brussels

Bernard BARTHALAY, University of Lyon, Club Victor Hugo for the United States of Europe, Paris

Hendrik BRUGMANS, Honorary Rector of the College of Europe, Bruges

Alan MILWARD, Professor, Department of Economic History, London School of Economics and Political Science; College of Europe, Bruges

14.30 - 18.00

The Sociological Dimension

Chair :

Hugue PORTELLI, Professor at the University of Paris-Nanterre

¹ For all working group sessions on Friday, 5 July, there will be coffee-breaks from 11.00 to 11.15 and from 16.00 to 16.15.

Introduction :

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Attila POK, Hungarian Academy of Science, Institute of History, Budapest

Secretary :

Barbara LIPPERT, Institut für Europäische Politik, Bonn

20.00

Dinner (College of Europe, Garenmarkt 15, Brugge)

Saturday, 6 July 1991

9.00 - 12.00

PLENARY SESSION (College of Europe, Dyver 9, Brugge)¹

Round Table Discussion "Widening and/or Deepening - The Strategy to Follow"

Chair :

Wolfgang WESSELS, Director of the Institut für Europäische Politik, Bonn; Director of Administrative Studies at the College of Europe, Bruges

Participants :

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Wolfgang WOLTE, Ambassador, Head of the Austrian Mission to the European Communities, Brussels

12.00 - 13.00

Reception (College of Europe, Dyver 9, Brugge)

¹ There will be a coffee-break at 10.30.

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Bruges, 4-6 July 1991

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Some errors may have occurred in this list. Participants are kindly requested to bring these to the attention of the Secretariat before their departure.

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

Deepening versus Widening ?

Debate on the Shape of EC-Europe in the Nineties

General Introduction

by

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I. The debate¹**1. Membership to "EC-Europe": A crucial and emotional issue****a) From the forties onwards: The geographical scope and the finalité politique**

"Europe" was always more than a geographical term². It served to delimit a certain group of people(s) having some kind of common heritage sharing some kind of destiny different from "outsiders". The criteria of this common identity were always disputed: religious, cultural, political, ethic, economic and legal indicators – quite often vague and difficult to operationalize – were put forward; those reflected partly some kind of deep emotional feeling of "belonging together", partly they were used as a political strategy to serve specific goals of marginalizing political enemies.

During World War II, the European resistance movements and exile governments developed fundamental considerations about the future state of Europe³ in which they argued nearly unisono for a Europe in which all democratic European countries would participate in creating a qualitatively new and different system strong enough to overcome the deadly hostilities among the nation states.

The original pan-European vocation, however, became illusionary soon after the end of World War II. The first cleavage occurred with the East-West conflict. OEEC and

1 The first chapter is a "deepened" and "enlarged" version of Wolfgang Wessels, Deepening and/or Widening – On the shape of EC-Europe in the Nineties, in: Außenwirtschaft Vol. 46, 2/1991, to be published in July 1991.

2 See amongst others Heinrich Schneider, Leitbilder der Europapolitik 1, Der Weg zur Integration, Bonn, Europa Union Verlag 1977, pp. 45-75; Werner Weidenfeld (ed.), Die Identität Europas, Fragen, Positionen, Perspektiven, München, Hauser 1983; Krzysztof Pomian, Europa und seine Nationen, Berlin, Wagenbach 1990, p. 20; William Wallace, The Transformation of Western Europe, London, Pinter Publishers, 1990, pp. 7-35; several chapters in William Wallace (ed.), The dynamics of European Integration, London, Pinter Publishers, 1990; John Pinder, The European Community, The building of a Union, Oxford, Oxford University Press 1991, pp. 43-54.

3 See especially Walter Lipgens (ed.), Documents on the History of European Integration, Vol. I and II, Berlin, New York, de Gruyter 1984, 1986; Walter Lipgens and Wilfried Loth (eds.), Documents on the History of European Integration, Vol. III and IV, Berlin, New York, de Gruyter 1987, 1988; Wilfried Loth, Der Weg nach Europa, Göttingen, Vandenhoeck & Ruprecht 1990.

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the Council of Europe excluded some countries being perceived as belonging "naturally" to Europe. The "return to Europe"⁴ of these countries is also and partly mainly geared to that (West) European group considered to follow this original vocation.

The second cleavage dated from the beginning of the fifties between the "small Europe" of the Six with a commitment for a transfer of "limited, but real power" and the "rest of the wider Europe", which stuck to looser intergovernmental forms of cooperation.

This cleavage was clearly less a result of factors outside the immediate reach of (West) European influence, like the first cleavage, but the consequence of different historical experiences, diverging perceptions and interests about the substance, and – perhaps even more important – of conflicting views about the methods of working together. The scope, form and nature of this new political system to serve European interests were the major issues leading to the second cleavage.

From the first days of the "small Europe" onwards the geographical scope has been a crucial, controversial and often emotional issue⁵. It was understood that new members would change the institutional efficiency of the Community and its future policy mix. Though the doctrine that all new members have to accept the existing "acquis" (the Community patrimony) was always implemented, experiences show that any enlargement led – at least in the medium term – to a different kind of Community. Demands and offers for membership to the EC implied thus always more than technical and legal details or incremental institutional adaptations. The pre-entry debate was always a soul-searching exercise raising the "finalité" issue of the European integration process. The confrontation of costs and benefits of new accessions in terms

4 See, with slightly different words, Václav Havel, Rede bei der Verleihung des Internationalen Karlspreises zu Aachen am 9. Mai 1991, in: Europa Archiv 11/1991, D 2863; Géza Jeszenszky, EckpfeilerungarischerEuropapolitik: EG-Mitgliedschaft und gesamteuropäische Zusammenarbeit, in: Integration 3/91, pp. 95-98.

5 Witness e.g. the outbreak of Paul-Henri Spaak against the British attitude in the third session of the (Parliamentary) Assembly of the Council of Europe 1952, Paul-Henri Spaak. Combats inachevés, De l'espoir aux déceptions, Paris, Fayard 1969, pp. 50-51.

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of the "future acquis" have always accompanied membership negotiations, which were most of time quite heated, especially in the case of the United Kingdom. Basic arguments which were presented in the northern as well as in the two southern enlargements will also be of major importance – though with some new accentuations – in the enlargement debates of the nineties⁶.

b) The Nineties: Increasing demands and reluctant offers

The European Community with its success story in the second half of the eighties⁷ has become the basic "anchor"⁸ and framework of nearly all West European and increasingly also pan-European activities for further integration and cooperation. Being the European organization came to a surprise for many inside and outside the Community who are now considering the period between 1965 and 1985 as "dark ages"⁹. The "Eurosklerosis" was perceived as a fatal disease for a moribund historical experiment.

6 Compare e.g. William Wallace, J. Herreman, *A Community of Twelve? The impact of further enlargement on the European Communities*, Bruges 1978, and Helen Wallace, *Widening and Deepening: The European Community and the New European Agenda*, London, Pinter Publishers 1989.

7 See e.g. Wolfgang Wessels, *The Dutch Presidency – A mission as "broker", "guardian" and "ambassador" for a historical opportunity*, Report prepared for the Interdisciplinaire Studie groep Europese Integratie (ISEI), Bonn, March 1991, to be published in autumn 1991.

8 This term has even been used quite often in recent years, see also the speech of Secretary of State Baker in Berlin, in: *Europa Archiv* 4/1990, pp. D 77 – D 84.

9 See for this term Stanley Hoffmann, Robert O. Keohane, *Conclusions: Community Politics and Institutional Change*, in: William Wallace (ed.), *The Dynamics of European Integration*, London, Pinter Publishers 1990, pp. 276-300.

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The difficulties of the EC were partly analyzed as consequences of the legal and institutional rigidities of a "First Europe"¹⁰ which became "obsolete"¹¹ because of a reborn nation state¹² and complex interdependencies¹³.

In this view, the debate about deepening and/or widening really looks quite surprising.

If one views, however, the EC as the major instrument of (West) European states to tackle in common core problems of interdependent welfare states¹⁴ then the demands for accession and some reluctances to grant membership become more obvious. The "vital interest" of a European state - to use the infamous term of the Luxembourg Compromise - for a strengthening and/or acceding to the Community is again at stake. The member states of the European Community and the European Parliament now dispose of the power to grant EFTA, Mediterranean, Central European or Eastern European countries the possibility to become an integral part of the major European decision-making organization for an increasing number of European and international policies. The debate on widening and deepening will thus perhaps be even more intensive in the nineties than in the forty years before.

On the one hand the demand for membership by European countries outside the EC will increase. This increased propensity for application is the result of two major developments which are mutually reinforcing: the evolution of EC-Europe and the revolution in East Europe.

10 See for the term Ralf Dahrendorf, *Plädoyer für eine Europäische Union*, München, Piper 1973, pp. 76-82; Ralf Dahrendorf, *A Third Europe? Third Jean Monnet Lecture*, Florence, European University Institute 1979, pp. 22-23.

11 See Ernst B. Haas, *The Obsolescence of Regional Integration Theory*, Berkeley, The Regents of the University of California 1975.

12 See Stanley Hoffmann, *Reflections on the Nation-State in Western Europe Today*, in: *Journal of Common Market Studies*, Vol. XXI, N° 1 and 2, 1982.

13 See Haas, *Obsolescence of Regional Integration Theory*, op. cit.

14 See Wolfgang Wessels, *The Growth of the EC-System - A Product of the Dynamics of Modern European States? A plea for a more comprehensive approach*, Paper prepared for the XIVth World Congress of the International Political Science Association, Washington 1988.

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The success of the European Community with the Single European Act, the progress towards an internal market as well as its plans for Economic and Monetary Union and for a Political Union have attracted other European countries to become part of this resourceful and powerful Community. These countries might not turn into fervent followers of federalistic concepts, which were seen by some as the basic dynamics of the First (small) Europe¹⁵, but they reckon that by staying out of the Community their national sovereignty is of rather irrelevant nature. In a trade-off curve between keeping formal sovereignty on the one hand and gaining access to bodies where decisions with a real impact are being taken on the other, more and more countries prefer to give up some parts of their sovereignty.

Besides this successful evolution in Western Europe the revolutions in Eastern Europe have created a strong and growing demand of a new group of European countries to join the Community. With decreasing engagement of the super-powers in Europe and the developments of the Eastern European countries into democratic and market orientated economies the Community gained additional attraction¹⁶.

Parallel to the growing attraction of the Community itself, some European Countries are going through a period of trying to find their identity in a changing Europe and a changing world. As such the discussion about membership of the Community is quite often a major indicator of an overall soul-searching of a nation or a country, dealing with long established national myths. Even established democracies and successful economies and welfare states, such as Sweden and Switzerland, are confronted with growing internal doubts about their specific virtues and special role in the world. Had the Community for a long time been regarded by some in these countries as a sub-optimal and even rather dubious¹⁷ way for dealing with pressing problems, Community membership is now becoming more and more the focus for the national

15 See the first chapters in: Roy Pryce (ed.), *The Dynamics of a European Union*, Beckenham, Croom Helm 1987 and as critics Dahrendorf, *Plädoyer für eine Europäische Union*, op. cit., p. 80, and Alan Milward, *The Reconstruction of Western Europe 1945-1951*, London, University of California Press 1984.

16 See e.g. Havel, op. cit., p. 285.

17 See for some voices e.g. Johan Galtung, *Kapitalistische Großmacht Europa oder die Gemeinschaft der Konzerne? A superpower in the making*, Reinbek, Rowohlt 1973.

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debate on stabilization, modernization and perhaps, though this is still quite uncertain, on the own identity in the world.

This growing demand will not necessarily be met by growing offers for membership. This reluctance by the EC members and its bodies are based on the same fundamental considerations. By the evolution of the Community - especially when taking into account major steps towards an economic and monetary union - the present members have linked their national destiny to the capacity of the Community to deal with vital "national" interests. If defence were also to be included in some way or other¹⁸ member states will be careful not to ruin this capacity by offering entry to countries which are not able or not willing to take up all obligations and rights of the Community and its finalité towards a European Union. The EC is not a luxury club but an essential framework to face the problems of the future.

Countries applying for membership have to realize, even if this might be difficult for their self-esteem, that the Community will not always directly accept demands with open hearts or hands. Immediate demands for specific exceptions by applicants - thus as a neutrality clause - will be taken as signs for the lack of the necessary fundamental commitment. Membership to the EC will thus not be settled by the national debate of the respective applicant-country¹⁹ but by negotiations with the EC and - which is even more important - by perceptions of member countries and the European Parliament of the capacity and willingness of the respective country to work together in tackling the vital issues ahead.

The present doctrine of the EC towards further enlargements reflects these worries: Before the completion of the internal market programme, no new accession negotiations are planned. Even more: the time schedule of the two Intergovernmental Conferences, aiming at establishing an Economic and Monetary Union as well as a Political Union, indicate that all responsible bodies and actors of the EC plan to make

18 See e.g. for the state of the debate the Luxembourg "non-paper" on the Political Union, April 1991.

19 See for such a debate in applicant countries: Heinrich Schneider: *Alleingang nach Brüssel*, Bonn, Europa Union Verlag 1990.

some first major steps towards reinforcing the EC before any serious negotiations about enlargement are undertaken. New applicants thus might have to adapt to an EC moving towards an entity, which is considerably different from the present EC.

The political debate in Europe clearly indicates that there is a growing gap between demands for membership put forward with the claim that the Community has to accept them as a historical and political obligation on the one side and offers with a kind of waiting-list put forward with some arrogance of those inside the club on the other side. Both sides are surprised by the speed by which the controversies become more obvious and intensive. In this situation the debate will be characterized again and again by frustration and bewilderment and quite often by a lack of mutual understanding.

2. Four schools of thought in the Community

In the early nineties we can identify four major schools of thought inside EC-Europe. Methodologically these lines of arguments are conceptual constructs derived from several small group discussions, political statements and academic analyses²⁰. They reflect not only different opinions about the immediate costs and benefits of enlargement but divergent considerations about the fundamental vocation and overall functions of the Community.

Within the four schools of thought there are two extremes: the "widening-first" or the "deepening-first" lines of arguments. In between there are two schools: "widening and deepening at the same time by differentiated and affiliated memberships" and "deepening as a prerequisite for also widening".

²⁰ See e.g. H. Wallace, *Widening and Deepening*, op. cit., and Helen Wallace (ed.), *The Wider Western Europe, Reshaping the EC/EFTA Relationship*, London and New York, Pinter Publishers 1991.

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a) The arguments for "widening-first": the moral obligation for help and stabilization

According to this line of thinking the Community as of 1990 is an "artefact" of "accidental historical constellations", which neither reflects "fundamentals" of Europe's history nor offers "optimal areas" for solving problems. Thus the Community of the Twelve should not be a purpose in itself but serve the overall European evolution towards democracy and market economy. Present EC members should not be too selfish and keep other European countries out but should be prepared to sacrifice some advantages of a smaller Community for the greater benefit of creating a larger democratic European framework²¹. The cleavage of "Yalta" has to be overcome.

These points are put forward especially by less Community oriented circles in those countries with special affiliations with applicant countries²². By "deepening-first" – it is argued – the Community will become a "hegemon" in Europe which is characterized for all outsiders by a byzantine bureaucracy and non-transparent ways of decision-making. The intra-Community institutional logics would automatically push the Community to become a "fortress" – irrespective of all good political intentions not to discriminate against other countries. By pointing at the ongoing debate with the EFTA countries about the "European Economic Area" the adherents of this school argue that the Community is not prepared to let other countries participate in a meaningful way in decision-making unless they are full members.

Especially with regard to the development of Central European countries – Poland, Czechoslovakia, Hungary – this school argues that early membership is necessary for these countries to stabilize their democracies and market economies and in a deeper sense welcome them back to "Europe". As with Spain and Portugal the Community has to integrate those countries to reduce any temptations or tendencies towards right-wing dictatorship, xenophobic outbreaks and economic collapse. Thus only by an early

21 See e.g. Hans Arnold, Die Europäische Gemeinschaft, Zwischen Vertiefung und Erweiterung, in: Europa Archiv 10/1991, pp. 321-326.

22 See e.g. many voices in the Federal Republic of Germany, see as such an emotional outcry, Günther Grass, Chodowleki zum Beispiel, in: Die Zeit, Nr. 25/1991, pp. 51-52.

membership it would be possible to stabilize major parts of Central and Eastern Europe — the region between the EC and the Soviet Union. This historical task is seen as an overall function of highest priority to which selfish economic objectives have to give way.

In this respect EC membership by EFTA countries is less urgent and needs less overall political commitment. Membership negotiations with these countries, can thus be "tougher". Some would even argue that Central European countries are the "locomotive" to bring EFTA countries also into the EC.

Mediterranean countries like Turkey would claim that by the earlier association agreements the Community has at least a moral obligation for helping these faithful allied countries into Europe²³.

By "deepening-first" the threshold for new members would be raised by the EC to a degree which will prevent those countries in need from becoming full members of the Community in the foreseeable future. The deepening-first option is thus not only a tactical choice for a temporary priority, but a major strategic decision which would negatively influence Europe far beyond the nineties. The historical first cleavage of the "iron curtain" would be repeated by a "golden curtain" between East and West²⁴.

The "deepening-first" arguments are perceived as politically and morally unacceptable. The hopes and expectations of millions of Europeans, who are already "punished" by historical circumstances, be it the first or the second cleavage, would be disappointed. The Community would betray its own basic "raison d'être".

Another set of arguments for "widening-first" is based on a specific "leitmotiv" for the Community's future itself. It is argued that the best way for the EC to proceed is not by a doctrinal strategy for strengthening the institutional structures towards some kind

23 See Turgut Özal, Wir haben ein Recht darauf zu erwarten, daß unsere Partner und Alliierten, mit denen wir gemeinsame Werte teilen, uns die Türen zur EG öffnen, in: *Newspol*, ed. by Kaya G. Toperi on behalf of the press and information office of Turkey, 28th September 1989.

24 See for this term several remarks by Eastern/Central European leaders.

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of quasi federal state, but to have a broader, less binding, more flexible, pragmatic trial and error process, based on several parallel ways of dealing with problems. The "Second or Third Europe"²⁵ would thus look less doctrinaire and less bureaucratic. This "Leitmotiv" is also suggested by those concepts which stress that the basic historical unit of Europe, the nation state, should be strengthened and not become dominated by an "unnatural" system like a supranational Community²⁶. To keep the "ultimate sovereignty" in national hands is then also seen as a guarantee against the domination of one country, i.e. the Federal Republic of Germany²⁷.

Widening would thus also serve as a strategy to prevent deepening, which discredits some other arguments in favour of widening in the view of strong Community adherents, especially if they are put forward by political leaders like Mrs. Thatcher.

b) The arguments for "deepening-first": an efficient, effective and democratic EC-Europe as a pole of growth and stability

Contrary to the assumptions and expectations of the "widening-first" school²⁸ the "deepening-first" arguments stress the necessity of developing "efficient, effective and democratic institutions"²⁹.

For the fate of the Community as for the future of Europe overall it is important to create a real decision-making centre, which is based on a certain homogeneity of members, on a broad and strong support for the *finalité politique* as well as on

25 See Dahrendorf, *Plädoyer für eine Europäische Union*, op. cit., pp. 82-89; Dahrendorf, *A Third Europe*, op. cit., pp. 23-24.

26 See Margaret Thatcher, speech in Bruges, in: Werner Weldenfeld and Wolfgang Wessels (eds.), *Jahrbuch der Europäischen Integration 1988/89*, Bonn, Europa Union Verlag 1989, pp. 411-418.

27 See the interview with Nicholas Ridley: *Saying the Unsayable about the Germans*, in: *The Spectator*, 14th July 1990.

28 See e.g. Jean François Poncet, *Die europäische Herausforderung für Frankreich und Deutschland*, in: *Europa Archiv* 11/1991, pp. 330-331.

29 See for these criteria the conclusions of the Presidency of the European Council in Dublin II 1990, in: *Europa Archiv* 16/1990, pp. D 396 - D 416 and in Rome I and II 1990 (the mandate for the Intergovernmental Conferences on the Political Union), in: *Europa Archiv* 1/1991, pp. D 9 - D 16; D 27 - D 38.

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sufficient economic, political and legal capabilities of member states. These arguments are especially put forward by the Community orthodoxy in the Commission³⁰ and in the European Parliament³¹, but also in major Community countries. It is argued that a widened Community would not be able to face the challenges of the nineties. With an enlargement before the Community itself has reached a higher plateau, the Community with its present structure would be overloaded by a complex set of serious economic, legal and political problems of quite heterogeneous nature. After a further enlargement any serious reform strategy towards a stronger Community would, however, be blocked by enlargement as most new members might not be prepared or willing to follow a "saut qualitatif" after accession. To accept the "present acquis" of the EC is already seen as a considerable burden for new members, which would need time to be digested. For some, this blockage of further steps is even seen as the major purpose of widening-first. Referring to "historical lessons" of a - as they would see it - "premature" UK and Greek accession, adherents of a stronger Community want to prevent more "Trojan horses" from entering the EC and thus hinder forces which are considered to be too soft on the finalité politique from gaining in importance.

This school defends itself against the accusation of being too selfish and narrow-minded. They argue that deepening as a priority is not only optimal for the EC but also for other European countries. It would be of no use for these countries to enter an inefficient Community, which would be eroded even more and thus not be able to help weaker countries. The expectations and hopes of the "widening first" school that the Community with its present instruments and procedures could already contribute to stabilize countries in turmoil and structural changes is refuted. Membership in the present EC would neither reduce Islamic fundamentalism in Turkey, or regional and ethnic conflicts in Yugoslavia, nor offer central European countries a well functioning democracy and market economy. Not only that the capacity of the EC to be the

30 See e.g. Avis de la Commission Européenne sur la demande d'adhésion de la Turquie à la Communauté, Agence Europe Documents, 20. Decembre 1989: "La Communauté progresse dans le sens des objectifs de l'Acte unique et sur la voie de l'Union économique et monétaire et de l'Union européenne ce n'est que lorsqu'elle aura procédé à une évaluation objective des résultats obtenus à cet égard que la Communauté disposera d'un des éléments sur lesquels elle sera appelée à fonder son appréciation à l'égard de tout nouvel élargissement."

31 Presently there is a respective resolution in preparation.

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paradise solution to all problems is overrated, even more, the obligations under membership might even have counterproductive effects: The EC is characterized as an organization of highly developed democracy and market economies. By getting into such an organization for mature countries the freedom to find its own way and identity might be curtailed for the applicant countries too early.

Some of the applicant countries have to find to their identity first. Premature entry might lead to disruptive developments inside the Community and the new members.

Positive examples of integration history – such as the French-German friendship or the economic miracle of (Northern) Italy and France as consequence of the Customs Union are not accepted as "models" for totally different situations and times.

A further set of arguments is put forward: it would be even better for these countries that the "smaller" EC-Europe is efficient and effective enough to deal with the major challenges for the whole of Europe, even if the direct participation at the Community's activities is limited. The Community as a "strong anchor" and "pole of growth and stability" would have a positive spill-over effect also on the neighbouring European countries, irrespective of sitting at the EC table or not. ||

Thus overall after a serious cost-benefit analysis the deepening-first school points at real advantages of a smaller Community for all of Europe. The "rest" of Europe might complain about "satellization"³² – the efficiency and effectiveness of EC-Europe – as some kind of benevolent hegemon – has positive effects for all of them.

Furthermore, after deepening all applicant countries would know into what kind of Community they will enter and what commitments they have to accept, i.e. finally that they must be ready to enter a political system of a "quasi federal" nature. Those countries will not then join the Community on a wrong or at least distorted perception of EC-Europe and its longer term finalité. Having a clear view of what a European

32 See for Swiss arguments "Wucherpreis für ein EWR-Abkommen", in: Neue Zürcher Zeitung, 24./25. March 1991.

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Union will look like could prevent both the present Community members as well as prospective applicant countries of going through a difficult soul-searching period after membership. Difficult and harmful "renegotiations" after entry³³ would be less likely. The politicians of applicant countries will then have no possibility of arguing that the Community they entered is only a functional economic agency without further political commitments.

Following this school of thought accession is not offered as a "credit" for an earlier but riskier adaptation process but as the reward for the final product which might take longer but is less risky. Membership is the end, not the beginning of the way towards EC-Europe.

Some adherents to this school would even argue that there is already in pure quantitative terms an optimal size of the EC of i.e. a limit to the number of member states. An EC of up to thirty states is no more manageable: Just imagine a European Parliament with more than thousand members. Even if the present composition is caused by historical factors of the first and second cleavage – the pure instinct for survival should push the EC to be very careful about further enlargements.

Other proponents of this school might argue more outside public debates that new members might basically alter the internal equilibrium of the present EC to the detriment of some (leading) present member countries. The political outlook and the economic problems of new members would change the EC agenda away from their own priorities. Even more: as Germany has special links with a lot of EFTA and central European countries the German weight might increase in a way which is not desirable including the language question.

Thus some arguments of the line are strictly against any kind of further accessions. This back-ground motive supports those critics who evaluate the major pan European

33 The British renegotiations lasted at least ten years, the Greek one were shorter – around four to five years.

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arguments of the "deepening first" school as pretexts for doing nothing out of selfish interests.

c) Widening and deepening by differentiated and affiliated memberships

Faced with these conflicting schools two strategies are offered to reduce the dilemma. Beside the politically more difficult approach of "deepening-for-also-widening" (see below), there is the apparently attractive but finally counterproductive solution to pursue both goals at the same time by a differentiation or affiliation of memberships in certain institutions and/or policy fields.

The proposals for such a differentiation and affiliation are quite often inventive, at least five sub-options – quite often of a similar nature – are being put forward.

The concept of a "Europe of several circles"³⁴ would strengthen the original core area of the Community towards a federal state; the present EC would permanently become a looser regime. Several circles of other countries would be organized around the EC by special arrangements of "an association plus" provision. Thus the European Economic Area, as now negotiated with the EFTA countries, could be one of the circles around the Community; the "Europe agreements" as negotiated with the Central European countries would constitute another.

This approach is based on the assumption that there are homogenous groups of other countries which could build a "circle" as a precondition of forming together better relations with the Community – an assumption not necessarily accepted by some countries which would be forced by the inner (EC) circle to work together. The resistance of some applicant countries to work together with "similar" countries in groups forced upon them by the EC is quite high.

34 Michael Mertes, Norbert J. Prill, Der verhängnisvolle Irrtum eines Entweder-Oder, Eine Vision für Europa, in: Michael Mertes et alii, Europa ohne Kommunismus, Bonn, Europa Union Verlag 1990, p. 45.

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This concept of several circles is not convincing, neither for the EC nor for applicant countries. It suggests that certain forms of participation can be offered to non-EC countries, at the same time as the Community is reinforcing its decision making structure; as the negotiation with the EFTA countries on the European Economic Area indicate this strategy can only lead to frustration: the offers of the EC or even of a further smaller circle will not meet the demands by those countries outside the inner circle.

The psychological effects of being outside the "centre" will push the outer circle constantly to get into the inner circle. A second sub-option of "parallel frameworks" would try to reduce these psychological effects: While continuing with deepening additional pan-European organizations would be strengthened in a concerted action like using the Council of Europe and the Conference for Security and Cooperation in Europe³⁵. President Mitterrand and President Havel proposed a "Confédération européenne"³⁶ in which all European countries would cooperate in certain areas like energy, environment, culture. It is stressed that other organizations like the EC and the Council of Europe would not be touched. This approach looks like window dressing. Either the European confederation becomes a rather irrelevant arena for secondary policy actions meaning that the heads of governments and ministers would meet more for ceremonial purposes or this set-up on the highest level would get involved in traditional crucial areas of other organizations; for certain areas mentioned in the French memorandum the EC has or will get after the end of the Intergovernmental Conferences at least some partial competence.

Two further sub-options of this differentiated approach are connected with several concepts being launched from the middle of the seventies to the middle of the eighties with terms like "abgestufte Integration"³⁷, multi-tier Community³⁸, L'Europe à la

35 See Gianni de Michelis, Die EG als Gravitationszentrum: Für ein Europa der vier Kreise, in: *Integration* 4/1990, pp. 143-149.

36 See The French Memorandum of June 1991.

37 See Eberhard Grabitz (ed.), *Abgestufte Integration - Eine Alternative zum herkömmlichen Integrationskonzept*, Kehl am Rhein et al. 1984.

38 See Leo Tindemans, *The European Union, Report to the European Council*, Brussels 1976.

caric³⁹, L'Europe à géométrie variable⁴⁰, and a "Europe of diversity"⁴¹. In these concepts, rights and obligations of member countries and of non-member countries would be disjointed according to the policy sector dealt with.

Thus, in a third sub-option, the "multi-tier integration", the EC would constitute a broader framework in which member countries participate according to their objective capabilities. In this sub-option the integration process would be deepened in crucial areas by smaller intra-Community groups and leave the "Community acquis" as it is for allowing more applicant countries to accede to the Community. In flexible forms the outer larger group of EC members could be present but not participate in common decision-making for those areas dealt with by the more advanced group. The EMS can be seen as a model. The ongoing debate in the Intergovernmental Conferences about a smaller more disciplined group to progress towards an Economic and Monetary Union⁴² or to use the Western European Union as a nucleus of a defence organization within the European Community⁴³ are examples for such a strategy.

The basic notion of this strategy is, however, that these exceptions to a full membership are temporary, i.e. that all members share the basic orientation and will take up their obligations and rights as soon as they are capable to do so.

In a fourth sub-option, "l'Europe à géométrie variable", "optimal areas" for problem-solving should be identified irrespective of membership or non-membership to the EC. This sub-option takes up certain arguments of the widening first school, namely that it is artificial and even counterproductive to tackle all problems with the historically accidental Community of the Twelve: for them it makes more sense to have problem solving forms along the lines of functional necessities and political interests. An optimal

39 Dahrendorf, *A Third Europe*, op. cit., pp. 19-20.

40 *Sec Commissariat Général du Plan. Quelle stratégie européenne pour la France dans les années 80? Préparation du IX^e Plan 1984-1988, Paris: La Documentation Française 1983.*

41 Helen Wallace, *Europe: The Challenge of Diversity*, London, Routledge & Kegan Paul 1985.

42 See the Luxembourg "non-paper" on the Economic and Monetary Union, April 1991.

43 See the Kohl/Mitterrand letter to the President of the European Council of December, in: Europa Archiv 1/1991, pp. D 25 - D 27.

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currency area might thus include Nordic non-EC member countries and exclude Southern EC members.

The EC would become but one possible area to tackle problems in common; legal rigidities of the "first Europe"⁴⁴ that everybody has to participate even though it makes no sense, would be overcome. Existing examples could be the cooperation of Western European countries in Eureka and the European Bank for Reconstruction and Development. Interests of the EC could be safeguarded by membership of the EC as such.

In a fifth sub-option, an "affiliated membership"⁴⁵ could be envisaged to certain policy procedures and instruments of the EC which might be either less crucial to the EC core activities or functionally more appropriate for a more flexible membership. The proposal of a full participation in European Political Cooperation before membership to the EC was already launched in the late seventies as a help for Portugal and Spain and repeated in the nineties for central European countries and for Turkey⁴⁶.

Already existing examples for this option are the participation of EFTA countries in EC programmes like COST or ERASMUS.⁴⁷ The Community would remain the major arena of policy-making, but allow a larger degree of flexibility, which seems to be positive for the Community as well as for other non-Community countries. Such a system of sector solutions with those European countries which are able and interested in participating paves the way for eventual further integration, i.e. they could be also seen as a good "traineeship" for full Community membership. They might, however,

44 See Dahrendorf, Plädoyer für eine Europäische Union, op. cit., pp. 76-82; Dahrendorf, A Third Europe, op. cit., pp. 19-21.

45 See Frans Andriessen, Towards a Community of twenty four? Speech held at the 69th Plenary Assembly of Eurochambers, Economic and Social Committee, Brussels, 19th April 1991 (unpublished paper).

46 See Andriessen, op. cit.

47 See William Wallace, Introduction: the Dynamics of European Integration, in: William Wallace (ed.), The Dynamics of European Integration, London, Pinter Publishers 1990, p. 3.

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also lead to a looser Community system, if this would be more functional to problem-solving.

These options to solve the dilemma between deepening and widening appear tempting, also for quite a lot of Community countries and political forces within the Community: a differentiated membership often looks more rational in terms of adequate problem-solving than too stringent Community measures for all member states. Why not have different environmental standards and policies in Central Europe from those in Southern Europe? Why not have Central European and EFTA countries join EPC for at least some common activities. Why not have an EMS with "disciplined" members from outside the EC and leave the weaker EC economies out? The ongoing debate on "subsidiarity"⁴⁸ as a basic principle for attributing tasks and power to different levels of government could even be closely linked to these considerations.

When analyzing the dynamics of the EC in terms of its internal functional and political logics this set of arguments for a differentiated option looses, however, a lot of its conviction.

As to the internal logics, it is difficult to divide problems clearly into neatly separated sectors: spill-over processes – the neo-functional arguments⁴⁹ are in this sense still or again valid⁵⁰ – in a world of sectoral interdependences reduce any separation of policy fields to artificial and inefficient solutions. A "technically sound" division of labour is difficult to envisage.

As to the political logics: progress in the Community's capacity to act is based on a dynamic "mix of policy areas" – not on disjoining them. The success of the Single European Act with the subsequent implementation of the internal market programme was based on broad package deals which offered positive incentives for each of the

48 See Vlad Constantinesco, *Subsidiarität: Zentrales Verfassungsprinzip für die Politische Union*, in: *Integration* 4/90, pp. 165-178.

49 See Ernst B. Haas, *The Uniting of Europe*, Stanford, Stanford University Press 1968.

50 See Keohane, Hoffmann, *Conclusions: Community Politics and Institutional Change*, op. cit., pp. 282-293.

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participating countries. To work within "one issue organizations" reduces drastically the possibilities for side payments and thus the decision-making capacity. Without those package-deals⁵¹, especially smaller and weaker countries will lose influence. Instead of having institutionally-based equal access to decision-making they will be marginalized and become "decision-takers" in the process of building more flexible policy networks.

Furthermore, the proper implementation of Community policies and therefore its success in shaping reality can only be guaranteed when based on a properly functioning legal system, which is difficult to establish in looser sub-systems.

Finally, a strategy of differentiation might lead to new (= old) political "games" as traditional balance of power concepts might inadvertently be promoted by this kind of group-building. Germany in the centre of whatever Europe and increasingly the "core"⁵² will have a "natural" key position for any groupings and thus might be tempted to play some kind of a hegemonic role⁵³ which in turn might lead to coalitions around and against Germany. This fall-back to traditional patterns would help no one.

The legal and institutional properties of the Community are a value as such for all member countries, which should not be abolished for some kind of short term functional advantage. Thus the benefits of this strategy, namely to reduce the dilemma between widening and deepening, is more than met by the costs – also for many countries, who expect to profit from it. This approach seems finally to be no more than an alibi for not taking the fundamental decisions for deepening or widening or at least for making clear that the real alternatives are limited.

51 See Helen Wallace, Making Multilateral Negotiations Work, in: Wallace (ed.), The Dynamics of European Integration, op. cit., pp. 213-228.

52 See especially William Wallace, The Transformation of Western Europe, London, Pinter Publishers 1990, p. 50.

53 See the interview with Nicholas Ridley, op. cit.

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d) The "deepening-for-also-widening" arguments

An alternative though less attractive way of reducing the gap between different expectations is to strengthen the Community for being better prepared to face the challenges of an enlarged Community⁵⁴. This school follows the basic arguments of the "deepening-first-school": the Community needs first to have a "democratic, efficient and effective" set of institutions to deal with the problems of an enlarged Community later on. Enlargement without deepening will lead to a blockage of EC-institutions in terms of the procedural functioning as well as in relation to the "policy mix" which is necessary for a dynamic Community. Thus it is argued that with a Mediterranean or Central European enlargement, the internal budgetary conflicts will increase as long as no real system of own resources exists, the institutional capacities of the present Community, e.g. the rotating Presidency of the Council and of the EPC, would be further weakened.

Deepening is, however, not only a goal in itself, as the school of deepening first would argue, but a necessary pre-condition for a reasonable and productive widening, which in itself is seen as desirable or at least inevitable. Thus the Community should not only think about internal strengthening but – when deepening – it should take into account possible consequences for further applicant countries. That means institutional reforms and the new policy mix of the Community should already try to consider further enlargements and thus prepare for the membership of additional European countries. In this phase, applicant countries should be helped to develop institutional structures and economic capacities which would make them capable of a "full" membership in the Community ("EC capability")⁵⁵. In view of necessary membership criteria those countries should have a certain "traineeship". Thus some arguments of the widening and deepening school are used, though for a different strategy. This school sets a clear priority for deepening first and then widening, but at the same time stresses the overall

54 See e.g. Ralf Dahrendorf, *Betrachtungen über die Revolution in Europa*, Stuttgart 1990, pp. 135-136 (English edition available); Peter Gloiz, *Der Irrweg des Nationalstaats*, Europäische Reden an ein deutsches Publikum, Stuttgart 1990, p. 168 and pp. 174-175; Manfred Wegner, *Die Entdeckung Europas, Die Wirtschaftspolitik der Europäischen Gemeinschaft. Ein Grundriß*, Baden-Baden, Nomos 1991, p. 217.

55 We use this term as a translation of the German term "Europa-Fähigkeit".

European vocation of the European Community and the necessity to develop a serious anticipatory strategy for widening.

This approach does not imply that deepening should be "softer", i.e. less radical in institutional terms and in the transfer of competence. The threshold should not be kept low in view of new members. This kind of anticipatory regard would also backfire for applicant countries as their expectations of a Community membership would not be met. Some even perceive further accessions as a major reason for more reforms to keep the Community efficient, effective and democratic. In this view "the shadow of the future" in terms of a larger Community will be pressing for more deepening. Adherents for a stronger Europe such as a majority of the European Parliament even set a clear "junctim": some deputies will agree to new members only in so far as adequate reforms of the EC are decided at the same time⁵⁶. Widening and deepening are closely linked – though within a clear step-by-step approach.

II. EC-capability: conditions for a membership – a check-list

1. An offer to systemize the debate

As indicated by the schools of thought several criteria and dimensions are major ingredients to the discussion about deepening and widening. To make a focused debate about several countries comparable, I suggest to work with a "check-list" (see survey 1), which could serve for further academic research and for political orientations. The dimensions enumerated are again in methodological terms constructs form political discussions and academic work. They are not weighed, i.e. there is not yet set a ranking list about which dimension or criterion is the most important, nor is there a minimum standard set. The dimensions of the check-list are oriented as well on the pre-conditions for becoming a member as on possible consequences. The dynamics between pre-condition on one side and consequences on the other side will need more studies and debates. The standards mentioned should not be understood as narrow principles to

⁵⁶ Respective resolutions are in preparation.

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exclude on purpose more members as the "widening-first-school" might be inclined to suspect but as prerequisites for a successful European Union of the future – as the "deepening-for-also-widening-school" argues. In this sense all present members would need to be scrutinised by the same check list.

The possible candidates are put into certain regional groupings, which will look "unfair" to some of them, as this categorization might not take into account the specificities of each country and the claim of each possible applicant to be a "special" case worthy of privileged treatment. The grouping serves as some kind of orientation point for a more systematic and coherent approach, they reflect also some vague classification for political strategies of the EC how to proceed and deal with individual countries. The Community might not want to negotiate with one country after another, but she might try to pool applications and to have further accessions by groups of countries.

The dimensions on the check-list can only partially be measured by objective, "hard" facts. Some points can be treated by statistics, which are, however, themselves open to different interpretations. Others are more based on a collection of subjective perceptions. Not all of them are on the official agenda, e.g. treated by the Commission reports to the Council, but my argument is that they are all relevant in the present debate about enlargement. Some points on the hidden agenda (see especially dimension IV) might even play a crucial role.

2. Membership dimension I: democratic reliability

Dimension I concerns the democratic reliability of an applicant country. There are generally three criteria mentioned in this context which are obviously quite closely related.

Criterion a) is the existence of a parliamentary democracy, i.e. governments being constituted and/or at least controlled by a freely elected parliament.

Criterion b) is that of respect of human and civil rights⁵⁷.

Criterion c) is the existence of a respective social and political "infrastructure" such as free trade-unions, freedom of the press etc⁵⁸.

This dimension is seen as an absolute pre-condition for becoming member, given the historic mission of EC-Europe. Though this dimension has not been formulated into the EC-treaties, it is an implied principle in many regulations of the treaty, as well as stated again and again in declarations by the European Council, the European Parliament and the Commission. Besides being a crucial characteristic of the self-perception of EC-Europe, it is also obvious that without fulfilling this pre-condition no member can work via the political structures of the Community and thus really take up all obligations and rights. In this sense it is not only a moral, but also a practical pre-condition for membership.

These criteria are at first view quite clear; at second view, however, the debate on some Mediterranean, Eastern or Central European Countries might be intensive in how far the basic standards of all those criteria have already been fulfilled or are going to be met by the very process of joining the Community. The very process of becoming a member of the EC - some will argue in the line of the widening-first school - is a guarantee for establishing a well functioning democracy as was the case of Southern EC countries; from the deepening-first point of view the capacity of the EC to really influence internal evolutions of certain applicant countries is perceived with more scepticism. The Community has no instrument, at hand, in case a member country would turn away from these standards. Sanctions are yet not part of the EC legal instrument.

57 See avis de la Commission Européenne sur la demande de l'adhésion de la Turquie à la Communauté, op. cit. p. 6. Joint Declaration by the European Parliament, the Council and the Commission on the protection of fundamental rights, Luxembourg 1977.

58 See avis de la Commission Européenne sur la demande de l'adhésion de la Turquie à la Communauté, op. cit. p. 6.

For the EFTA-countries these criteria do not need to be mentioned. All three other groups need secondary reflections, especially till the "Litmus test of a double change of government"⁵⁹ has been passed successfully.

3. Membership dimension II: Fulfilling the "acquis"

A second crucial test for membership is the capability of a country to really fulfil all obligations and rights being put down in the laws and rules of the Community and related policies (the "acquis communautaire and politique").

Criterion a) might be called "economic maturity", to be measured with the help of traditional statistics for the competitiveness and performance of an economy (e.g.: GSP per head, import-export patterns, competitiveness in modern industries, areas and numbers of backward industries in crisis situation)⁶⁰.

By entering the Community – even with a perhaps longer delay in accepting all EC-obligations – means to open its industries as well as to a highly competitive industry inside the EC as to exports from other industrialized and third world countries. The normally lower external protection of the EC in comparison with most applicant countries will thus lead to a double test of being competitive. With the Internal Market completed and with the Economic and Monetary Union in process, there will be few instruments left in the hand of new member states to pursue a modernisation strategy of their own. Though helped by some instruments of the Community, e.g. the Regional Fund, EC membership means a reduction in the freedom of choice for reaching industrial competitiveness. Many would argue that it is more efficient to be inside the Community when confronted with this modernisation process than staying outside. The quite difficult period has to be overcome in any case and, so runs the argument, it is better to be helped by the Community and to be a rewarding place for investments

59 See for the use of this criterion Dahrendorf, *Betrachtungen über die Revolution in Europa*, op. cit., p. 117.

60 See the usual reports of the Commission on applicant countries.

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inside the Community than to be a marginalised economy at the fringe of Europe, which has no free access to the larger market.

From the Community's side, this issue of economic "fitness" is also a question of the budgetary implications and a proper "Finanzausgleich" across the Community. In this respect their wealth is a plus for EFTA countries. The accession of all other groups of countries will lead to a very high burden on the Community budget. Again, you might argue that most of those countries will get budgetary contributions by EC Europe in any case, if outside or inside EC, as the Phare programme indicates. Thus it might be better for the EC to spend these sums within the Community by efficient instruments and proper controls, than to "waste" it outside the direct channels of the EC.

Within the EC the budgetary conflicts will increase between the more and less prosperous members and between Eastern and Southern members over the proper distribution of these sums. This kind of budgetary battles might - like in the past of the EC - block the overall progress within the Community. A proper financial constitution for the EC⁶¹ will therefore be an important precondition for any reasonable enlargement strategy.

Without a certain economic maturity the benefits of the EC cannot be enjoyed and the costs for the new member state and the EC will be unbearable.

Criterion b) for taking up all obligations and - even more for profiting from all rights are an adequate legal and administrative apparatus of new members. The legal acts of the Community have to be properly implemented and applied if they should serve their purposes. Already within the present Community of Twelve, the "sinner's list" of the Commission⁶² clearly indicates the shortcomings and deficiencies of certain

61 See e.g. Dieter Biehl and Peter Ungar, Eine neue Finanzverfassung für die Europäische Gemeinschaft, Strukturen, Rahmenbedingungen, Realisierungschancen, Report to the Economic Ministry, Bonn/Frankfurt, June 1990 (unpublished paper).

62 See e.g. Kommission der Europäischen Gemeinschaften, Siebter Jahresbericht an das Europäische Parlament über die Kontrolle der Anwendung des Gemeinschaftsrechts 1989, Brussels 1990, pp. 46.

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member countries. With the internal market and Economic and Monetary Union, the homogenous application of EC laws and economic guidelines will become of an even increasing importance. All member countries need an appropriate legal as well as an administrative system.

As many EC acts reflect legal and administrating experiences of West European countries, new applicants have to adjust to these West European traditions and working methods. For the EC the issue of sanctions against member countries violating their obligations might become a major topic⁶³.

Again, for the EFTA countries the standards set by the EC seem to create no major problem, though also these countries will have to adapt their traditional system to the legal character of the EC with authoritative rulings by a supranational court.

For all other groups of countries, more research needs to be done in how far they will be able to implement EC acts.

This criterion does not only refer to obligations, but also to the offers by the Community: e.g. for using Community funds, you need to have a proper administrative set-up, which apparently is not available in each of the applicant countries.

Criterion c) of this second dimension is closely linked with the legal and administrative set-up. To be able to pursue your interests and enjoy all possible benefits of EC-membership, you have to dispose of certain political and administrative elites, which are able to play the complex "multi-level system", which takes place in the EC decision-making and implementation. This demand for efficient players in the EC system ranges from experts and civil servants, taking part in the large and differentiated system of committees and working-groups, to ministers and heads of government. With the increasing role of the European Parliament, also the qualifications of European Parliamentarians might become an additional issue. Besides these official actors,

⁶³ See the Luxembourg "non-paper" on the Economic and Monetary Union, op. cit.

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political parties, associations of industries, trade unions, regional politicians and alike need to get involved in their respective European networks.

Again, one might argue that this criterion is of a minor importance for EFTA countries, though again also the political and administrative elites of these countries have to learn quite intensively the "lessons" the present EC-Europeans have. Experiences from international organisations like OECD and the Council of Europe are certainly not sufficient. They might be even misleading for understanding and working the EC-system.

For the three other groups it is difficult to find a common evaluation. Certain countries like Turkey have a long experience with the Community and dispose at least on the administrative level about an experienced staff. In others, like Central and Eastern European countries, a new political and administrative elite has to be established first. In how far these representatives of the "new systems" are open and capable to play the multi-level game is yet to be seen. Given their general background, you could expect that after respective "traineeships" e.g. within the "Europe agreement" there will be a sufficient capability available.

To meet these EC standards is again not only a question of costs and benefits for applicant countries but also for the Community. Unless members have a certain capability to play the EC game, they will become outsiders, marginalized and by this process discontent and frustrated. Perhaps even more important: They might not be able to fulfil all institutional roles they are supposed to take up, e.g. to send experienced commissioners, parliamentarians and especially to prepare a proper presidency of the EC Council and EPC bodies.

With the increase of non-experienced and badly staffed member states, the issue for an adequate political and administrative structure for EC policies becomes a major topic. Institutional and administrative centralization might be a necessary pre-condition for certain accessions.

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Criterion d) for the capacity to be a Community member is the willingness and the capacity to take up all obligations and rights in the European Political Cooperation or the Common Foreign and Security Policy (CFSP) within a Political Union. Though not part of the EC treaty, it is commonly understood that new members have to fulfill the "acquis politique"⁶⁴, though this body of common achievements in foreign policies less clearly defined than the "acquis communautaire". Even by excluding the military dimension of security policies (see below) the Twelve have achieved a certain standard in the convergence of foreign policy perceptions and of the willingness to pursue common actions.

Concerning this criterion there are some doubts about major EFTA-countries. The issue of neutrality will become a major topic of pre-entry debates. The evolution of the neutrality issue seems to be as well a factor of the "detente in Europe", regional conflicts "out of area" as well as a part of "national identity" of certain countries⁶⁵. Norway seems to be the easiest case on this account. The issue of neutrality is more demanding and broader than just the problem of joining a future uncertain defence policy (see below). It is already the question in how neutrals would participate in applying sanctions used already by the Community.

For the other groups no general statement seems possible. Membership in other alliances is incompatible with any accession. For neighbours of the USSR it is of major importance in how far the detente and new orientation of the Soviet Union continues to exist. For the mediterranean countries we also need individual analyses. Malta seems to be a case with specific problems.

Again as with dimension I the deepening-first-school will fix high thresholds to be fulfilled before membership, whereas the widening-first-school would rely on certain positive tendencies which promise to be reinforced by the very process of accession itself.

64 See especially Elfriede Regelsberger, EPC in the 1980s: reaching another plateau?, in: Alfred Pijpers, Elfriede Regelsberger, and Wolfgang Wessels (eds.), European Political Cooperation in the 1980s, A Common Foreign Policy for Western Europe?, Dordrecht et al., Nijhoff 1988.

65 See Heinrich Schneider: Alleingang nach Brüssel, op. cit.

4. Membership Dimension III: Openness towards the "finalité politique"

The third dimension on the check list for members is less clear than the first two, it can be less clearly defined in legal terms or with objective indicators but it is a quite essential. It might be called the willingness to share the vocation for further integration. This "finalité politique" - however ambiguous this is - is expressed in a preamble of the EEC as "ever closer union". In major documents the European Council and the European Parliament have stated that a "European Union" is the final goal. In the preamble to the Single European Act this formula has become a treaty objective. With this dimension I try to identify some arguments in an ongoing debate by the Community orthodoxy in the EC institutions, especially the Commission and the European Parliament, and in major member countries like France. These supporters of the "deepening-first-school" demand some kind of assurance that new members would be prepared to understand the Community as a political process towards a stronger integration and not just an additional functional framework for solving certain limited problems, which would exclude further commitments. Given the salience of the EC policies for the "vital national interests" this issue of also fulfilling "the future acquis" becomes increasingly important.

Criterion a) of this dimension refers to the scope of future policy areas; in this view each applicant is supposed to be in principle open to potential enlargements of the Community competences, that means that there is no major "tabu-zone" by which new members would - after accession - block extensions of the agenda of the Community. In the case of EFTA countries this criterion might be a question of including also possible defense issues onto the EC area of activities. For Central and Eastern European as well as Mediterranean countries this standard might be an obstacle when the issue of joining a Monetary Union is raised, reducing their freedom of economic manoeuvring to a large degree.

Openness criterion b) extends also to flexibility in terms of institutional and procedural adaptations and reforms of the present EC, i.e. that a possible evolution towards a stronger and perhaps more federal system should be not unacceptable.

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Criterion c) refer to the fundamental issue in how far applicants define what might be called their future national destiny as inseparably linked with that of EC-Europe: do they see their "national future" as part of an ongoing process towards a European Union. The Spanish membership is identified as a positive case in which an a new member perceives its overall mission as a part of a successful European integration and redefines in this sense its own history.

With this criterion we raise the issue of possible "double loyalties" to other groupings or states which might reduce a complete sharing of the common destiny, an issue which has been raised in relation with the U.K.'s "special relationship" with the United States, the Danish link with Scandinavia, and might be put on the agenda when applicant countries are members of the Islamic Conference or of the group of non-aligned countries. Some of these countries might argue that this kind of double loyalties could serve for "building bridges" to other neighbouring regions - a concept which at least so far is of limited value in the Community.

If the membership application is not based on a broad internal consensus but subject to strong disputes among the mayor political forces of a country then this standard does not seem to be met. Negative experiences with the Labour party in the UK or Papandreou in Greece worry the Community.

This link of EC membership with the future national position in the world is - as mentioned above - a major reason for the debate about membership in most applicant countries. For many EFTA-countries to "pass" this standard EC-Europe expects a clear commitment to join the Community "for better or for worse". The suspicion within the EC will be strong in how far these successful countries which might feel to be superior to the Community will be prepared to link their future to that of the Community without a long list of open or hidden reservations. For some political groups within these countries it might be quite frustrating to realise that their basic change towards taking up all obligations of the present Community is not sufficient for many political forces within the EC, especially the European Parliament, but that even a "carte blanche", an open check, will be asked by them.

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For the group of Central European countries, the issue of national orientation is difficult to grasp at the moment. There are tendencies similar to that of Spain, of redefining the own history in European terms and by this perceiving EC membership as a major part of the "return to Europe"; thus the future of the nation would be closely linked with that of EC-Europe. On the other hand the rediscovering of national identities might set limits to any major move forward: After having been subjected for a long time to a rule which tried to destroy many traditional values and characteristics these countries might be less inclined to give up again some of their national peculiarities, even if this is a process of a totally different nature. Some would argue that Greece was an example of such a position. For East European and some Mediterranean Countries, it is again too early to make some kind of assessment as the orientations inside these countries will need further observations and analyses.

Some — in line with the widening-first approach — would argue that once an accession has taken place political, legal and functional spill-overs will force the political forces inside the new member states to perceive their own fate as part of EC-Europe even if it is against their original political inclination. In this analysis mental reservations towards more integration do not hold when confronted with the dynamics of the integration process — as the fate of Mrs. Thatcher demonstrates.

The adherents of the deepening-first-school are more pessimistic and worried: they would claim that some kind of clear guarantee is needed first before accession. The potential "nuisance power" of any disloyal or instable member state is perceived as being too high for the Community and its member states. In this view the risks outweigh possible positive opportunities of EC Europe to really integrate countries searching their role in Europe and the world.

5. Membership dimension IV: European Identity

The dimension of what might be called "European Identity" — itself an ambiguous term — is most of the time hidden on the official agenda, however, it is quite often dominating the informal discussions with a high emotional overtone. It concerns the

eligibility of an applicant country in view of how far it shares its cultural and historical heritage with "Europe". It is more than meeting the democratic and human rights standards evoked in dimension I, it is different from the will to pursue the path towards the "finalité politique". This dimension refers to the basic feeling within EC-Europe and beyond of who should belong to the "in-group". Thus EFTA countries are high on this list, though they might be low on dimension III. The dimension might be considered as a "fundamental" in the debate on membership with no or only limited instruments to influence the assessment.

In article 237 of the Community treaties this issue is raised with regard to the geographical location of the Community (criterion a), as only "European" countries are permitted to become members. This provision already stopped an application by Morocco.

Quite often, however, it is not the traditional geographical demarcation which is taken as important but what is seen as a common cultural heritage in a very broad sense (criterion b). There are some who argue that limits of the European Union are set by the borderline between "Rome" and "Byzantium", i.e. major parts of the Balkan and the Soviet Union should not belong to this kind of Europe⁶⁶. Also different racial and religious backgrounds are quite often raised. This criterion of "common heritage" is difficult to operationalise by a clear set of objective indicators which could operationalize the standards to be met.

Criterion c) for this dimension is the trust among members of a future Europe. With this indicator you might grasp the idea of what is called an "imagined community"⁶⁷ in terms of a "security community"⁶⁸ à la Deutsch which implies "a sense of community and of institutions and practices strong enough and widespread enough to assure for a 'long' time dependable expectations of 'peaceful change' among its

66 See e.g. On excluding the Soviet Union, Dahrendorf, *Betrachtungen über die Revolution in Europa*, op. cit., pp. 112-114.

67 See Wallace, Introduction: *The Dynamics of European Integration*, op. cit. p. 17.

68 See Karl W. Deutsch, *Political Community and the North Atlantic Area, International organization in the light of historical experience*, Princeton, Princeton University Press 1957, p. 3.

population." Eurobarometer data on the confidence vis-à-vis potential applicant countries⁶⁹ might be helpful as a starting point for further considerations. EFTA countries get the highest mark, mediterranean countries are low on most lists; further aspects of this criterion c) are related to common understanding of historical experiences and traumata, which forge a common sense of identity and mutual solidarity. Apparently, the consequences of the two "civil" wars in Europe have created a sense of responsibility and, as strange as this might sound, even solidarity among the major countries involved. These perceptions of experiences are not fixed but depend also on the interpretation of ongoing national and international developments. Dramatic events, such as the reactions to the Gulf war, highlight differences of the "historical luggages" which are quite considerable in terms of drawing similar conclusions from a common history.

III. Preliminary conclusions: No easy exit from the dilemma

The four schools of thoughts present different explicit and implicit assumptions and hypotheses about trends in Europe and especially about the dynamics of European integration. The respective validity of the competing analyses and expectations are to be discussed more in detail with the help of the four dimensions from the check-list.

Whatever strategy the EC chooses between widening and deepening one point is underlined in nearly all contributions to the debate: the future of EC is a vital issue for the whole of Europe; the issues at stake cannot or should not be decided upon at random. Major lines in both extreme schools of thought share one assessment: the EC is not just a "functional agency" of secondary importance whose functioning and impact on reality is ultimately not of further relevance. On the contrary: most arguments might even overestimate some of the potential consequences the choice between the strategies might have.

69 See e.g. Eurobarometer 30, Dec. 88, pp. 48-49 (German version).

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From this conclusion about the debate we might draw a major lesson: To treat accession to the EC as a subject of minor importance creates mistrust and will only lead to negative backlashes later on. To become member of the EC is not equivalent of joining an intergovernmental organization of a traditional kind. The EC is an entity with considerable in-built dynamics for further change. Integration is a moving train which cannot easily be stopped by one new passenger. Accession to the EC implies a fundamental decision for both the applicant country and EC-Europe. Both should take their decisions only after an intensive debate about what is involved. Emotional reactions might even be helpful to highlight this importance.

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

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WORKING GROUP I

Institutions and Procedures

Deepening and Widening : The Institutional Dimension

by

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A. A Review: The institutional dimension against the background of the deepening due to the SEA and the widening following the accession of Spain and Portugal to the European Community

1. The institutional dimension of the SEA: modest but successful deepening

At the time being the European Community (EC) is in a reform process unknown to the EC in the last 40 years of its history. Since 1985, the EC is experiencing a remarkable impetus towards further integration, highlighted in the Single European Act (SEA) of 1987, and leaving behind the years of "euosclerosis- or pessimism" after the relaunching of a "new Messina".

The fundamental pillars of the institutional reform in the recent five years have been laid down by the SEA, incorporating the following essential institutional mechanisms into the legal framework of the Community: the revival of the majority voting in the Council of Ministers and the legislative cooperation procedure as well as the assent procedure of Arts. 237 and 238 EEC treaty.

The first two reform steps definitely contributed to a considerable streamlining of the EC decision-making process¹, and at the same time increased the legislative power of the European Parliament (EP) by establishing the right to influence the legislative process on the ground of ten articles of the ECC Treaty. The assent procedure in the field of association agreements and the accession of new members to the EC has additionally contributed to a certain elevation of the Parliament to a "less unequal" partner within the institutional triangle of the Community. Besides this merely institutional progress towards a more consolidated state of

¹ For statistical data as to the streamlining of the EC decision-making process cf. inter alia: Claus-Dieter Ehlermann, Commission lacks Power in the 1992 Process, European Affairs, no.1, p.66/67; idem, The Institutional Development of the EC under the Single European Act, Außenpolitik, 1990, p.138; Christine Borrmann/Christian Engel. Die Verwirklichung des Binnenmarktes 1992 durch eine engere Zusammenarbeit zwischen dem EG-Ministerrat, dem Europäischen Parlament und der EG-Kommission, Bonn/Hamburg, 1990.

the European integration, the SEA enhanced a deepening of the Community by adding further policies to the sphere of competence of the Community, i.e. environmental policy, research and technology, and economic and social cohesion. In a nutshell, the step towards deepening the institutional structures of the Community undertaken by the SEA was, even if often criticized as being nothing but another lukewarm compromise, a considerable advance.

It is interesting to note that the deepening phase from 1981-87, enshrined by the Single European Act, almost coincided with the widening of the Community through the accession of Spain and Portugal in 1986. A central issue that ought to be discussed within the framework of 'widening vs. deepening' is the question whether it might be possible to create a synergy between the first and the latter, following the example of the SEA having done so with economic and institutional problems.² Already during the last rounds of negotiation about the enlargement of the Community through the accession of Greece, Spain and Portugal the Commission considered a deepening of the EC's decision-making capacity in order to avoid an extra overloading of the procedures due to the accession of the new Member States³. Against the background of these considerations the EC Commission had developed, at an early stage of the discussion, the concept of a treaty revision by linking the enlargement with the deepening issue. The solution to the problem of overloaded procedures was seen in a treaty modification which combined a reinforced use of majority voting within the Council of Ministers with an amended legislative procedure: by means of this procedure the decision-making capacity of the Community was to be improved.⁴

² Cf. Emile Noël, *The Single European Act, Government and Opposition*, vol.24 no.1, 1989, p.4

³ Cf. in this sense the Report of the Commission on Enlargement of the European Community: General Considerations, Bulletin of the European Communities, Supplement no.1, 1978, p.15, which calls for an improvement of the practical modus operandi of the decision-making procedures in view of a Community of twelve members.

⁴ Cf. Emile Noël, *op.cit.*, p.11/12.

2. Majority Voting

One of the prominent characteristics of the EC as a new form of international organization, viz supranational organization, derives from the possibility laid down by the founding treaties, that decisions can be taken by a qualified majority. At the time of the Treaties of Rome this innovation must be characterized as one of the specific institutional differences between a supranational organization as the EC and international organizations of the "classical" type, like the OECD. Majority voting in the EC implies that binding decisions can be taken against a number of Member states, unless these form a "blocking majority", of currently at least 23 votes; furthermore, a Member state is able to attack a decision of the Council before the European Court of Justice, even if his own representative consented to it (a fact which is not interpreted as a "venire contra factum proprium") and is not allowed to withdraw from his Community obligations by arguing that his representative did not vote in accordance with his national instructions: almost every aspect of this voting procedure constitutes a radical change with voting procedures in "classical" international organizations. Against this background of decision-making by majority voting it does not come as a surprise that the most crucial crisis of the EC (the French policy of the "empty chair" in 1965), turned exactly around this point of proceeding to more frequent majority voting within the Council, a crisis which was presumably solved by the "Luxembourg compromise", which de facto implied a revival of unanimous votes whenever issues were to be considered of vital interest for one or more Member states.⁵

Due to the importance of the voting procedure for the whole of the institutional system of the EC it must be considered as one of the more important achievements of the SEA reform that it introduced

⁵ Cf. Rolf Lahr, Die Legende vom "Luxemburger Kompromiß", Europa-Archiv, Nr.8, S.223-232. Rudolf Streinz, Die Luxemburger Vereinbarung. Rechtliche und politische Aspekte der Abstimmungspraxis im Rat der Europäischen Gemeinschaften seit der Luxemburger Vereinbarung vom 29.11.1966, München, 1984. It is interesting to note that in between 1973 and 1985 the Luxembourg compromise was only invoked 13 times, cf. Emile Noël. op. cit., p.11.

the majority voting system in a number of policy areas - internal market programme, common customs tariff etc. - and thus strengthened the supranational structure of the Community.⁶ It is needless to stress the fact that an additional impetus towards an enhanced system of majority voting derived from the prospective enlargement of the Community in 1986.⁷ The political and institutional system of the EC composed of 12 Member States was bound to have recourse to majority voting if the Council was to stay an effective legislator.⁸

Future enlargements of the Community - both *ratione materiae* and *ratione personae* - will necessitate a further improvement of its decision-making capacity. The efficiency and effectiveness of the EC institutional system could be e.g. promoted by an enhanced use of majority voting. Decisions to be taken by qualified majority in the Council could be extended to all policy areas of the Community treaties with the exception of article 235 EEC Treaty and the constitutional provisions; a proposal advanced by the Belgian delega-

⁶ Even before the ratification of the SEA a steady trend towards majority voting within the existing treaty system and despite the Luxembourg compromise was to be noticed. In between 1966 and 1974 six to ten decisions were taken at a qualified majority; this number climbed to 35 from 1974-1979 and to over 90 from 1980 to 1984, cf. Jean De Ruyt, *L'Acte unique européen*, Bruxelles, 1987, p.116. Despite these encouraging evolution it is probably not all too difficult to predict, that "consensual decision-making remains, and can be expected to remain, the Council norm", cf. Neill Nugent, *The Government and Politics of the European Community*, Durham, 1989, p.106.

⁷ For a brief history of the reliance of majority voting within the preparatory discussions of the SEA see Andrew Moravcsik, *Negotiating the Single Act: National Interests and Conventional Statescraft in the European Community*, International Organization, vol.45, no.1, 1991 (forthcoming), p.671-673.

⁸ Claus-Dieter Ehlermann concludes on the topic of majority voting and internal market programme: "However, the success of the 1992 project is at the same time conditional on institutional development. The 1992 project would have remained one of the Community's many ambitious but eventually disappointing legislative programmes if the Single Act had not changed voting procedures in the Council and if these new rules had not been applied", cf. *idem*, *Commission lacks Power in the 1992 Process*, European Affairs, no.1, 1990, p. 65.

tion during the current IGC discussions.⁹

To sum up one can conclude that "the return to majority voting enabled the Council to decide better and more quickly, but that was not enough. The effective participation of the European Parliament in the amended legislative process was seen [...] as the indispensable complement to the move from unanimity to majority voting".¹⁰

3. The Cooperation Procedure

In the course of the negotiations of the SEA the European Parliament was, for the first time in the history of the Community, consented a rudimentary right of legislative co-decision via the co-operation procedure instaurated by Art. 149 paragraph 2 EEC Treaty. In the field of ten articles of the EEC Treaty, dominantly connected to the internal market programme, the European Parliament is capable of influencing the legislative process by amending or by rejecting the so-called "common position" of the Council in second reading.¹¹ If the Council decides to by-pass a response of Parliament shared by the Commission the final decision within the Council of Ministers has to be taken by unanimity. Henceforth, a close cooperation between the Commission and the Parliament is a condition sine qua non for a successful enhancement of the European Parliament's point-of-view in the legislative process on the basis of

⁹ Cf. Brigid Laffan, Political Union: A Quantum Leap forward or SEA Mark II, CEEPA Working Papers on European Economic and Public Affairs, no.1, 1991, p.17/18; Wolfgang Wessels, Institutionelle Strategien für die Politische Union: Eine Neuauflage der EEA ?, Integration, Jg.13, Nr.4, 1990, p.197. A Greek paper on the same subject matter is more restrictive as far as the use of majority votes is concerned, but advocates the reduction of the special Councils to four, i.e. political affairs, economic policy, internal integration, agriculture, cf. Brigid Laffan, *ibid.*

¹⁰ Emile Noël, *op.cit.*, p. 11/12.

¹¹ Nevertheless the first reading remains the "crucial stage" for the European Parliament, where it has to "flex its muscles and exercise its powers of amendment", cf. Juliet Lodge, The Single European Act and the Legislative Cooperation Procedure: A Critical Analysis, Journal of European Integration, vol. 11, no.1, p.15.

the cooperation procedure.¹²

Another crucial point revealing the effectiveness of the decision-making process of the EC related to the deepening of the institutional structures through the SEA is the time factor. If one is to consider the lapse of time between the transmission of a proposal to the Council and its adoption, various studies conclude that the decision-making speed in the EC considerably increased, after the coming into force of the SEA¹³, even in the light of the cooperation procedure, which, in the beginning, appeared to many a source of additional mechanical "lourdeur" in the decision-making process (cf. annex 1).

Judging the increase of political influence of Parliament in the legislative process in the light of the new cooperation procedure, even initially critical observers have to admit that this institutional mechanism went beyond the more or less pessimistic expectations of the early post-SEA period.¹⁴ According to an analysis of the Commission, 58% of the Parliament's amendments were accepted by the Commission and 46% by the Council after the first lecture stage since the ratification of the SEA. During the second lecture the European Parliament accepted 70 % of the "common positions" of the Council without modification; as to Parliament's amendments at this stage, 50% were accepted by the Commission, 26% by the Council.¹⁵ These statistical data are confirmed by a recent survey of

¹² It must be noted however, that the Commission generally accepts in between 70-80% of the amendments of the European Parliament at the first or single reading stage, cf. inter al. Neill Nugent, op.cit., p.112.

¹³ Cf. Christine Borrmann/Christian Engel, op.cit., p.128; Claus-Dieter Ehlermann, Commission Lacks Power in the 1992 Process, European Affairs, no.1, 1990, p.66/67.

¹⁴ Cf. inter al., Richard Corbett, Die neuen Verfahren nach der Einheitlichen Europäischen Akte: Mehr Einfluß für das Europäische Parlament, Integration, Jg.12, Nr.1, 1989, p.22-30; Claus-Dieter Ehlermann, op.cit, p.68.

¹⁵ Cf. XXIV. Gesamtbericht über die Tätigkeit der Europäischen Gemeinschaft, Brüssel/Luxemburg, 1991, p.424; Werner Ungerer, Die neuen Verfahren nach der Einheitlichen Europäischen Akte: Eine Bilanz aus der Ratsperspektive, Integration, Jg.12, Nr.7, p.101/102; Wolfgang Wessels, Institutionelle

Jacobs/Corbett who examined the first two years of the cooperation procedure (July 1987 - June 14, 1989) using the same grid (for the latest data cf. annex 2):

- a) in the first reading:
 - the European Parliament approved 11 proposals and amended 57
 - the Commission accepted 473 of the 712 amendments of Parliament (i.e. 66%)
 - the Council took 332 of the 712 amendments into account (i.e. 47%).
- b. in the second reading:
 - the European Parliament approved 35 of the Council's "common positions" (i.e. > 50%)
 - in 32 cases Parliament adopted a total of 132 amendments, 70% (53) of which were taken into account by the Commission and 30 (23%) by the Council
 - Parliament only rejected one "common position" of the Council which the latter in return was not able to overrule by unanimity.¹⁶

An extension of the cooperation procedure to all important areas of the EC Treaties is - as a second-best solution in the event of failure of the EP's (backed by some Member states) present strive for virtual codecision (cf. e.g. annex 3) - highly desirable in the light of the unexpected success of this procedure, for the sake of more transparency within the decision-making process of the Community.

Strategien für die Politische Union: Eine Neuauflage der EEA?, Integration, Jg.13, Nr.4, p.194.

¹⁶ Statistical data taken from Francis Jacobs/Richard Corbett, The European Parliament, Harlow, 1990, p.170/171. Cf. for analogous data Wolfgang Wessels, op. cit., p.194; Christine Borrman/Christian Engel, Die Verwirklichung des Binnenmarktes 1992 durch eine engere Zusammenarbeit zwischen dem Ministerrat, dem Europäischen Parlament und der EG-Kommission, Bonn/Hamburg, 1990, passim.

4. Widening vs. deepening and its impact on the SEA

If the SEA successfully created a synergy between substantial policy issues¹⁷ (i.e. deregulation promoted by the internal market programme) and institutional change, it apparently used this blueprint for the correlation between the enlargement issue and the institutional dimension.

Following the path of the 70s, when institutional change usually constituted a follow-up of preceeding geographical expansions (cf. creation of the European Council in 1974, establishment of the EMS (1978) and the direct elections (1979) in the wake of the enlargement of 1973), the SEA thus seems to have delivered an example of a new "spillover dimension": not from one economic sector to another, but from one institutional dimension to another¹⁸: "Thus in a dialectical manner, the enlargement of the six to twelve, first appearing as an antithesis to effective decision-making, became a decisive element in decision-making reform".¹⁹

B. A brief outlook

1. The IGC on Political Union

In the light of the experiences made with the SEA and its limited institutional progress towards more democratic and more efficient decision-making as well as its even more limited progress towards achieving European Union (more emphasized as objective than really enhanced by the SEA), the current Intergovernmental Conference (IGC) on "Political Union" opened by the European Council in Rome on 14 December 1990 has been set up with, inter alinea, the task of realizing further progress in the functioning of the EC insti-

¹⁷ Cf. Emile Noël, op.cit, p.4.

¹⁸ See Robert O. Keohane/Stamley Hoffman, Institutional Change in Europe: The Single European Act, in: Keohane/Hoffman (eds.): Decision-Making in the European Communities, Westview (forthcoming), p. 32.

¹⁹ *ibid.*

tutional system. The three criteria given by the European Council in this field are: democratic legitimacy, efficiency and effectiveness.²⁰ Although the three criteria are so broad that they could be, and indeed are interpreted very differently by member governments, the negotiations during the IGC have shown that the issues range from limited progress (e.g. the extension of majority votes in the Council of Ministers or the cooperation procedure) to such "fundamental" questions as are co-decision rights for the European Parliament and the (federal) "finalité politique" of the European Community.

The institutional issues involved in the Political Union IGC have their origin in the EC reform debate launched since the beginning of the 80s; in the first place, they concern only "internal" problems. The current debate on a widening of the Community, though, has already had an impact on the internal reform discussion insofar as some Member states and at least one Community institution, the Parliament²¹ (the Commission to a somewhat lesser extent), now consider it absolutely necessary to reach a full political agreement on the Community's future before any widening becomes effective, an agreement that would politically commit Member states to a final goal. Although this goal is, according to those favouring such a political commitment, not going to be reached now, it will nevertheless commit Member states, and applicants for membership. Inside the Community "pillar", the institutional issues of the Political Union IGC could thus broadly be divided into three (though perhaps not very distinct) categories:

1. Progress along the methods and procedures already instituted: Numerical and other "technical" treaty modifications (of considerable political importance however, as purely "technical" questions really do not exist) assuring greater efficiency in the exercise of EC competences or a more democratic decision-making, although not fundamentally changing the EC governance

²⁰ European Council, 14/15 December 1990, Conclusions of the Presidency, First Part.

²¹ Cf. Planas Puchades Report of the EP's Political Committee of 26 March 1991, EP Doc. A3-0077/91.

system.²²

2. Progress by carefully adding new elements to those yet existing: Treaty modifications introducing some new elements, with the objectives of increasing the democratic legitimacy of the EC's system of governance²³, the effectiveness of decisions²⁴ and the participation of national or regional decision-makers in Community affairs.²⁵ Progress along this line should again not fundamentally change the system of governance in the Community, but enhance its overall legitimacy, the acceptance of its decisions by those responsible for implementation or execution of EC policies and also by the citizens.
3. Finally, progress by changing the system of governance, which is, in terms of institutional progress (towards the so-called European Union), the most controversial issue. It concerns in the first place the future role of the European Parliament in the decision-making process, and, more precisely, co-decision between the Council and Parliament. In fact, in institutional terms, co-decision between Council and Parliament is the only issue at the Political Union IGC that, should any solution be found, would bring the EC a step closer to a more federal political system. Even if at least two Member states (the Federal Republic of Germany, Italy) have linked their endorsement of progress in other areas (as EMU) to the parallel strengthening of the EP position²⁶, it can be doubted whether it will be possible, during the current IGC, to reach an agreement on

²² Eg. the extension of the cooperation procedure and majority voting in the Council to new policy areas, a reduction of the number of Commissioners to one per member state.

²³ E.g. giving the Parliament the right to confirm the President of the Commission appointed by the European Council and to give investiture to the whole Commission, and introducing an independent "Ombudsman" for citizens complaints.

²⁴ Eg. By giving the Court of Justice new powers, eg. to fine Member states not fulfilling their obligations.

²⁵ Eg. the introduction of a "Committee of Regional and Local Authorities" with consultative powers, and regular meetings between the EP and national Parliaments in the treaty.

²⁶ In Italy, thus, the Parliament has stated that it wouldn't ratify any treaty that does not explicitly get the consent of the European Parliament.

the co-decision issue (cf. the complex "co-decision" procedure proposed in a draft (a so-called Non-Paper) of the current Luxembourg EC Presidency, annex 3).

Broadly speaking it could be stated that the institutional issues discussed in the Political Union IGC should not affect the possibility of an enlargement of the Community too strongly in setting institutional "barriers" or "hurdles" that would be too difficult to overcome. It could be feared, rather, that the IGC will not be able to agree upon the - necessary - streamlining of its decision-making that must be precondition for the accession of new members. Three aspects - at least - should be pointed out, however, as they may cause difficulties for some (or all) applicants for EC membership:

1. After the SEA, unexpectedly for many, majority voting in the Council has proven to be a considerable success (c.f. above). The extension of majority voting (possibly together with the cooperation procedure) into new policy areas like environmental protection, social policy or maybe even the harmonization of indirect taxes could prove to create problems for such new Member states that will, for (at least) a considerable number of years, depend on the comparative advantage of lower levels of protection for the functioning of their economy, or with a tax system depending on a high level of indirect taxation. If majority voting in these highly sensitive areas would be combined with a stronger influence of the EP (e.g. in the cooperation procedure), these problems could even be increased. On the other hand, an institution as the EP, traditionally "the" supporter of high levels of consumer, environmental or social protection within the EC system, could change its traditional standing on these issues in a different composition. New Member states have to consider, in any case, that they will have to bear with decisions in sensitive areas that could be highly damaging to their economy, or cause other problems. Though many will argue that majority voting in the Council and other new measures introduced to streamline, to simplify or to make more efficient the EC's internal decision-making, for example also a strengthening of the EC Commission's executive powers,

are necessary to assure efficient decision-making in the case of an enlargement, it should be seen that the new Member will suddenly have to bear with the consequences of the decision-making process (majority voting) in the EC in potentially all policy fields, whereas before EC membership they would decide alone.

2. New Member states will equally have to be aware of the amount of loyalty that EC membership is demanding and will be demanding even stronger in the future, if (financial or any other) sanctions by the European Court of Justice are to be avoided, and their political credibility is to be maintained. Although new Members can apply for the solidarity of partners, and ask for derogations and long(er) transition periods, they need to consider that the "costs" of membership, in terms of obliging to the EC's "rules of the game", are already considerable and are at the point of being increased. Countries that until now are not used to give up their national "sovereignty" but are prepared to join the EC have to be, before such a commitment, aware of the amount of independence they will have to give up and the amount of "sovereign" powers they will be transferring to EC institutions. Often, it seems, the implications of EC membership are hardly realized by new Members, and advantages are more easily seen than duties and obligations. Institutional constraints, the institutional dynamics and the extent to which the EC adopts binding legal provisions by own institutions, in which the voice²⁷ of Member states is powerful, but not all-dominating, and in which the individual Member state, acting alone, will only have little impact upon the decision-making, are often not fully understood. This may lead, and it has led, to "premature" applications for membership. The prospect of introducing a new EC legal instrument, a "law" which should be enacted by Council and Parliament in co-decision²⁸, only serves to highlight what is meant. Solutions like a dif-

²⁷ Cf. Weiler, Joseph, *The European Community in Change. Exit, Voice and Loyalty*. Vortrag vor dem Europa-Institut der Universität des Saarlandes, Saarbrücken 1987.

²⁸ Cf. the Non-paper of the Luxembourg Presidency of 15 April 1991, *Europe Documents* N° 1709/10 of 3 May 1991, new Art. 189 EEC treaty.

fentiated integration or a two-speed Europe, again discussed currently, should however be avoided when possible.

3. Though the issue yet is highly controversial, the EC is about to affirm its - "federal" - "finalité politique". It may even be that this finalité, even though it is not going to be realized during the present IGC on Political Union, will however be enshrined in the treaty in some way or another.²⁹ Although some Member states are strongly opposed to mentioning a federal goal and others consider it unwise to focus the attention of the IGC on a simple term³⁰, the debate nevertheless reveals a strong motivation by some Member states and EC institutions to achieve a political agreement now - the dynamics of which may be strong. The political agreement on such a "federal" political system also implies a revision of the institutional structures, a revision that could also, in a long term perspective, lead to system with a true "trias politica" with a "European government" (cf. the Commission) and a Parliament composed of two chambers (cf. the EP and the Council). Applicants for EC membership should carefully consider if they are prepared to follow this road, or at least accept its implications, while the EC should test the willingness of the applicants to realize further steps of political and institutional progress.

2. The future institutional agenda: The European Parliament for example

It could be said, indeed, that some of the most important institutional issues, and in particular some that should very much interest applicants for EC membership, namely the future composition of EC institutions, and in particular the European Parliament. Though the issue of the composition of the EP, and of its representative-

²⁹ Indeed, the informal General Council of Foreign Ministers in Dresden (June 1991) held an extensive (and controversial) debate over whether the term "federal" should figure in the new treaty on "European Union".

³⁰ Cf. statement by the Commission's President Delors before the recent European Council in Luxembourg, Bulletin d'Informations de l'Ambassade de France en Allemagne, N° 122 (28.6.91), p. 4.

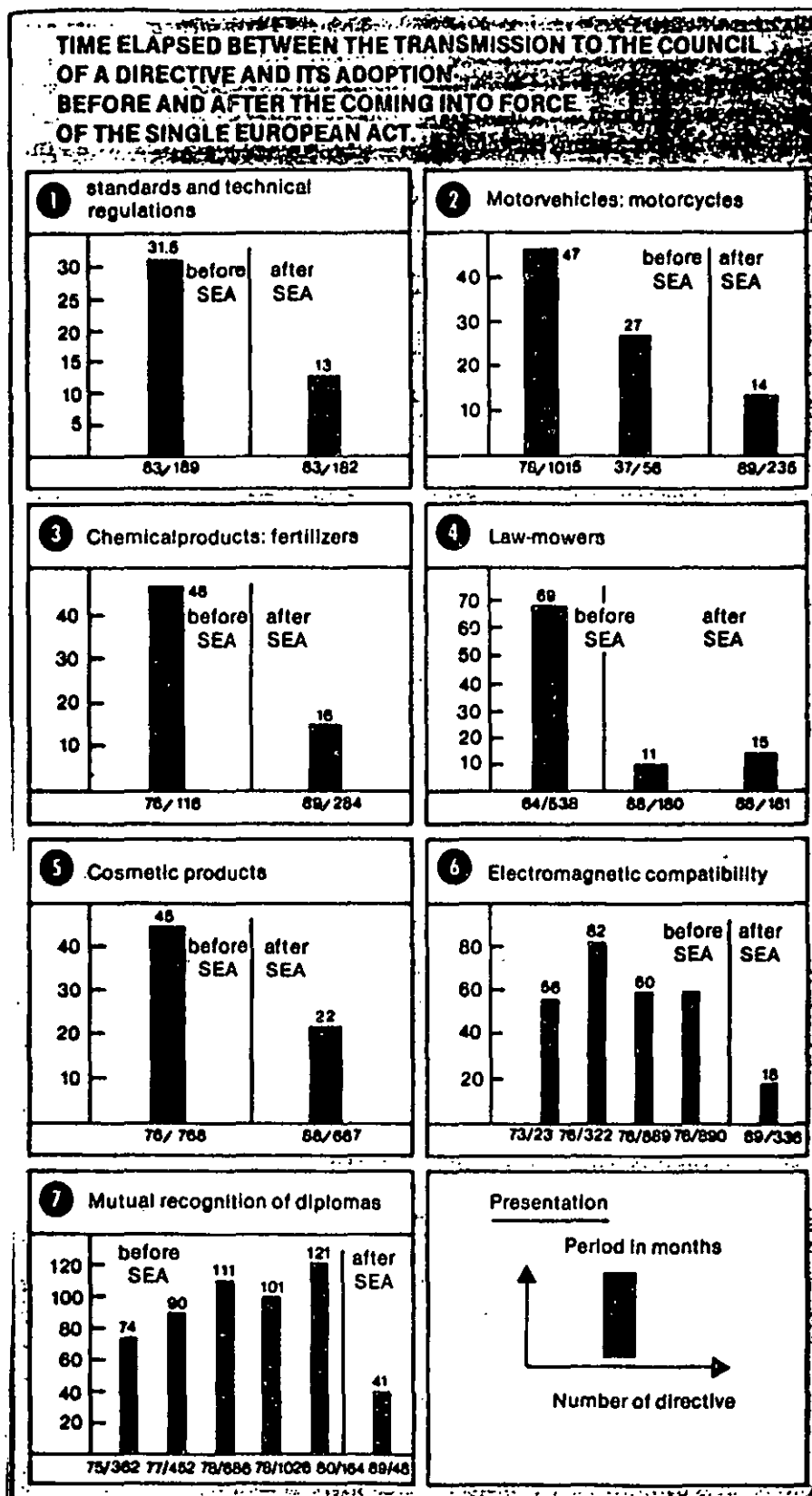
ness, has already come up with German unification that brought the German population up to 77 million people, without that the number of German MEPs was increased³¹, neither this issue nor the problem of a uniform electoral procedure for Parliament has been discussed by the Political Union IGC. Although this subject is not taboo, it seems as though Member states are not inclined to approach it currently.

If, as envisaged by some already for the current stage, Parliament should become a real co-legislator, it will be impossible to avoid the questions of its representativeness and of a uniform electoral procedure, only for the European elections. Both questions remain, however, unanswered and highly complex if it is to be ensured that the present "status quo" in the number of MEPs is retained for the smaller EC Member states and the overall number of MEPs is kept as low as possible, for the orderly functioning of Parliament. A proposal for a Community of 20 Members³² is contained in annex 4. New Member states (as the existing Member states) have to realize that their "national voice" could sound a little weaker once Parliament has become a true co-legislator and its composition is more representative, as in Parliament their numerical importance will usually be smaller than in the Council. No one, however, should be able to predict how a more representative and powerful Parliament would work, e.g. whether the role of political parties - yet to be created on a European level - or national interests will increase. For all, and more particularly for new Member states yet without experiences in and with the EC, more democratic decision-making with a representative Parliament thus is a strong risk. Intergovernmental bargaining is a lot "easier", but will the EC be able to work this way for much longer? Institutional issues thus have to be carefully assessed.

³¹ The situation of 18 "observers" representing the people of the former GDR will satisfy nobody.

³² The number of Member states is deliberately chosen, as it incorporates most EFTA countries and the three Central European countries Poland, Czechoslovakia and Hungary, but disputable. When for the first time making his proposal for "associated membership" at a lecture on 19 April 1991, Vice-President Andriessen of the EC Commission spoke of a "Community of twenty-four".

Annex 1: Decision-making speed in the EEC after the Single European Act³³



³³ Ehlermann, Claus-Dieter, Commission lacks power in 1992 process, in: European Affairs N° 1/90, pp. 65-73; p. 67.

Annex 2: Influence of the European Parliament within the cooperation procedure (EP amendments taken up by the Commission and the Council)³⁴

TABLÉAU STATISTIQUE RÉCAPITULATIF
Acceptation par la Commission et le Conseil
des amendements du Parlement européen adoptés dans le cadre
de la procédure de coopération (Acte unique européen)
pour les 125 procédures achevées fin avril 1990 (1)

<u>PREMIÈRE LECTURE</u>				<u>DEUXIÈME LECTURE</u>			
acceptation par		acceptation par		acceptation par		acceptation par	
la Commission		le Conseil (position commune)		la Commission		le Conseil (texte final)	
Cas (2)	nombre d'amend.	Cas (2)	nombre d'amend.	Cas (2)	nombre d'amend.	Cas (2)	nombre d'amend.
A 18	113	A 9	29	A 21	60	A 7	3
B 69	743/1232	B 73	596/1276	B 30	136/254	B 24	80
C 6	22	C 11	62	C 19	43	C 39	10
- 32	-	- 32	-	- 55	-	- 55	-
TOTAL							
Cas 125		125		125		125	
Proportion nombre d'amendements repris/adoptés							
856/1367		625/1367		196/357		94,	
% d'acceptation							
63 %		46 %		55 %			

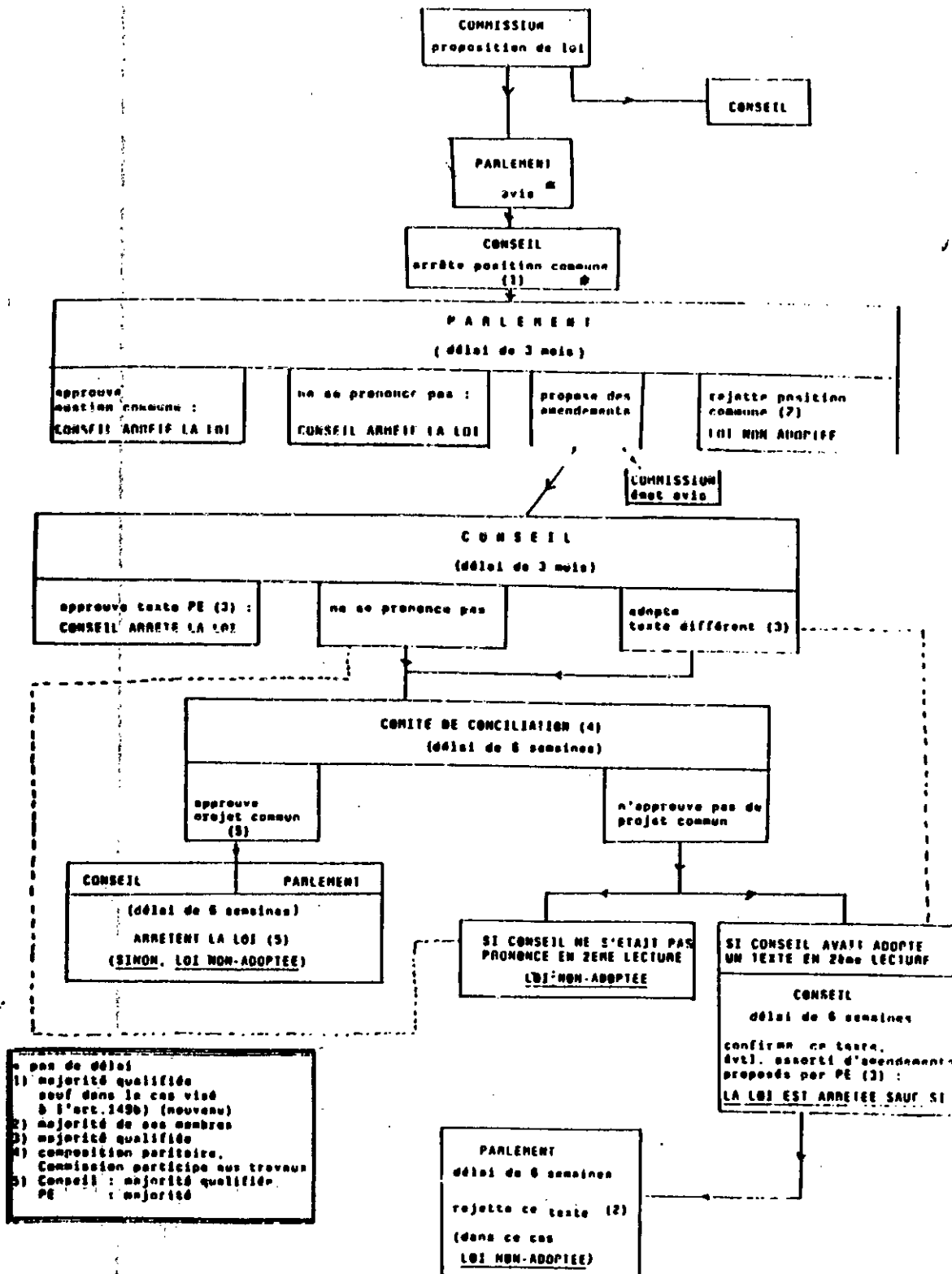
(1) et dont le texte définitif a été publié au J.O. jusqu'à présent

(2) A = amendements PE repris totalement, B = repris partiellement (proportion des amendements repris/adoptés);
C = non repris; - signifie : adoption par le PE sans amendements

³⁴ Cf. Parlement Européen, Direction Générale des Etudes, Les avis législatifs du Parlement Européen et leur impact (Juillet 1987 - Janvier 1990), Luxembourg 1990, Annexe II.

Annex 3: Co-decision Procedure proposed by the Luxembourg Presidency of the EC on 15 April 1991³⁵

NOUVEL ARTICLE 189 A - PROCEDURE DE CODECISION



³⁵ Cf. Europe Documents, N° 1705, 16 April 1991.

Annex 4: A future composition of the European Parliament?^{3 6}

Table 1: Graduated Proportionality Pattern for a European Parliament with 771 Members in an EC of 20 Member Countries

	Indicators of Country Largeness		Representation in Europ. Parliament
	Area (1.000 km ²)	Population (Millions)	767 Members
Federal Republic of Germany	357	78,2	119
Italy	301	57,4	89
United Kingdom	244	56,9	88
France	547	55,6	86
Spain	505	38,8	62
Netherlands	41	14,7	27
Belgium	31	9,9	24
Greece	132	10,0	24
Portugal	92	10,2	24
Denmark	43	5,1	16
Ireland	70	3,6	15
Luxembourg	3	0,4	7
European Community of 12	2.366	340,8	581
Sweden	450	8,4	18
Austria	84	7,6	17
Switzerland	41	6,5	15
Finland	337	4,9	13
Norway	324	4,2	12
EC of 17	3.602	372,4	656 (+ 75)
Poland	313	37,7	61*
Czechoslovakia	128	15,6	29
Hungary	93	10,6	21
EC of 20	4.136	436,3	767 (+ 111)

* Seat distribution: minimum per country (6), strict proportionality up to 750 (for 20), which means that some are losing seats. To guarantee the present "acquis" we add Belgium 4, Ireland 4, Greece 3, Portugal 3, Denmark 3. Total number of seats in EP (771).

^{3 6} Wolfgang Wessels, The Dutch Presidency: A mission as "broker", "guardian" and "ambassador" for a historical opportunity. Paper presented to the TEPSCA Colloque on the Priorities of the Dutch Presidency, The Hague, 21/22. March 1991.

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THE EUROPEAN COMMUNITY IN THE 1990s :
WIDENING VERSUS DEEPENING ?
Bruges, 4-6 July 1991

WORKING GROUP I
Institutions and Procedures

*The Increase of Effectiveness - The Problems of
Implementation in the Light of a Possible Enlargement*

by

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Draft not for quotation

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I. Introduction

There is little need to emphasize the importance of the correct, complete and uniform application of Community law, if the construction of Europe is not to be a house built on sand, the Treaties and Single Act mere words writ in water. Popular acceptance of European integration, already stretched to the limits of credibility by the secretive and, dare I say it, undemocratic character of the decision-making process, may fail altogether, if the laws adopted are not applied, or applied in a manner which favours one category of persons or enterprises over another on grounds of nationality or location. That the Community is one based on the rule of law is a principle which must govern not only the behaviour of the Community institutions, but also that of the Member States in their dealings with all Community citizens, and of citizens in their dealings with fellow-citizens.

The implementation of Community law, an unfinished chapter in the story of the Community's legal order, is a more general problem than those specifically related to enlargement, and it is this more global perspective which has been adopted in the present paper. While enlargement *per se* does not have a direct impact on implementation, new Member States may experience similar difficulties to those existing Member States have had to face, and which are reflected in infringements of their Treaty obligations. This paper therefore examines briefly the Treaty structures for implementation (legal instruments, supervisory mechanisms and relevant characteristics of Community law), current problems and some of the possible causes; a number of comments and suggestions are offered, both in the short term perspective (without Treaty amendments), and in the longer term, in the perspective of a larger and more integrated European Community.

Two further preliminary observations: firstly, improving the implementation of Community law is not necessarily a question of 'deepening', in the usual sense of extending the competences of the Community institutions, though any radical modifications to the present system may have a 'deepening effect'. Secondly, either a series of enlargements of the Community or substantial progress towards European Union would require better arrangements for ensuring implementation of Union or Community law; indeed, like some of the other institutional reforms currently under discussion, measures to improve implementation could well be seen as an urgent necessity for the present European Community if it is to thrive as a viable economic and political entity¹.

II The implementation of Community law - the existing structures

The division of responsibilities between the institutions and the Member States as regards the implementation of Community law is reflected in the legal instruments by which Community policy is enacted, the supervisory jurisdiction of the Court of Justice in this area and certain fundamental characteristics of the Community's legal order.

¹ The necessity for institutional reform was raised early in the last enlargement debate, though substantial action in this regard had to wait until the enlargement process had been completed (see Garrett Fitzgerald in Wallace and Herremans (Eds.), A Community of twelve? The impact of enlargement on the European Communities, p. 12 (Bruges, 1978)).

(1) Legal instruments

The Treaty² provides two principal legislative instruments:

- the regulation, 'binding in its entirety and directly applicable in all Member States'. Not only does a regulation not normally require national measures for implementation, but the Community character of such regulations may not be disguised by national measures. Regulations must therefore be applied by national administrations and courts without more.
- the directive, on the other hand, is stated to be binding as to the result to be achieved, leaving the 'choice of form and methods', to the Member States. These are then required to adopt implementing measures, whether through national legislation, statutory instrument or administrative act. Member States are often given a considerable period of time under a directive in which to adopt the necessary national measures, though this is no guarantee of proper or timely compliance.

In either case, the apparatus of the national judicial system is used to give effect to Community law, whether qua Community law or in the form of national law.

(2) Supervisory jurisdiction of the Court of Justice

The principle of the participation of the Member States which obtains for the adoption and implementation of Community legislation is also present in the Treaty arrangements for the supervision of its application. National courts dealing with matters of Community law may request the Court of Justice to give a preliminary ruling on the interpretation of the Treaty, and the interpretation and validity of Community legislation; such a reference is obligatory for national courts of last resort³. The existence of this procedure presupposes decentralized control of implementation, with the possibility of authoritative rulings on matters of Community law from the central judicial body. To a very large extent in practice, the Court of Justice has used the preliminary ruling procedure as an indirect means of reviewing the compatibility with the Treaty of national provisions⁴. It should go without saying that the Community institutions are under an obligation to cooperate in good faith with national authorities applying Community law, though the Court was recently forced to remind the Commission of this truism⁵.

The Treaty also provides for centralized control, by means of the

² For convenience, reference is made to the EEC Treaty only; the legislative instruments are set out in Article 189.

³ Article 177 EEC; national courts may not themselves rule that Community provisions are invalid (Case 314/85, Foto-Frost [1987] ECR 4199).

⁴ Florence project on Article 177, quoted by Dehousse and Weiler, in W. Wallace (ed.), The Dynamics of European Integration, pp. 254-255 (London, 1990).

⁵ Order of the Court of 13 July 1990 in Case C-2/88 Imm., Zwartveld and others, [1990] 3 CMLR 457. The Court has long held that the Member States and institutions owed each other 'mutual duties of sincere cooperation' deriving from Article 5 EEC (see, for example, Case 230/81, Luxembourg v European Parliament [1983] ECR 255, 287).

'infringement procedure' of Articles 169 and 170. These enable the Commission or a Member State to seek a declaratory judgment of the Court of Justice that another Member State has failed to fulfil an obligation under the Treaty, whether this arises directly from a Treaty provision or from secondary legislation. Though the Court may not annul national provisions - a judicial power considered fundamental to the very existence of the American constitutional system⁶ - it can declare that a Member State has through its conduct, legislative or other, failed to fulfil an obligation under the Treaty, in which case the defendant Member State is 'required to take the necessary measures to comply with the judgment of the Court of Justice'. The EEC Treaty does not provide any form of sanctions against a defaulting Member State, such as had been foreseen (though never applied) in the ECSC Treaty⁷, though the negative judgment may found the liability of the Member State in its national courts towards those whose interests had been prejudicially affected⁸.

(3) Direct effect and primacy of Community law

Certain features of Community law, derived by the Court of Justice from the underlying Treaty structures briefly set out above, facilitate its implementation in the national arena, and, in particular, decentralized control of its application in the national courts. In the first place, the Court has held that not only regulations but Treaty provisions and, in more restricted circumstances, provisions of directives, are capable of creating individual rights⁹. The 'direct effect' of such provisions is intended to contribute to the proper implementation of Community law; in the leading case, decided in 1963, the Court noted that 'the vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles 169 and 170 to the diligence of the Commission and of the Member States'¹⁰.

The other essential feature of Community law in this regard, a corollary of direct effect, is its primacy over conflicting rules of national law; the national court is required not to apply the rule, which the responsible

⁶ O. W. Holmes, Collected Legal Papers, pp. 295-296 (New York, 1920).

⁷ Article 88 ECSC allows the High Authority to suspend payment of sums due to a defaulting Member State, and to take, or authorize the other Member States to take, 'measures to correct the effects of the infringement'; see also section IV (4), where the inclusion of such a possibility in the EEC Treaty is discussed briefly.

⁸ For this reason, the Court of Justice has ruled on infringement actions continued by the Commission even after the Member State has brought the particular infringement to an end; see e.g. Case 309/84, Commission v Italy [1986] ECR 599.

⁹ For a general introduction to the concepts of direct effect and primacy, see e.g. Louis, The Community Legal Order, Ch III (Luxembourg, 1989), or Kovar in Olmi et al., Thirty Years of Community law, pp. 109-149 (Luxembourg, 1983).

¹⁰ Case 26/62, Van Gend en Loos [1963] ECR 1, 13.

national authorities may be required to abrogate. By way of illustration, in a judgment which caused no little controversy in the United Kingdom last year, the Court of Justice held that the British Courts were obliged to set aside the common law rule that an interim injunction could not lie against the Crown, if the application of this rule would undermine the effectiveness of a right recognized under Community law¹¹. While the Court has held that provisions of a directive may only be pleaded by individuals against the State which has failed to implement it¹², certain Treaty provisions can apply in relations between individuals; a good example is the rule requiring equal pay for work of equal value in Article 119 EEC¹³.

Direct effect and primacy are now generally accepted by even the highest courts in national jurisdictions, albeit only grudgingly and rather late in the day by some of these¹⁴. The objective of the uniform application of Community law which underlies these principles is not merely necessary for the purposes of European integration, but reflects a more fundamental value of justice, equality before the law, of which the prohibition of discrimination on grounds of nationality in the Treaty is also an expression.

(4) Implementation - a Member State responsibility

The implementation of the policies of the European Community is, with one or two notable exceptions¹⁵, in the hands of the administrations of the Member States, at national, regional or local level. Disputes on the application of the rules adopted to give effect to those policies are within the jurisdiction of the national courts and tribunals; in the absence of a separate system of courts, Community law is enforced as an integral part of national law in the courts of the Member States, and under national procedural rules. The primary interface between the citizen or economic operator and the Community is therefore the Member State, rather than the central authorities in far-distant Brussels or Luxembourg, though as noted above these are called upon to play an essential supervisory role. Structures for implementing Community law are therefore predominantly national structures, and the Community institutions only intervene after the operation of whatever supervisory mechanisms apply at the level of individual Member States, or if there has been no adoption of national measures in accordance with the Community act.

¹¹ Case C-213/89, ex parte Factortame Ltd., judgment of 19 June 1990, not yet reported in ECR; here the national rule did not require to be abrogated, though it could not be applied to a matter concerning Community law.

¹² Case 152/84, Marshall [1986] ECR 723; see also Prechal 27 CMLRev 451 (1990).

¹³ Case 43/75, Defrenne II [1976] ECR 455. Other provisions with 'horizontal direct effect' include Articles 48 and 59 (non-discrimination on grounds of nationality) and 85(1) and 86 (competition rules).

¹⁴ See Bonichot et al., 6 Rev. fr. Droit adm. 955-986 (1990)

¹⁵ The obvious example is the comprehensive power to enforce the Community's rules on competition enjoyed by the Commission, though even here the Commission favours an increase in decentralized control.

In discussing the question of implementation, it is customary to distinguish between the different stages of such implementation: the adoption of national measures to comply with a directive (or, less typically, a regulation), the application of such measures in practice, and the administrative and judicial supervision of application¹⁶. It is the net result of these processes which constitutes effective implementation, the focus of this part of working group I. Because this paper is presented primarily from the perspective of the Community, rather than the Member States, and Community action to prevent and resolve problems of implementation in the light of possible major constitutional changes, a certain emphasis has been placed on the supervision stage, in the national courts and at the Community level, as providing a potentially more efficient fulcrum for improving the level of implementation of Community law. Furthermore, certain proposals in this area are currently under discussion at the intergovernmental conferences.

III. Current problems of implementation

(1) Why do Member States fail to implement Community law ?

It is not difficult to speculate as to why Member States would on occasion deliberately fail to fulfil their obligations under Community law: dissatisfaction with the outcome of the decision-making process (especially in the post-consensus era), domestic pressure for protectionism, economic advantage for national enterprises, executive inertia or lack of parliamentary time¹⁷. Apart from the non-implementation of judgments of the Court of Justice, such infringements 'in bad faith'¹⁸ remain very much the exception, and it is more instructive to examine the other category of infringements, where the Member State is acting more or less *bona fide*. These may be attributed either to certain features of the Community's legislative process, or arise from national constitutional and administrative traditions.

(a) Community legislative process

Community legislation has in the past been pilloried for its lack of clarity and ambiguity of expression; this may be due in part to linguistic constraints, or reflect the more general difficulty of collective drafting, where a variety of committee-type bodies have a say in the final result. Such defects may also arise from a series of political compromises between the proposal and the adoption, or even the complete failure to agree on a

¹⁶ See, generally, Siedentopf and Ziller, Making European Policies Work, European Institute of Public Administration, London 1988.

¹⁷ Siedentopf and Ziller, op. cit. Vol II, is an invaluable source of information on the administrative structures created in the Member States (excluding Spain and Portugal) to implement Community law, and the problems they encounter in this area.

¹⁸ The expression is Rasmussen's, 'Les Etats membres et l'inexécution des obligations communautaires', 48 Pouvoirs 39 (1989).

particular point¹⁹. On a practical level, to give effect to the single market programme, Member States are called upon to cope with an increasing volume of legislation from Brussels, particularly directives which require further action on their part. A more serious complaint, which may reflect the level of democratic input in the legislative process, is that the content of Community provisions is sometimes out of touch with social and economic realities. The evolutionary nature of Community law, especially through innovative interpretations of the Treaty by the Court of Justice, has also on occasion caught the Member States flat-footed. Finally, infringements have arisen in the past when the Member States have simply agreed, with or without the connivance of the Commission, not to apply a particular provision of Community law, such as the Treaty rules on majority voting (the so-called Luxembourg agreement of 1966) or the principle of equal pay for equal work mentioned before.

(b) National practices and traditions

The correct and timely adoption by the Member States of the requisite national measures to give effect to their Community obligations can depend on constitutional factors (such as the necessity for a legislative act rather than a statutory instrument or ministerial degree, or the extent to which the rule-making competence on the national level is decentralized), or administrative organization (such as the splitting of responsibility for a particular Community matter amongst several departments). In practice, implementation can be affected at this stage by other less easily quantifiable factors, such as the extent to which the political process can impede implementation by the administration, or the adequacy of resources accorded to the administrative department responsible.

As regards application of the rules adopted, observable differences between the Member States in this regard may be considered to be more a function of differences in the national 'administrative cultures', than necessarily going to prove a lesser respect for Community law in the recidivist Member States. By this token, 'the implementation of Community legislation is not the problem: if one could solve the implementation problems of national law, one could also solve the implementation problems of Community law'²⁰. That said, differences in legal culture which are not necessarily dysfunctional, as illustrated by the facts of the Factortame case, can also give rise to infringements of Community law, as can unfamiliarity with the Community's complex legal system and its novel concepts. The independence of

¹⁹ A striking example of the latter gave rise to the 'coinsurance cases' by the Commission against four Member States. An intractable disagreement between a liberal minority of the Member States and the Commission, on the one hand, and the remaining Member States on the other, as to the extent of the freedom to provide services under the Treaty had resulted in the adoption of a 'notoriously ambiguous' provision defining the scope of the 1978 coinsurance directive, which the Court of Justice was called in to resolve (Case 205/84, Commission v Germany [1986] ECR 3755, et al.; the background is described in Pool, 'Moves towards a common market in insurance', 21 CMLRev 123, 134-136 (1984)).

²⁰ Kooiman, quoted by Ziller in Siedentopf and Ziller, *op. cit.*, Vol. I, p. 141.

the judiciary, and certain other organs of government, means that the executive is in effect powerless to intervene to bring a breach of Community law committed by such bodies to an end, though, as noted above, the Commission's policy is not to institute proceedings in these cases. While most of these 'national' causes of possible infringements are not such as can be 'cured' by measures at the Community level, it may be hoped that their potential for damage will diminish over time.

(2) Community supervision of implementation

I think it is fair to say that the question of supervising the implementation of Community law by the Member States was given a very low priority for the first two decades of the history of the common market. During this 'diplomatic period', the Commission rarely used the infringement procedure of Article 169, relying on persuasion in its dealings with the national administrations: in the words of the former Director General of its Legal Service, in those days 'for the Commission and its services, the implementation of directives was largely unknown ground'²¹.

The Commission's change of tactics came in 1977, under the presidency of Mr Roy Jenkins, when it adopted a policy of more vigilant supervision of the Member States by the Commission and a more 'aggressive' use of judicial proceedings. As the results of this supervisory policy became known, the European Parliament took an interest in the matter, and in 1983 requested the Commission to produce an annual report on the application of Community law by the Member States²², the first of which was produced the following year, the seventh last September²³.

The reports, which may be considered essential reading for any Community lawyer, classify infringements into two main categories: failure to respect a provision of the Treaty or a regulation, and non-implementation of a directive (whether through failure to notify the Commission of national implementing measures, improper implementation or improper application of national implementing measures). The commencement of such proceedings generally proves

²¹ Ehlermann in Siedentopf and Ziller, *op. cit.*, Vol. I, p. 146.

²² Resolution of 9 February 1983, OJ 1983 C 68/32. Ehlermann's view that the European Parliament pays the annual reports 'relatively limited attention' (*op. cit.*, p 147) is difficult to sustain; indeed, Parliament's keen interest in the subject is reflected in its consistent complaints that each annual report is presented too late in the year - the report covering 1989 was published in September 1990 - to enable it usefully to contribute to the drawing up of the following report. Parliament's Rules of Procedure were amended in September 1990 to render obligatory the drawing up of a parliamentary report on the Commission's annual report on Community law (OJ 1990 C 260/85), which could be considered as having replaced the annual general report on the Community's activities (Article 143 EEC) in importance.

²³ References for the first six reports are given in footnote 1 on p. 1 of the introduction to the seventh report, OJ 1990 C 232/1 (= COM(90) 288 final). Obviously reports on the Commission's monitoring of the application of Community law are only an approximate guide to implementation in practice, complementing scientific studies on implementation mechanisms in the Member States, such as Siedentopf and Ziller, *op. cit.*

to be an efficient incentive to the Member States to act in order to apply a directive; though proceedings concerning directives constitute about 3/4 of the actions initiated in a given year, they only make up about half the judgments the Court is called upon to pronounce. The Commission is thus frequently able to withdraw its action following tardy compliance²⁴. As might be expected, agriculture, the internal market and environment make up the bulk of the infringements classified by sector.

The reports also reveal considerable differences in the behaviour of the Member States. In 1989, for instance, the Commission took Italy to Court on no less than 35 occasions (more than 1/3 of the total for the year) and Belgium 14 times; the respective figures for the Federal Republic of Germany and the United Kingdom are 4 and 5²⁵. The figures do not necessarily tell the whole story; in the third report, covering 1985, the Commission expressed disquiet at the failure of certain national courts of final instance either to take account of the caselaw of the Court of Justice, or to refer questions of Community law to that Court for a preliminary ruling. It took the view that, though infringement proceedings could have been commenced against the Member State in such cases, 'such a procedure does not constitute the most suitable basis for cooperation between the national courts and the Court of Justice' preferring instead 'to induce the Member States to ensure, without impairing the independence of the judiciary, that Community law is respected'²⁶. In the seventh report, the Commission was gratified to note a greater willingness of the national courts to apply Community law, including judgments of the Court of Justice and the preliminary ruling procedure: 'the Commission's analysis has shown no instance of national supreme courts having given judgments inconsistent with Community law'²⁷.

The seventh report evidences a continuing tendency of the Member States not to conform to the deadlines set by directives required under the single market programme (45% failure rate). Of more concern to the Commission, however, is the comparatively greater reluctance of the Member States to comply with 'unfavourable' rulings of the Court of Justice. The phenomenon was practically unknown 15 years ago; a study of infringement proceedings in 1975 noted that 'there has been only one occasion on which the Court has rendered a decision recording the failure to comply' with an earlier Court ruling²⁸. In 1984, 29 cases of non-implementation of Court judgments were outstanding, a

²⁴ In 1989, for example, the Commission sent 521 formal notices concerning non-implementation of directives and 119 reasoned opinions; 60 cases were referred to the Court, which delivered just 12 judgments for this type of infringement (seventh report, table 7, OJ 1990 C 232/37). The figures for a given year are of course only indicative, as the infringement procedure can take two or more years from formal notice to judgment.

²⁵ *Ibid.*, table no. 1, p. 31.

²⁶ OJ 1986 C 220/27.

²⁷ OJ 1990 C 232/54.

²⁸ Barav, 'Failure of Member States to fulfil their obligations under Community law', 12 *CMLRev* 369, 377 (1975).

figure which had leapt to 89 in 1988 and 82 in 1989. In 1990 the Commission was moved to denounce as 'detrimental to the proper functioning of the Community' the failure of one Member State to comply with a ruling against it dating back to 1983, notwithstanding a second condemnation in 1987²⁹.

IV Some proposals for improvement of the implementation of Community law

A number of reforms at both the Community and the national levels can be envisaged in order to improve the implementation of Community law in the short term, without requiring Treaty modifications. In the perspective of either a substantial enlargement of the Community, or worthwhile progress towards a European Union, these may prove insufficient, and so a few more radical modifications are also discussed. The proposals are not a disparate set of discrete measures, but should be viewed together as a policy of reform to improve the implementation of Community law in practice, while leaving the underlying structures more or less intact; the increased direct effect of Community provisions, for example, would be much less effective without the necessary procedural mechanisms.

(1) Short-term reforms - Community level

The current activities and immediate future of the Community are dominated by the objective of the creation of a single internal market, the process to be completed in just 18 months from now. The primary beneficiaries of this internal market seem likely to be economic operators in the Member States (unless dramatic steps in defining Community citizenship are taken in the near future), and it is they who have the most direct interest in ensuring the Member States respect their legislative commitments³⁰, if need be through the national courts. Though a matter within the purview of the Member States, the Community institutions could act to facilitate decentralized control, which should have a knock-on effect on the earlier stages of implementation. Practical considerations also plead in favour of such a policy, in particular the sheer volume of national measures; if each directive is supposed to engender 12 sets of implementing measures, the White Paper alone will be responsible for approximately 3360 legislative acts, to say nothing of national measures required in other areas of Community activity.

- more extensive use of regulations

The possibility of utilizing regulations for internal market legislation was specifically included in the Treaty by the Single Act in Article 100a, though little used heretofore, if at all. Regulations could also be adopted in other areas, where the current tendency is to prefer the directive. One example from the areas of citizens' rights is the series of directives on the right of residence for persons of independent means, for retired workers and for students adopted by the Council in June 1990, which appear capable of creating rights which could be relied upon in before national courts; nothing in the

²⁹ OJ 1990 C 232/27.

³⁰ See Bronckers, 'Private enforcement of 1992: do Trade and Industry stand a chance against the Member States?', 26 CMLRev 513 (1989).

Treaty would have prevented the Council adopting a regulation in each case³¹. With a view to a more effective, and uniform, decentralized control, regulations should tackle procedural matters, such as the possibility of judicial review of administrative decisions, and the range of remedies for breach of their provisions (on access to justice and national procedures generally, see (4), below).

- extended direct effect of directives

Where the directive is the instrument imposed by the Treaty, those provisions which are capable of creating rights the citizen can rely upon in national courts (direct effect) should be identified in the directive itself, and the Member States obliged to indicate the Community origin of a national implementing measure. One further possible refinement would be to combine the directive with a regulation, the latter to apply in a particular Member State only if, and to the extent, that the Member State has failed to adopt implementing measures³² (this would overcome the absence of horizontal direct effect of directives, i.e. effect as between citizens inter se).

- use of legislative codes

The idea of codifying existing Community legislation, adopted at various times years apart though now settled law, is not a new one, and as a proposal for reform is quite modest³³. The code should set out in a single measure all the Community provisions on a given topic, indicating as need be, those areas where the Member States may or must legislate. Certain branches of internal market legislation completely overhauled in the space of the last few years (banking and insurance regulation, for example), would make particularly suitable candidates for codification; once the 1992 programme has been completed the Community institutions may even have some spare legislative time for such an undertaking.

- Commission activity

The essential contribution of the national administrations in both the shaping and the application of Community legislation has been noted above; to alleviate as far as possible problems arising from linguistic discrepancies and accidental ambiguities of drafting, the Commission could cooperate more intensively with those national administrations in the preparation and application of implementing measures³⁴. If measures to promote a greater decentralized control of implementation are successful, particularly as

³¹ Directives 90/364, 365 and 366/EEC, OJ 1990 L 180/26, 28 and 30, respectively; they were each based on Article 235 EEC.

³² See Gaja, Hay and Rotunda in Cappelletti, Seccombe and Weiler Integration through Law, Vol. 1, Book 2, pp. 124-126 (Berlin 1986).

³³ The European Parliament, for example, has long advocated codification of Community law; see, for example, its resolution of 20 May 1989, OJ 1989 C 158/388.

³⁴ In its seventh report on Community law, the Commission indicated its intention to 'dialogue with the Member States in the preparation of incorporation measures' and organize exchanges with the departments of national administrations responsible for implementation, though only in the internal market area (OJ 1990 C 232/7).

regards directives, the Commission could presumably reserve infringement proceedings primarily for disagreements of a legal character on the interpretation of Treaty provisions and regulations. The suggestion that the Commission should carry out a centralized monitoring of draft national legislation liable to encroach on Community law has been tentatively mooted³⁵, though the enormity of the task casts some doubt on its probable efficiency.

(2) Short-term reforms - National level

- consideration of potential implementation difficulties at the adoption stage

The role of the national administrations is not confined to the implementation of Community legislation; through the working groups of the Commission - 70 % of whose membership comprises national officials acting in a 'non-official' capacity - and of the Council, the administrations of the Member States play an important, perhaps too important, role in formulating that law³⁶. To the extent that they do not do so already³⁷, the Member States could ensure adequate representation at the adoption stage of the departments responsible for implementation and application of the Community decisions adopted, and that potential problems in this regards are raised and dealt with as early as possible.

It has also been observed that whenever the responsibility for applying the Community provisions lies with regional or local authorities, their implementation is facilitated if these authorities are able to participate in the adoption process, for example through consultation with the central authorities before definition of the national negotiating position. The necessity of including an institutionalized representation of the regions at the Community level of decision-making is currently under discussion³⁸.

- national supervision of application

If a policy of decentralized control of implementation is to work, it should follow that the supervisory mechanisms of the Member States should be applied to Community law. The Commission has already proposed that each of the Member States set up a central administrative system for monitoring implementation, which most Member States have done. What is striking, however, is the apparent lack of interest of the national parliaments in the implementation of

³⁵ Gaja *et al.* op. cit., p. 156-158; such a priori supervision already applies in a number of areas, particularly as regards technical regulations under Directive 83/189/EEC as amended.

³⁶ See Wessels in W. Wallace (Ed.), The dynamics of European Integration, pp. 229-241 (London, 1990)

³⁷ The matter appears not to have been raised at the IVth Erenstein Colloquium, reported by Ziller in Siedentopf and Ziller, op. cit., Vol. I, who considered that this lacuna 'demonstrates a symptomatic disregard by both practitioners as well as theoreticians of the difficulties arising from problems of implementing public policies' (p. 136, sic). The input of departments dealing with implementation at the decision-making stage is touched upon in most of the national reports in Vol. II.

³⁸ See Article 198A of the draft treaty of the Presidency of 18 June 1991 for the intergovernmental conferences on political and economic union.

Community law on their respective territories, particularly given their limited role in the adoption of implementing measures in most Member States³⁹. In the Community system of the division of responsibilities, the European Parliament is primarily concerned with supervising the activities of the Council and the Commission, yet it was this parliament which pushed for the annual report which covers the application of Community law by the Member States. As Community law is fully part of each national law, albeit not adopted (except for directives) by the national legislature, it is surely the duty of national parliaments to supervise at least the activities of their administration in applying Community law⁴⁰, with centralized supervision by the Commission and Court as a last resort.

- dissemination of information on Community law and citizens' rights

It is at the national level that the most effective action could be taken to ensure the widest dissemination of accurate information about the Community⁴¹, and in particular the rights Community law has created for the benefit of the citizen and small businesses, perhaps through Citizens' Advice Bureaux where they exist, or their equivalent. Courses on Community affairs might with profit be integrated into higher education qualifications with a vocational flavour, and in particular Community law could be designated as a core subject for the practice of law, whether at university or in separate professional courses. It is beginning to dawn upon certain Member States, heretofore lagging behind in this area, that the familiarity of its workforce with Community matters can be a valuable personal and national asset, and not an intellectual ornament acquired in pursuit of some sort of grandiose Euro-philosophy.

(3) The Enlargement Perspective

The question of implementation in the perspective of enlargement is primarily one for the new Member States under the division of competences reflected in the Community legal order; the accession of one or several European states to the Community will not mean that Community law is implemented more effectively, or less so, in the present Member States⁴².

The fundamental condition for accession to the Community is the acceptance by the candidate Member State of the existing legal patrimony, or

³⁹ For details of the practice in each Member State, see Siedentopf and Ziller, Vol II. On the increasing importance of the supervisory functions of national parliaments, see, e.g. Bosco in Louis and Waelbroeck, Le Parlement européen dans l'évolution institutionnelle, p. 318 (Brussels, 1988).

⁴⁰ The same could be said in theory, though without much conviction in practice, of their duty to supervise the legislative activity of their ministers and officials at Community level.

⁴¹ This point is consistently emphasized by the European Parliament in its resolutions on the Commission's annual report (see, e.g. paragraphs 16 and 17 of its resolution of 13 July 1990 on the sixth report, OJ 1990 C 231/232).

⁴² Obviously such accession or accessions would have a number of 'instrumental effects', rendering the Commission's supervisory task more difficult, especially if new and unfamiliar working languages are added to the present nine.

acquis communautaire⁴³. This has grown considerably richer, in quantitative and qualitative terms, even since Spanish and Portuguese accession, only five and a half years ago, and is set to increase further in the years to come. New Member States which have not enjoyed close links with the Community over a long period of time, such as those under an association agreement⁴⁴, will be called upon to implement a large body of substantive law, in an unfamiliar legal context, without the benefit of having participated in its adoption process which is generally thought to facilitate subsequent implementation⁴⁵.

In this regard, it is clear that the possible accession of some or all of the EFTA countries will be rendered very much easier should they reach an agreement on the European Economic Area, such as is currently under discussion. To a large extent, this initiative grew out of the fear of these states of exclusion from the internal market access to which would be regulated by harmonized Community provisions, some of which they then adopted unilaterally⁴⁶. As negotiations presently stand, not only will the EFTA states agree to apply the substantive acquis communautaire in most areas of Treaty activity by 1 January 1993, but they seem likely to agree to give 'EEA Treaty law' both direct effect and primacy over national law, and to adopt the necessary national provisions to ensure the application of such law. It would be more than somewhat ironic if Community law were applied after 1993 more diligently outside the Community than within.

The Community now has a certain experience of enlargements, and a number of practices have developed, such as bringing candidate Member States into the decision-making machinery unofficially even before formal accession, and granting transitional periods, tailored to the particular area of activity and capabilities of acceding Member State, for the full application of Community law⁴⁷, which should facilitate more efficient implementation. There is no need to emphasize how much an early and comprehensive campaign to familiarize the relevant public with Community law would also contribute to the achievement of this aim⁴⁸.

⁴³ See Olmi in Wallace and Herreman, op. cit., p. 80.

⁴⁴ See the thoughtful contribution to the 1978 Bruges week by the late Judge Evrigenis on the impact of accession on Greek law and institutions, who describes the association regime as 'a sort of anti-chamber to the status of Member State', in W. Wallace and Herreman (eds.), op. cit., p. 135, at 149.

⁴⁵ Ciavarini Azzi in Siedentopf and Ziller, op. cit., Vol. I, p. 196.

⁴⁶ Candidate Member States outside EFTA might also consider the possibility of unilaterally adapting their national provisions to those of the Community in advance of formal application.

⁴⁷ Olmi, op. cit., pp. 107-108.

⁴⁸ See Evrigenis, op. cit., p. 153.

(4) The Perspective of European Union - Treaty reforms⁴⁹

- a new typology of acts

The typology of legislative instruments of the EEC Treaty is as confusing to the ordinary citizen as it is innovative; in particular, it is difficult to explain why a directive can create rights or not, depending on how its provisions are drafted, and why such provisions may be relied upon if you are a public sector employee, but not if you are working in the private sector. Community directives in certain areas tend to legislate ever more minutely; the devil is in the detail, and on the principle of 'mutual distrust'⁵⁰, each Member State - and the Commission, at least in theory - will be in a position to know what the other Member States are doing if directives dot every 'i' and cross every 't'. The national implementing authority is thus frequently left with little or no choice as to the national measures which are required, and in many cases the provisions would sooner or later have direct effect. The converse tendency may be seen as regards regulations, where the Member States can be required to adopt implementing measures, notwithstanding the direct applicability of the Community act; indeed, the Council has been known to choose a regulation in preference to a directive with the inglorious objective of allowing Member State governments to circumvent their national parliament.

The strict Treaty rules constraining the Community institutions in their choice of legal instrument, relaxed only to a small degree by the Single Act, may be considered to be characteristic of an early stage of European integration; the directive was seen as safeguarding a certain legislative role for national parliaments, especially in the harmonization of existing national legislation, and a hedge against centralizing tendencies the Community might develop. In a more mature European Community, or Union, the distinction between regulation and directive could be abandoned in favour of a more rational typology of acts, such as a single Community 'law', which may or may

⁴⁹ The question of extensive centralized implementation, for example, by means of Community agencies in the Member States applying Community rules directly, or by the widespread use of funding from the Community budget subject to compliance with a wide variety of Community rules in matters not directly related to the activity funded (along the American 'grant-in-aid' model) is not examined in detail here, as it presupposes a more centralized power structure for the Community, which does not exist, and seems unlikely to exist in the foreseeable future. Dominant opinion in the United States sees such devices as having contributed to the formation of a system of 'permissive federalism', where 'there is a sharing of power and authority between the national and state government, but ... the states' share rests upon the permission and permissiveness of the national government' (M. Reagan and J. Sanzone, *The New Federalism*, p. 175 (OUP, New York, 1981); see also, Stewart, 'Madison's Nightmare', 57 *U. Chicago L.R.* 335 (1990)).

⁵⁰ The expression used by Ziller, in Siedentopf and Ziller, op. cit., Vol. I, p. 132, who discusses in detail the confusion of legal instruments in the Community. Officials in some national administrations tend to prefer detailed directives which can be taken over *in extenso* in the relevant transposing measure, warts and all (see, e.g., Francois and Vandercammen in Siedentopf and Ziller op. cit., Vol. II, p. 27, and Pag and Wessels, *ibid.*, p. 169).

not require implementing measures by the Member States⁵¹. The question of the creation and enforceability of individual rights - against the State and other citizens, as the case may be - would then depend on the nature of the right claimed and rules concerning locus standi, rather than the classification of the instrument. I am not here advocating the centralization of legislative power in the Community institutions; au contraire, the abolition of the now somewhat misleading distinction between the directive and the regulation, combined with the application of a workable principle of subsidiarity by subject matter, would surely facilitate the task of national, regional and local authorities in identifying and carrying out their own responsibilities, under both national and Community law.

- Sanctions

One of the more fashionable ideas for improving the implementation Community law, and in particular the compliance with judgments of the Court of Justice, is to provide for a sanctions against a defaulting Member State, in the form of a periodic penalty, a lump sum or the withholding of Community funds⁵². While in a few areas financial pressure can already be brought to bear on recalcitrant Member States - under the structural funds and rules on the award of public contracts, for instance, Community aid is conditional on compliance with the relevant Community rules⁵³ - the punitive approach now being advocated poses a number of problems compared to the current techniques of persuasion. As noted above, not all infringements are committed male fide. More practically, it is difficult to envisage a level of financial penalty against a Member State which will be effective; furthermore, while all Member States are equal before the law, really substantial fines would have more impact on the poorer Member States, some of whom, perhaps not coincidentally, are more frequently guilty of infringements than their richer neighbours. Even the withholding of Community funding on a large scale may run counter to the requirements of Community solidarity which masquerades under the less-than-enlightening epithet 'economic and social cohesion'.

A more refined approach to the problem of non-compliance with Court judgments would consist in empowering the Council, acting in all cases by a qualified majority, to adopt measures to bring the Treaty violation to an end where the defaulting Member State had not done so within a fixed deadline. Though more attractive in theory than financial penalties, such a solution is

⁵¹ Article 34(1) of the European Parliament's Draft Treaty for European Union of 14 February 1984 proposes a single legal instrument for the 'common action' of the Union, defined in Article 10(2) to mean 'all normative, administrative, financial and judicial acts...addressed to [the] institutions [of the Union], or to States, or to individuals' (OJ 1984 C 77/33-52).

⁵² The idea is discussed in a Commission staff paper reproduced in SEC(91)500 of 15 May 1991, and reproduced in Article 171 of the Luxembourg draft treaty of 18 June 1991; a number of other proposals have been discussed but not published.

⁵³ Seventh Commission report, OJ 1990 C 232/5. The European Parliament's suggestion that illegal state aids be repaid into the Community's budget rather than that of the offending Member State is an interesting one (resolution of 18 January 1990, OJ C 38/108).

not immune from the danger that a sufficient number of Member States would side with the defaulter or defaulters, in an atmosphere of mutual back-slapping, and that the Council would be unable or unwilling to adopt any worthwhile measure⁵⁴; the rights of individuals and undertakings would not necessarily be protected.

- Access to justice

The Commission's proposal for discussion at the Intergovernmental Conferences in this regard is particularly worthy of consideration⁵⁵. Article 5 of the Treaty, which obliges the Member States to 'facilitate the Community in the achievement of its tasks' could be amended to spell out the minimum requirements of national procedural law necessary to ensure adequate individual access to justice⁵⁶ in order to be able to enforce Community rights: remedies, liability of public authorities, availability of interim measures, and though the Commission does not mention it, equal treatment as regards entitlement to legal aid. This could be supplemented by secondary legislation as required. Not only would such an amendment contribute to more effective decentralized control, but it would respect the spirit of the European Convention on Human Rights, Article 6(1) of which guarantees 'a fair and public hearing ... before an independent and impartial tribunal' for the determination of civil rights and obligations.

V Conclusions

The system of the Treaty entrusts the implementation of Community law to the agency of the Member States, and the control of proper application in the first instance to nationals and economic operators. To a very great extent, at least as far as can be measured, the system may be said to work; national administrations and parliaments by and large take their Community duties seriously, and the highest national courts recognize the value of contributing to the uniform application of Community law through the preliminary ruling procedure and accepting direct effect of such provisions. The number of complaints to the Commission of violations of the Treaty in a given year, and the tendency of Member States in recent years to drag their heels in complying with judgments of the Court of Justice give cause for concern, certainly,

⁵⁴ As mentioned above, the sanctions clauses of Article 88 of the ECSC Treaty, which inspired this proposal, have never been applied.

⁵⁵ See also Ehlermann, who links the access to justice question with the necessity for decentralized control: 'the essential element is to be able to bring the matter before a judge, to apply to the courts' (op. cit., p. 148).

⁵⁶ As regards breaches of public law, the Court of Justice has derived from Article 5 EEC an obligation for the Member States to 'ensure that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive' and to pursue such infringements 'with the same diligence as that which they bring to bear in implementing corresponding national laws': Case 68/88, Commission v Greece [1989] ECR 2965, 2985.

though perhaps not yet for consternation.

The matter of implementation, and the fact that it is still problematic well into the Community's fourth decade, do serve to illustrate a point of some importance for the enlargement debate. Accession to the Community implies not only that new Member States partake in the Community's decision-making processes, but that the requirements of implementation can have a substantial impact in the internal workings of the Member State, at the administrative, legislative and judicial levels, equivalent to that of a constitutional revision. The introduction of a more efficient system of implementation of Community law could might be considered as raising the price of entry; it also surely increases the value of membership. It may therefore be in the mutual interest of both the Community and any candidate Member States to examine the implementation question, and potential difficulties, from the very beginning of the enlargement process, and that such states be not merely willing to accept the acquis communautaire, but able to guarantee its implementation. In this regard, the motto of the next enlargement debate could well be et velle, et perficere, not just wishbone, but backbone.

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

WORKING GROUP I
Institutions and Procedures

The European Community and Constitutional Government

by

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THE EUROPEAN COMMUNITY AND CONSTITUTIONAL GOVERNMENT

by John Pinder

The EC economy and the rule of law

It is economics that attracts the Efta countries to the European Community. They gained access to the customs union through the free trade agreements negotiated in the early 1970s; and the idea of the European Economic Area (EEA) was conceived so that they would have access to the single market. The prospect of the economic and monetary union (emu) may have a similar effect. But though the motive is economic, the problem is institutional. For at the heart of the Community's economic integration is the enactment and application of Community law; and Eftans have held back from participating in this process.

Some see this juridical basis as a protectionist device. Mrs Thatcher, for example, may find it appropriate to warn against 'an inward-looking trading bloc tied by a single currency and controlled by a Brussels-based bureaucracy'. (1) Yet a market economy is not a jungle, but a game played within a framework of rules. The great contribution of the Freiburg school of social market economists was to add this dimension to the laissez faire liberalism of the Manchester school. The market has to satisfy both the need for free initiative in business and the requirement of business for the reduction of unnecessary uncertainties; and the legislative framework for the market economy is an essential element in this. Until the creation of the European Community, legislation was enacted only for each nation-state. But already in the 1930s, Lionel Robbins had identified the contradiction between the national reach of the legislation and the increasingly international scope of the market, and pointed out that its resolution would have to be an international rule of law. Nor could this be effective if it were to be international law in the conventional sense, without a legislature to enact it or an effective judicial system to ensure that it was applied. A federal system of enactment and justice would be required. (2)

The key to the success of the Community is that it provides such a rule of law for the whole of the Community market. Within the field of Community competence, law predominates over the arbitrary exercise of power, whereas in the preceding system based on national sovereignty, there was no effective judicial check on the arbitrary use of power in dealings with the governments or citizens of other states. The Community also provides for the other principal feature of the rule of law: equality before the law. For there is no discrimination,

under Community law, between citizens or governments of the member states; and the Community's institutions are, equally, bound by the law. The effect of this is not only economic. It has also helped to create a new political quality and an unprecedented security in the relations among the member states.

The ever-increasing complexity of the modern economy has brought with it an ever more complex framework of public policy and legislation. This interface between the public authorities and the private sector includes standards and norms, regulations for service industries, state aids, state enterprises, public procurement, and taxation, all of which may imply frontier controls or other discriminations against economic agents of other countries. The result has been a growing fragmentation of the Community's market by non-tariff distortions; and the Community's remedy is the 1992 programme to complete the legislation for a single market through the enactment of some 280 Community laws. It is scarcely contested that this will benefit the EC economy, with Cecchini's central estimate of about 5 per cent gain to productivity over the medium term a widely accepted order of magnitude. (3) The dilemma for Eftans is that they want to participate in this beneficial economic process, but have until now resisted the political and juridical mechanisms that make it possible: the enactment of laws in common, which, for the single market programme, the Community has held requires majority voting in the Council of government representatives as well as participation by the European Parliament through the cooperation procedure; and the enforcement of the laws by a common juridical system, with the Court of Justice at its peak and with uniform application for all Community citizens and other legal persons assured by the principles of direct effect and primacy of EC law.

EC law and sovereignty: the Eftans' dilemma

In standing aside from the Community, the Eftans preferred to keep the final word in matters of law in the hands of the courts and parliaments of their own solid democracies. The EEA negotiations have been an attempt to enable them to benefit as much as possible from participation in the single market without participating in the Community institutions. The main problem of principle, from the side of the Community, has been the risk that this would dilute its system for enacting and applying Community law.

Although consultation with the Eftans would add to the already great complexity of the Community's legislative process, there is no difficulty of principle, and

the Community accepts that Eftans may help to shape its legislation in this way. But any proposal that Efta states should participate in the enactment of Community legislation creates more profound difficulties. The process of securing qualified majorities to enact laws in the EC Council is not at all an easy one. The Council has, like any political institution, its own dynamic which makes its functioning possible; and this includes the package deals which enable all member states to gain from the process, even if they lose on individual items of legislation. (4) This dynamic can only be weakened if the membership of the Council differs for different purposes. The point could be illustrated by suggesting that the Swiss Federal Council, for example, should include representatives from neighbouring governments when deciding on the texts of laws to be submitted to the Federal Assembly, when the interests of those neighbouring countries are involved, or that the Federal Assembly itself should include representatives of those countries when enacting the laws. One can hardly conceive that the Swiss would regard this as compatible with their constitution. A similar problem arises with respect to the European Parliament. The cooperation procedure already gives it significant influence over Community legislation; and the Intergovernmental Conference on political union (IGCpu) has received proposals, notably from the Federal Republic of Germany, that this influence should be upgraded into a right of codecision for all laws presently enacted by the Council by the procedure of majority voting. Even if British opposition limits the scope of such a reform in the IGCpu of 1991, it is likely that the Community will move further in that direction in the 1990s. Eftans will make powerful enemies within the Community if their actions appear to stand in the way of this process. The European Parliament, to take one example, itself has the power to veto agreements for association or accession; and it is not likely to approve any such agreements that would diminish its role.

The Community has likewise found it hard to devise a system for ensuring that the laws of the single market are applied effectively throughout the European Economic Area (EEA), without weakening its own juridical system, with its primacy of Community law, direct effect in member states, and growing authority of the Court of Justice. Nor would the Community wish to devalue the role of the Commission in competition policy and the control of state aids by accepting a less rigorous alternative for the EEA. (5)

Given these institutional difficulties, the outcome of the EEA negotiations can only be an inferior position for the Eftans in the enactment and application

of single market law; and, since firms' investment decisions will depend on the conviction conveyed by these arrangements, this will limit the gains from the single market to the Eftan economies. These considerations have doubtless helped to motivate the Austrian and Swedish applications to join the Community, which may be followed by those from other Efta states.

The economic and monetary union (emu) which is almost certain to result from the other IGC will add to the pressure. This will introduce the rule of law in a somewhat different way, constraining the public authorities of member states more than the private operators in the markets. But the political implications will be at least as profound as those of the single market. A strong political basis for the juridical arrangements will be essential; and the Community institutions will have to accept more responsibility for developments in the macro as well as the micro economy. Countries that do not accept the single currency and its institutional corollaries will find that businesses prefer to put their money where the risks of exchange-rate instability are removed over the large area covered by the single currency. The economic pressure on other Efta states to apply for membership will be considerable.

The escape hole that was proposed by President Delors for Britain and seems likely to be included in the emu treaty may appear to let Eftans off this hook. But this échappatoire was designed only to prevent some of the less rational rituals of British politics from obstructing the agreement on emu desired by the other eleven member states. If the British were to persist with their self-imposed exclusion, the échappatoire would become an oubliette, in which Britain's financial eminence could be lost without trace; and British financial interests will therefore ensure that it remains no more than a ^{temporary} political device. Economic motives will ensure British participation in emu; and the same will, sooner or later, apply to most of the Eftans. The majority of Efta member states will, then, be likely to accede to the Community during the 1990s, and will thus confront the implications of the political union, towards which the IGCpu of 1991 will take some steps, and which will probably be strengthened as the emu is established and foreign policy and security cooperation are reinforced during that period.

Eftans' accession and political union

Membership of the Community, including full participation in the single market and the emu, may be vital for Eftan economies. Collectively, they form the Community's largest export market, so their inclusion will be useful for the existing members, as well as contributing to the ideal of a European Union comprising all European democracies. But there is concern that the accession of Eftans might weaken the Community's institutions and its prospects of developing a common foreign and security policy.

The Austrian application placed an explicit reserve on acceptance of any Community competence with respect to security; and the Swedes, like the Irish, might act as a brake on the formation of Community policy in that field. The same could be said of Switzerland and Finland. The Single European Act already brought the coordination of political and economic aspects of security within the sphere of Community competence; and the IGCpu will go farther in that direction. The simple response of the Community to Austria and any other applicants that may be sensitive about security would be to refuse any exception to the application of Community competence to a member state, even if delays could be allowed. Britain's escape hole for emu could be seen as a one-off exception in that field, rather than as a precedent for the field of security. But insistence on complete acceptance of existing treaties would not resolve the Community's difficulty, because where unanimous voting is practised, as will be the case for security policy for some years to come, a state that has joined the Community with reluctance about security policy could, as the neutral Irish have shown, add to the difficulties of Community policy-making; and the unanimity required for treaty amendment could stand in the way of any future strengthening of Community competence. For this and other reasons, the Community is likely to consider ways of enabling those member states that seriously wish to cooperate or integrate in the field of security and related foreign policy to do so without waiting for the others.

One instrument for this is the Western European Union (WEU). EC member states are likely to locate their defence cooperation in this institution for a few years at least. Beyond that, there is a divergence of view. France wants WEU to be absorbed by the Community after 1998, when the WEU's founding treaty will expire, whereas Britain resists any such commitment to a defence dimension for the Community. The British position may suit present Austrian and Swedish policies better. But it is based on a reductionist view of the Community which may not stand the test of time, given the pressures that may arise for a political union that is increasingly capable of standing on its own feet in matters of defence as well as economics.

A second proposal that may be seen as helpful by neutrals is that backed by Britain and France for a separate pillar for coordinating foreign and security policy alongside, rather than within, the existing Community institutions, with both the existing Community and the more intergovernmental new pillar being capped by the European Council of heads of state and government. This would appear to allow full participation in the existing Community without commitment to any coordination of security policies. But Germany is opposed to this splitting of foreign and security policy from the Economic Community, regarding a strong political union within the Community as the counterpart that justifies its acceptance of emu. The separation of foreign and security policy from economic policy can, indeed, only weaken the Community's effectiveness. Policy towards Central and Eastern Europe is one of the Community's most important fields of action at present, and it is predominantly economic. To divide this central element from the remaining aspects of foreign policy can hardly be justified, unless prevention of growth in the Community's capacity to act is regarded as an important objective. It may be doubted whether such an objective can be sustained through the 1990s. It seems more likely that political union will be further strengthened by bringing the various elements of foreign policy closer together within the Community institutions. Efta states that may wish to join the Community in the hope that such a development can be resisted may find their position uncomfortable -- as indeed Britain has experienced a loss of influence through its frequent attempts to prevent the strengthening of the Community.

The enlargement of the Community to include Eftans will bring with it pressures for further strengthening of the Community's institutions. With strong support from Germany as well as other member states, the IGCpu is likely to conclude with an enhancement of the European Parliament's role, in the direction of co-legislation by the Parliament together with the Council; and there is likely to be an extension of majority voting in the Council. With each enlargement, the case for further such reform will be reinforced. With more member governments, the intergovernmental negotiations within the Council will become more complex and cumbersome and the possibility of reaching unanimous agreement within a reasonable time less. Even qualified majorities will be harder to secure, unless the percentage of votes required for such a majority is reduced. It may be desirable to move to a system of simple majorities of both countries and weighted votes for many decisions. At least, the proportion of votes to comprise a qualified majority could be reduced from the present 71 per cent. The unwieldiness of the intergovernmental system could also be

relieved by a rationalisation of the web of committees of member states' officials, some of which obstruct the Commission's execution of Community laws and policies. This problem, too, will become worse as the number of member governments increases, unless something is done to improve it. Although the Single European Act determined to confer on the Commission 'powers for the implementation of the rules', the Council's ensuing regulation did little to help. (6) Enlargement could be the occasion for a more effective reform.

The European Parliament's power of assent for the accession of new members may give it the leverage to require such reforms as a less obstructive committee system and more decisive arrangements for voting in the Council. The Parliament is at the same time likely to seek to increase its own powers, on the grounds that further complication of the intergovernmental system in the Council consequent upon enlargement would aggravate the democratic deficit. The Parliament would damage its standing if it demanded more than was reasonable on the occasion of each enlargement. But each enlargement will imply a case for some steps in these directions; and the Community will, as it moves towards the single currency and a growing role in foreign policy, be likely to move also towards stronger and more democratic institutions. It is to be hoped that new member states will not wish to impede such a development.

Central and Eastern Europe and constitutional government

Central and East Europeans are attracted to the Community not only because they want access to its market, but also because they see it as a bastion of democracy and security. Perhaps they also sense that the prosperity of the market is based on commitment to the rule of law to which they aspire. The Community ^{for its} part wants to see market economies and pluralist democracies established in Central and Eastern Europe. The trade with Efta countries shows how important relations with neighbouring market economies can be; and experience shows that pluralist democracies are better adapted to political stability and peaceful change. The collapse of the leninist polity has, indeed, reinforced confidence in the democratic system, which has spread in the last half century from some fifteen states on the rim of the Atlantic and in Australasia, (7) to cover ^{in addition} the whole of Western Europe, Japan and India, and is reaching into Central and Eastern Europe and many parts of the third world. Thus the Community has shown no doubts about making the transition to market economies and pluralist democracies one of the aims of the Europe Agreements which are to associate Central, and later East, European countries with it, as well of the PHARE programme of aid to these countries. The Community has

also made 'practical evidence of commitment' to market economy and pluralist democracy one of the conditions for eligibility for Europe Agreements. (8)

The Commission's Communication which was the starting point for the negotiations for Europe Agreements listed the rule of law, human rights, multi-party systems, and free and fair elections as essential criteria of pluralist democracy. (9) The list is necessary but not sufficient. Constitutional government must be 'limited by regular legal and political restraints and accountable to the citizens'. (10) The legal and political restraints must include the submission of government to the rule of law. But they must also make government accountable to the citizens: the system of representative government, 'in which . . . legal and political authority is located wholly or mainly in an assembly of representatives chosen in regular free elections'. (11) Thus the free and fair elections are not enough. The representatives elected in them must enact essential legislation; and the government must be accountable either to them or, as in the US presidential system, through regular elections direct to the citizens.

The conditions that enable such government to function are crucial, not just for the Europe Agreements, but also for the countries that are likely to seek membership of the Community and hence participation in its political union. Public discussion of these conditions has so far been extraordinarily thin, given the importance of the subject for the future of the Community and of the states directly concerned, and in comparison with the intensive discussion of the transition to market economies. (12) For a properly functioning parliament, it is necessary to have . not only adequate procedures, but also members of parliament and staff with a minimum of competence. There must be parties that are capable of conducting effective elections and forming competent governments. There must be a juridical base with independent and qualified courts and legal profession. Likewise qualified and sufficiently independent of parties must be the civil service, teachers and those who enable the world of business to function. In short, there must be not only competence for government but also a civil society, with 'autonomy of private associations and institutions, as well as that of private business firms'. (13) In countries where civil society has been systematically crushed by ruling monopoly parties that were opposed to the concept, these conditions can only be hard to achieve.

It is, therefore, strongly in the interest of the Community to help those

Central and East European countries that wish to establish the conditions for solid pluralist democracies and constitutional governments, not only with economic assistance, which is already substantial even if not as ample as it should be, but also with assistance aimed directly at creating the essential political and juridical institutions as well as the civil society. The Community and its member states are providing some assistance with these aims. But it is small and much less thought is given to it than to the programmes of aid for the transition to competitive market economies. This may be partly due to the weakness of the profession of political science compared with that of economics. Partly it may be that the deliberate creation of democracies is a relatively new aim of policy, despite the experience of the democratisation of formerly fascist states after World War Two, the recent emergence of new democracies in southern Europe, the efforts of some decolonising powers, and the interesting experience of the major foundations related to German political parties in fostering elements of democratic politics in third world countries and Central and Eastern Europe.(14) Whatever the reason, the Community needs to think and act rapidly to make its policy for encouraging pluralist democracy more effective. It needs the capacity to judge the adequacy of its policies of association and aid in this respect. Above all, it will need to do all it can to support the transition to stable democracy among potential members to the East; and it must be able to form a rigorous judgement of their democratic credentials when they apply to join.

Political conditions for eastern enlargement

Pluralist democracy and market economy present no problems to the Eastans. Most of them do these things better than most members of the Community. But it would be wrong to underestimate the difficulty of the transition for Central and East Europeans. Nor should potential members fail to appreciate the reasons why the Community will have to insist that the transition be accomplished before they can accede.

The rule of law within the Community depends not only on the Court of Justice and the Community's own legal services, but also on the effective cooperation of the judicial systems of the member states, which are responsible for dealing with the vast majority of cases that arise under Community law. While there are doubtless significant imperfections in the existing member states in this respect, there is on the whole confidence that the courts are dealing correctly and independently with matters of Community law. The Community would be seriously undermined if, in any member state, this were not to be so. As

regards the Community's executive, the Commissioners have to be 'completely independent in the course of their duties' (article 157 EEC). The political systems of member states must thus recognise the right of their citizens who accept such a post to exercise such independence. The Council comprises representatives, usually ministers, from properly constituted representative governments. Its legitimacy and functioning would be undermined should it contain representatives of another type of regime. The European Parliament contains representatives elected in free elections, predominantly from parties committed to democratic institutions. It could hardly accept substantial numbers of representatives not so elected or committed. And since all these characteristics of Community institutions are a product of civil society, the Community could not contain members in which civil society was not securely established. Without these characteristics, the Community would fail. Not only its member states, but also neighbouring countries would suffer severely from its failure. For economic problems, long transitional periods for new members can be envisaged. But the political and juridical conditions should be fulfilled by the time of accession.

The accession of new members will pose questions for the Community itself, many of which will arise anyway as the Community develops through the 1990s, but which enlargement will render more acute. Thus the Community's constitution will have to be explicitly and unequivocally based on fundamental rights, including the rights that comprise representative government; and the Community will require the power either to enforce the rights or to suspend member states that fail to apply them. The number and diversity of member states will necessitate more extensive and effective majority voting in the Council and executive competences for the Commission, if the Community's efficiency is not to be undermined. Since representative government is required in the member states, it would be anomalous if the Community itself were not to apply the principles of such government; and this implies a right of codecision for the European Parliament with the Council for all Community legislation as well as for the appointment of the Commission.

Some of these matters were broached in the Single European Act and most are on the agenda of the IGCpu this year. Despite the present opposition of the British government to most of them and of some other member governments to some of them, it now seems likely that the Community will move far in this direction during the 1990s. The draft treaty that the Luxembourg government put to

the European Council at the end of its presidency in June 1991 proposed a review by 1996 'to reinforce the federal character of the Union'. This has been the trend of opinion in the Community and it is likely that the minority of member governments at present opposed to it will change their view by the mid-1990s. Those countries that approach the Community with a view to membership should expect that it will have federal institutions, with colegislation by the European Parliament ^{together} with a Council voting by majority, to deal with its competences in the macroeconomic as well as the microeconomic sphere. Whether these same institutions will encompass foreign and security policy as well as the economic competences is less clear. But here again, it will not be surprising if the trend is towards combining these powers with the economic ones in unified institutions. Not only will the Community require constitutional and representative government in its member states. It is also likely to move by further steps to become a constitutional and representative system of federal government itself.

EC25? EC30?

By the year 2000 or soon after, the Community is likely to contain about a score of member states: the present twelve, the majority of Eftans, and the three Central European countries with which Europe Agreements are now being negotiated. It is likely to have federal institutions, that is to say the existing institutions reformed to be more efficient and democratic, to exercise its economic powers; and it will have strengthened its system for coordinating foreign and security policies, with the perspective that they too become the responsibility of the federal institutions. There will remain a number of potential candidates for membership: any Efta or Central European countries that have not yet joined; the Balkan states comprising Yugoslavia, Bulgaria, Romania and Albania; Cyprus, Malta and Turkey, in so far as these have not yet joined; and perhaps the Baltic republics, Estonia, Latvia and Lithuania, if these are independent of the Soviet Union and wish to join. Other republics that may leave the Soviet Union and eventually wish to join the Community could be Moldavia, Georgia, Armenia and the Ukraine. If the Community continues to prosper and to develop its powers, it may be a pole of attraction for any or all of these.

For the reasons already given with respect to Central and East Europeans, not only market economies but also pluralist democracies will be essential features of any states that wish to be considered for membership. For reasons of good neighbourliness, as well as for the cultivation of future member states, the Community should provide help for the transition to market economy and

pluralist democracy for any states that need such help and accept it. At the same time, the Community will have to consider the impact of further enlargements on its own working and institutions.

President de Gaulle, in vetoing British accession to the Community in the 1960s, claimed that British membership was not feasible because British interests and political culture were too different from those of the six founder member states. Differences of culture and interests there are. But the happier experience of Spanish membership indicates that it is less any such divergences than the differing attitudes towards unification that determine the ease with which a new member state may be accommodated in the Community. Experience has also shown that after some years of working together in the Community institutions the attitudes and orientations of member states tend to converge; and it seems reasonable to suppose that the stronger and more democratic the institutions, the more likely is such convergence to occur. If this is so, the feasibility of enlargement will depend more on the strength of the Community's institutions and the time given for the system to digest each phase of enlargement than on the diversity of political culture and interests. Culture and interests surely do matter and efforts should be made to bring those of potential members into harmony with the mainstream of the Community. But provided that the applicants for accession have market economies and pluralist democracies, the strength of the Community's federal institutions will matter more. A Community that has become a federal union should be able to accommodate, as its founding treaties imply, all democratic European states, if enough time is allowed for the process: a matter of decades rather than years.

Such a federal Community, enlarged to include most or all European states, with a population of half a billion, could become the world's greatest democratic power. As such, it would have to form a new view of its responsibilities in relation to the United States and the Soviet Union within the CSCE system, and as a determining element in the prosperity and security of the world as a whole.

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

WORKING GROUP II
The Economic Dimension

***Some Preliminary Notes on the Economic Dimension of
Widening and Deepening***

by

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The latest phase of economic integration in the European Community, which started in the second half of the 1980s and has been largely associated with the completion of the internal market, has brought the EC into new areas: economic regulation inside national boundaries, and also into services and factors of production. The dramatic transformation of the economic and political climate in Western Europe has led to a continuous expansion of the EC agenda, and this has eventually included the creation of new redistributive instruments, some hesitant steps in terms of social policy, and more recently the renewed attempts to establish an economic and monetary union.

The revitalisation of European economies in the late 1980s, with the return of high growth and the creation of many new jobs, went hand in hand with a major restructuring of industry; and, unlike earlier periods, this restructuring was no longer confined within national boundaries. Political initiatives had a noticeable effect on market expectations, thus creating a favourable environment for investment as well as the further expansion and deepening of regional integration.

It may be too early to assess with enough confidence the overall importance of recent developments for European integration. We are still living through many of those developments, and there is always the temptation to exaggerate the significance of current events and to look for major turning points which, with the passage of time, may fade into the grey area of the ordinary. Having said that, we shall, however, venture the prediction that recent years will occupy an important position in the history of European integration, having some similarities with an earlier phase connected with the establishment of the EEC and the first years of the transitional period provided for in the Treaty of Rome.

Predictions about the future are, of course, even more difficult. It is impossible to predict how long this phase of integration will last and what will be the effect on it, if and when there is a major change in the political and economic environment. There are so many imponderables which can have a major influence on regional integration, including the prospect of further enlargement. Negotiations for the creation of an EMU and political union are precisely intended to keep the momentum going for several years, although economic

and political adversity could have an important negative impact. Is European integration a fair weather phenomenon? Historical experience suggests that there is a positive correlation between economic booms and the deepening of integration. However, the experience from the 1950s and 1980s as well as the more recent one from the previous decade also seem to suggest that European political initiatives can influence the economic weather. Such correlations, as they exist in real life, are very rarely beyond the influence of men.

Steadily, the economic map of Western Europe has been transformed. More than forty years after the setting up of the first regional organisations, Western Europe is characterised by a high intensity of cross-border economic exchange. National economic frontiers have become less and less important, although they are still far from irrelevant. The transcending of economic frontiers applies not only to border controls but also increasingly to the various forms of indirect discrimination between producers and owners of factors of production on the basis of nationality, resulting from different regulatory frameworks in each country. Integration has slowly but steadily penetrated the area of mixed economy, and this has been achieved through a combination of deregulatory measures, the wide application of the principle of mutual recognition and the adoption of common rules at the European level. The emerging new 'regimes' vary considerably from one economic area to the other. Over the years, attention has shifted progressively from customs duties on goods to technical regulations and standards, to supervision rules of financial institutions and the opening of public procurement.

In terms of goods and services, the emphasis has been increasingly on market liberalisation and the strengthening of competition. State intervention at the national level has been weakened as a result of the opening of frontiers and the constraints imposed at the European level, and this has not been compensated by similar intervention undertaken by the new central institutions. The latest phase of integration has been characterised by a strong deregulatory element, although the jury is still out as to the extent and the likely effects of this deregulation. The new approach to standards and the liberalisation of financial services are two cases in point. Europe's industrial policy consists mainly of competition policy which applies both to private enterprises and also increasingly to state aids and nationalised firms. Otherwise, public intervention at the European level is mainly directed at the promotion of R&D, especially in high technology sectors, and inter-firm collaboration across national borders. This is a very mild European version of the old policy of national champions which

It has gradually replaced. It remains to be seen whether the relationship struck between the European bureaucracy and several large firms is too cosy for the comfort of European consumers.

Interventionism, in the form of an active industrial policy aimed at influencing the allocation of resources at the sectoral or even the micro level, has been the exception rather than the rule. The most notorious exception is agriculture where a highly elaborate set of rules and a very costly policy date back to the early years of integration. Laissez-faire in the farming sector is certainly not on as a political option; there are too many considerations, social and environmental among others, apart from narrow market efficiency, which exclude the complete dismantling of the CAP in the foreseeable future. However, the balance sheet of this sectoral policy, the most advanced form of a common policy at the European level, is not at all encouraging. There has been little correspondence between objectives and instruments, and this has led to much wastage of scarce resources and serious aggravation in relations with third countries. Furthermore, European institutions have shown great inflexibility in adjusting the CAP to changing economic circumstances. Previous attempts at reforming the common policy have met with very limited success and the pressure in this direction has been constantly mounting.

In the manufacturing sector, the only important example of a highly interventionist policy has been with respect to steel. It developed as a response to the deep crisis of the sector during the years of the long recession and it has been strongly challenged in terms of its efficiency. However, the only realistic alternative at the time was, arguably, national protectionist policies which could have caused even greater damage. With the improvement of the economic conjuncture, the elaborate system of European controls has been gradually dismantled and it is now difficult to envisage such a system being put together again in the foreseeable future.

Trade liberalisation, including the progressive elimination of a large number of NTBs, has helped to bring about a very high degree of trade interdependence among Western European countries; and this extends beyond the EC. Intra-European trade has grown faster than GDP and also faster than trade with the rest of the world. This interdependence is mainly true of goods, although it also increasingly applies to services which have been at the centre of the latest phase of integration.

The situation is qualitatively different with respect to capital and labour. Capital mobility has grown rapidly over the years, but this is more an international than a European phenomenon. For many years, capital flows between Western Europe and the rest of the world were several times bigger than intra-European flows; this applied both to foreign direct investment and hot money. The situation has changed somewhat in more recent years which have witnessed a substantial increase in intra-European capital mobility, aided by significant liberalisation measures. The ability of national governments to influence the location of investment and capital flows in general has been curtailed, although it is still far from marginal. Increased capital mobility has been accompanied by a wave of cross-border mergers and acquisitions and the appearance of more and more European and international companies. There has been a progressive weakening of ties between firms and states. Although this trend is not only limited to Europe, it should eventually lead to a further increase in intra-European trade interdependence.

On the contrary, labour mobility across national frontiers has remained low, and most migrants have come from outside Western Europe. Within the region, professionals are more mobile, and their mobility is expected to increase further as a result of the current phase of liberalisation. National labour markets are still characterised by wide diversity in terms of legislation and power relations between employers and trade unions; in other words, the European labour market remains highly compartmentalised. The persistence of national social and political realities largely explains the failure to make any serious advances with respect to European social policy, despite increased efforts in recent years. Decentralisation and subsidiarity are likely to remain for some time the key principles in this area.

In the macroeconomic field, intra-European cooperation has made significant progress after a slow and difficult start. The emphasis has been on the preservation of stable intra-European exchange rates, and close coordination of national monetary policies has been the means to this end. This has been based on a convergence of policy preferences towards more stability-oriented policies. This should be reinforced by further progress towards monetary union. The latter will lead to the transfer of important policy instruments from the national to the European level, the political and economic implications of which will be quite considerable. On the other hand, fiscal policies have remained distinctly national. Only very recently, has there been some progress in the harmonisation of taxes; and further progress in the foreseeable future is unlikely to be very rapid. Budgetary policies have also continued

to differ widely, as an important remnant of national economic sovereignty. To some extent making virtue out of necessity, large fiscal autonomy appears to be the preferred option in the transition towards a complete EMU. Weak fiscal power at the centre is the other side of the coin, and this also means that both the stabilisation and redistribution functions of the central institutions remain rather marginal.

High economic interpenetration among Western European countries is combined with considerable openness vis-à-vis the rest of the world, although in this respect Western Europe as a whole is not much different from either the United States or Japan. Western Europe is the world's biggest economic bloc and it participates actively in international economic exchange. Both the large restructuring of the manufacturing sector and the deregulation of financial services which have marked European economic developments in recent years are part of international phenomena; but they have not been, of course, unaffected by political decisions. Defensive policies and relatively high protective barriers exist in some sectors, both at the upper and the lower end of the international division of labour, where the Europeans perceive a loss of comparative advantage. But in general, it would be perhaps unfair to qualify European policies as more protectionist and inward-looking than those pursued by the other two major actors on the world economic scene. European trade and trade policies have traditionally had a strong regional dimension, although trade preferences have sometimes been used as a substitute for the lack of other policy instruments for the pursuit of wider objectives. These are, perhaps, the frustrations of an economic giant who remained for years a political dwarf. The relative weakness of central institutions also explains, at least in part, the defensive and reactive character of European policies.

The emerging European economic system is characterised by a rapidly increasing mobility of goods, services and factors of production; it is also characterised by a high degree of decentralisation of political power. Some transfer of power in the economic sphere has, indeed, taken place away from the national level and this has been reinforced by the adoption of common rules. Yet, economic integration has had an undeniable effect on the interaction between the state and the market, bringing about a shift towards the latter. To the extent that there is a general trade-off between efficiency on the one hand and stability and equity on the other, the emphasis has been on the former, especially during the latest phase of integration, which is also consistent with the ideological shift of the 1980s. The new

European economic system is closer to the American model: more dynamic perhaps, but also more unequal.

Increased Intra-European interdependence and growing competition inside the region co-exist not only with a high degree of decentralisation of power but also with wide economic, political and social diversity and large income disparities. In terms of the intensity and nature of economic interaction and also the level of economic development, we may refer to the existence of a core and a periphery in Western Europe. Economic boundaries are much more difficult to trace than political boundaries. Yet, there is broad agreement that Germany (perhaps excluding the former German Democratic Republic), France, the Benelux countries, Denmark and also large parts of England, Italy and Spain form part of the core group, while the less developed countries and regions of the Community are situated on the geographical periphery. There is also little doubt that the heart of the European economic system lies in Germany which has acquired over the years some of the traits of a dominant economy. Germany is the biggest trading partner for almost all the other countries in the region, with large and persistent surpluses (except for the hiccup created by reunification). Its currency is the undisputed leader in the European exchange rate mechanism and the second largest international reserve asset, after the US dollar. Germany is also the most important 'hub' in terms of Intra-European human flows.

Decentralisation, combined with wide diversity and large disparities, means that private economic agents enter the Intra-European competition with very different handicaps. The differences in terms of capital infrastructure between different countries and regions are simply enormous; as for the differences in the quality of educational systems and the relative efficiency of institutional structures, they are not much smaller either. Yet, historical experience does not allow us to make any meaningful generalisations about the effect of integration on economic disparities between different countries and regions. If anything, those disparities have shown a tendency to narrow during periods of high growth. Thus, we may have to remain agnostic about the distributional effects of further integration in the future. Serious fears have been, however, expressed in relation with the internal market programme about the possibility of an increased concentration of economic power, the freezing of the Intra-European division of labour and the widening of existing disparities, if the invisible hand were left unguided.

The Community attempts to deal with the problem of inter-country economic disparities through a limited number of redistributive policy instruments, some differentiation in the application of common rules and policies (longer timetables for the weaker economies and temporary derogations have characterised a good part of the internal market legislation) and much hope in the continuation of favourable macroeconomic conditions which should facilitate the task of economic adjustment. The main responsibility for redistribution still lies with national governments. An interesting, although not necessarily stable, division of labour has developed over the years between European and national institutions, with the former concentrating mainly on liberalisation measures and the pursuit of economic efficiency, while the latter have continued to assume the main burden of income redistribution and welfare provision. For some of the less developed countries of Western Europe, further economic integration, and especially the proposed new steps towards EMU, create a fundamental challenge in terms of the modernisation of political and institutional structures as a precondition for their successful participation in a new, more competitive environment.

The completion of the internal market, which is bound to extend beyond the end of 1992, and the transition to an EMU are likely to mark the next phase of economic integration in the EC. The attempt to reconcile the objective of further integration with the large political and economic heterogeneity (and disparities) of the Community of Twelve will not be an easy one, especially if the central institutions and the policy instruments available remain weak. Further enlargement can only add significantly to this problem. The range of prospective new members is very wide in economic terms: it includes highly industrialised countries which belong to the economic core of Western Europe (which in turn serves as a reminder that the underlying patterns of industrial production and financial integration, not to mention the levels of economic development, are not necessarily consistent with institutional arrangements), others which are currently taking the first painful steps in the long transition to market economy, and those which are still in a much earlier stage of economic development. Thus, while for some of those countries, early membership of the EC is indeed a realistic option, for the others it is more a question of gradually paving the way which may lead eventually to their full participation in the Community. Further enlargement is bound to take place in different instalments which may be spread over a relatively long period; and the final boundary of the EC has not yet been decided.

For the EC, further enlargement and the forging of closer economic links with other European countries will add to already existing pressures for the reform of common policies and the reallocation of resources, which are likely to be strongly resisted especially in such sensitive sectors as agriculture, textiles and steel. They will also raise new awkward questions in the field of social policy, and labour migration in particular. The strengthening of redistributive mechanisms, both in terms of the amounts available and the effectiveness in the use of resources, will acquire new urgency in order to avoid the institutionalisation of different tiers inside the EC; or is such a process already inevitable, especially in view of the future establishment of EMU, with serious implications for the functioning and further development of the Community? On the other hand, new preferential arrangements for those countries, which will find themselves in the antechamber for some years, may lead to new agonising attempts to reconcile regionalism with multilateralism, not to mention the constantly growing, and largely neglected, needs of many Third World countries.

In view of the wide economic diversity among the candidate countries, any generalisations about them would be highly misleading. The adoption of the acquis communautaire will require major economic adjustment, even for EFTA countries which are already closely integrated into the Western European economic system. Agriculture, financial services, transport and labour migration are only some examples where the need for adjustment will be considerable. For the less developed candidates, the challenge of economic adjustment is of a totally different dimension.

The combination of widening and deepening worked much more successfully in the 1980s than in the 1970s; and this surely had much to do with exogenous economic factors and internal political initiatives. A favourable macroeconomic environment and new measures to strengthen and consolidate the process of integration should greatly facilitate the incorporation of new members into the EC. Thus, there may be need for both prayers and political action which normally fall outside the sphere of economic analysis. The ancient Greeks used to say: "Νὺν Ἀθηνὰ καὶ χεῖρα κίλει" which in a non-literal translation would read: "Do not rely only on Goddess Athena, but also do something yourself".

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

WORKING GROUP II

The Economic Dimension

Marché intérieur et élargissement de la Communauté

par

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Marché intérieur et élargissement de la Communauté

Paolo Cecchini

1. Le Marché intérieur, fondement indissociable des Communautés Européennes

Un élargissement ultérieur des Communautés Européennes est désormais à l'ordre du jour. Des demandes d'adhésion sont déposées, d'autres sont attendues à plus ou moins brève échéance. Entre-temps les Etats membres des Communautés accélèrent le processus de transformation de leur relations en une Union Européenne en accord avec la Déclaration Solennelle de Stuttgart du 19 Juin 1983" (Acte Unique Européen, Préambule).

Le Conseil Européen qui vient de se tenir à Luxembourg n'a pas mis en cause l'approche globale du projet de Traité constitutif de l'Union, contenu dans le "Non-paper" luxembourgeois du 12 Avril dernier. Ce projet de Traité de l'Union, tout en retenant comme fondement les Communautés

instituées par les Traités originaires, transforme le Traité instituant la Communauté Economique Européenne en Traité instituant la Communauté Européenne, avec une longue liste d'objectifs comprenant le marché intérieur. Aussi se vérifie encore une fois le principe énoncé en 1967 dans l'Avis de la Commission au sujet des demandes d'adhésion de l'époque: " Les Communautés Européennes représentent le noyau original à partir duquel l'unité européenne s'est développée et a pris son essor".

Cette confirmation de l'enchaînement hallsteinien " Union douanière -> union économique -> union politique " relègue au rang d'hypothèse d'école tout essai d'échapper aux développements politiques pour limiter l'adhésion à l'"acquis économique communautaire" ou alternativement pour se soustraire aux contraintes de l'acquis économique par une participation à l'Union Européenne se limitant à son contenu politique.

Cependant les adhésions futures, tout en devant s'appliquer le moment venu à l'Union Européenne dans son intégralité, garderont encore pendant des longues années comme point central de référence le marché intérieur, espace sans frontières intérieures dans lequel est garanti l'exercice des quatre libertés communautaires.

2. Principes et modalités de l'adhésion à la Communauté Européenne.

Les principes devant régir l'entrée de nouveaux membres dans la Communauté ont été mis à point à l'occasion du premier élargissement, à la fin des années '60, lorsque, à la différence des négociations avortées de 1961/63, la cohésion communautaire avait eu la possibilité de s'affermir au cours des dix premières années de travail en commun, en dépit des disputes de famille. Ces principes, simples, logiques et par conséquent clairs n'ont pas été mis en cause lors des élargissements successifs. Ils demeurent pleinement valables et extensibles à la future Union Européenne:

i) Egalité juridique et politique entre les Etats membres: mêmes droits, mêmes obligations, surtout même disponibilité à négocier sans réserve préalable les développements futurs;

ii) Participation des nouveaux Etats membres aux Institutions de la Communauté immédiatement dès l'adhésion, à part entière même pour les domaines faisant l'objet de mesures transitoires;

iii) Acceptation integrale de l'acquis communautaire, qui ne peut pas être mis en cause puisqu'il représente le resultat de compromis dans la plupart des cas très laborieux;

iv) Négociation nécessaire: adaptation matérielle des dispositions institutionnelles telles que nombre des membres du Parlement, pondération des voix du Conseil, nombre des membres de la Commission, nombre des membres du Comité Economique et social;

v) Négociation possible: mesures transitoires permettant l'adaptation à l'acquis communautaires de la part des nouveaux Etats membres, à la double condition d'une durée limitée (en pratique autour d'un maximum de 5 ans) et de la reprise immédiate des instruments juridiques créés par la Communauté;

vi) Lorsque l'adhésion concerne plusieurs Etats, parallélisme des négociations, de l'entrée en vigueur, des périodes transitoires avec le minimum possible d'exceptions, afin d'éviter les complications inextricables d'adhésions échelonnées et de périodes de transition différenciées.

Dans la raisonnable hypothèse du respect de ces principes lors du traitement des demandes d'adhésion déjà présentés ou futures, on est amenés à envisager un premier élargissement

vers la moitié des années '90 et un deuxième paquet de nouveaux membres autour du début du prochain siècle. Aussi le troisième millénaire de notre ère pourrait voir naître une Europe s'unissant à l'intérieur de ses frontières naturelles non plus dans le signe de la peur et de la pénitence comme il y a mille ans, mais dans celui de la paix, de la liberté et de la solidarité.

Peut-on assouplir le cadre rigide des principes régissant l'élargissement de la Communauté, surtout en ce qui concerne l'acquis communautaire et en particulier les règles du marché intérieur, en vue de faire place rapidement dans l'Union Européenne aux démocraties retrouvées d'Europe centrale et orientale ?

L'impossibilité de dissocier le contenu économique des engagements politiques de l'Union Européenne ne peut qu'éloigner dans le temps l'élargissement vers l'est des frontières actuelles de la Communauté, en raison de la double et complexe adaptation vers l'économie de marché et vers les règles communautaires. Cette perspective réaliste soit est d'autant plus gênante sur le plan politique que le développement de la Communauté conduit presque quotidiennement à déplacer vers le haut la barre des engagements à souscrire par les nouveaux Etats membres.

Malheureusement toute l'expérience passée de la Communauté tant dans son intérieur que dans ses relations avec ses voisins européens - depuis les négociations "Maudling" dans le cadre de l'OECE en 1958, en passant par les accords AELE de 1972, jusqu'aux négociations qui s'achèvent de l'Espace Economique Européen - témoignent du refus farouche des Etats membres à l'encontre de toute formule permettant de bénéficier des avantages de l'appartenance à la Communauté sans en partager les charges. Dès lors on doit admettre que même la haute motivation politique d'accueillir rapidement comme Etats membres les démocraties retrouvées d'Europe centrale et orientale se heurterait à la rigidité de l'équilibre des intérêts établis à l'intérieur de la Communauté.

Aussi les inévitables délais de l'évolution de ces Etats vers une économie de marché suffisamment stabilisée et étoffée pour pouvoir assumer les charges résultant de l'appartenance à la Communauté ne conduisent pas à débattre dans leur cas du thème "élargissement/renforcement" même dans la forme de parallélisme entre les deux actions, la Communauté ne paraissant pas prête à retarder son développement.

Par conséquent le problème politique de l'"ancrage européen" des démocraties d'Europe Centrale et Orientale demeure posé et demande des solutions urgentes, qui devront

être trouvées sur le double plan d'accords politiques "paneuropéens" (la "Confédération" du Président Mitterand?) et des accords d'association en cours de négociation. Encore faudrait-il que l'objectif politique de ces accords conduise la Communauté à négocier et surtout à gérer ceux-ci en modérant son traditionnel esprit restrictif, en vue de ne pas foçer des adhésion prématurée à tous égards, comme ce fut déjà le cas de la Grèce.

3. Elargissement et Marché Intérieur:

A) La réalisation du programme

Il est pratiquement acquis qu'aucune négociation d'adhésion ne commencera avant le 31 décembre 1992, échéance retenue dans l'Acte Unique Européen pour l'instauration du marché intérieur. Dès lors la question de l'approfondissement éventuel de l'action de la Communauté dans ce domaine ne se pose pas car les pas nécessaires vers la mise en oeuvre des quatre libertés de circulation - personnes, marchandises, services et capitaux - auront en principe été accomplis au moment de l'accession des nouveaux Etats membres. Au surplus les procédures auront aussi été établies pour procéder, dans le respect du principe de subsidiarité, aux adaptations du cadre législatif et réglementaire de la Communauté rendues

nécessaire pour satisfaire de nouveaux besoins exprimés par l'opinion publique. Autrement dit, les règles préposées au fonctionnement du marché intérieur contiennent déjà les modalités de leur approfondissement.

Il n'en reste pas moins qu'à cette date l'oeuvre d'instauration du marché intérieur n'est pas encore achevée, ainsi qu'en témoigne le 6e Rapport de la Commission [Com(91)237 final du 19 juin 1991].

Le fait qu'il y ait encore 89 projets législatifs en instance devant le Conseil n'augure pas d'un respect intégral de l'échéance du 31 décembre 1992, dès lors qu'il faut laisser un délai raisonnable de transposition des directives en droit national. Toutefois ce retard possible sinon probable ne devrait pas préoccuper excessivement à l'égard des nouvelles adhésions, dont le délai minimal est tel qu'il peut permettre la réalisation intégrale du programme.

On ne peut pas toutefois oublier que le Livre Blanc de la Commission comporte un parent pauvre, qui est le cadre légal et fiscal de l'activité des entreprises, qu'on s'obstine à appeler "coopération des entreprises" alors que cette forme d'activité transnationale n'est en réalité qu'un "second best" par rapport à la stratégie unitaire d'utilisation du marché élargi. Les progrès évidents en matière de société

européenne ne doivent pas masquer les retards des législations sur le brevet européen, sur la marque européenne, sur les services d'investissement et surtout sur la taxation des entreprises.

Sur ce dernier thème le Livre Blanc a été très pudique, alors que déjà en 1987 la Commission avait avancé un programme d'action en matière fiscale qui traitait également de ce sujet. Certes un groupe de travail vient d'être créé sous la présidence de l'ancien Ministre des finances néerlandais M. Ruting, pour examiner l'incidence des disparités dans la fiscalité des entreprises sur la localisation de celles-ci. Alors que la Commission développe son action de contrôle des aides publiques en vue d'éviter des distorsions de concurrence sur le marché intérieur, il serait particulièrement malheureux que l'intervention publique excessive ainsi reprimée se rattrape grâce à l'usage abusif de l'instrument fiscal.

Par ailleurs même sur le secteur où le programme du Livre Blanc est le plus avancé, à savoir l'élimination des entraves techniques aux échanges, une réflexion est en cours dans la Communauté [Livre vert de la Commission, COM(90)456 final du 8 octobre 1990]. En effet la base technique de la "nouvelle approche", l'activité de standardisation avance péniblement, multipliant ainsi le recours précaire et instable aux normes techniques nationales. De même on

commence à se rendre compte qu'en ce qui concerne les produits l'accent mis par le Livre blanc sur la reconnaissance mutuelle était quelque peu exagéré. En conséquence l'indéniable avancée législative n'est pas synonyme d'unification du marché.

Dans le domaine des entraves techniques aux échanges on ne peut pas oublier non plus la situation spécifique du secteur automobile dont la libre circulation est loin d'être assurée au plan technique, au plan fiscal et à celui d'un système de distribution qui facilite le fractionnement du marché. On ne peut d'ailleurs légitimement se demander si la résistance acharnée opposée par certains Etats membres à la libre circulation de l'automobile n'est pas finalement motivée davantage par la perspective de la perte de l'emprise des entreprises sur la politique nationale que par la "menace" japonaise.

Enfin sur un autre plan entièrement justifiée apparaît la requête britannique, avancée dans le contexte de la Conférence intergouvernementale sur l'Union Politique, d'assurer par les moyens appropriés y compris le cas échéant des sanctions, le respect complet et dans les délais imposés du droit communautaire: après négociateur, le gouvernement britannique toutefois n'est pas souvent pris en faute à ce sujet, alors que tel n'est pas toujours le cas pour certains Etats fondateurs de la Communauté.

B) Achèvement du marché intérieur comme préalable à l'élargissement ?

Dans l'ensemble, la question essentielle dans le contexte de la dialectique "achèvement du marché intérieur/élargissement" est de savoir si l'achèvement du programme 1982 y compris la mise en place d'un système efficace de contrôle du respect du droit communautaire doit en tout état de cause constituer un préalable pour l'adhésion de nouveaux Etats.

On se souviendra qu'à l'occasion de la préparation du premier élargissement, la rencontre au sommet tenue à la Haye en 1969, avait arrêté un programme d'action fondé sur le triptique "achèvement, élargissement, renforcement". De ces trois termes seulement l'achèvement avait été erigé en préalable à l'élargissement, alors qu'on avait constaté que le renforcement ne pouvait pas assumer ce même caractère. D'ailleurs déjà dans son Avis de 1967 la Commission avait constaté qu'il n'était acceptable ni de retarder l'élargissement en vue de renforcer la Communauté, ni d'arrêter les travaux visant le renforcement pendant la négociation de l'élargissement. On avait par conséquent envisagé à la Haye que les Etats candidats "acceptent les Traités et leur finalités politiques, les décisions intervenues depuis l'entrée en vigueur des Traités et les

options prises dans le domaine du développement". La situation ne se présente pas apparemment de la même manière aujourd'hui, dans la mesure où des jalons importants du renforcement de la Communauté seront avec toute probabilité définis avant même que ne commence la préparation de tout nouvel élargissement

A l'époque le terme "achèvement" visait deux aspects bien précis:

- la déclaration formelle de fin de la période transitoire en tant que terme extrême pour l'entrée en vigueur de l'ensemble de règles et de réalisations pour l'établissement du marché commun (art. 8.7 CEE), en renonçant à la possibilité de prolongation (art. 8.5 et 8.6 CEE) au delà des 12 ans prévus (échéance 31.12.1969, art. 8.1 CEE) pour une période ne pouvant pas dépasser au total les 15 ans au maximum (un sous-produit de l'application de l'art 8.7 CEE a été le changement de terminologie de marché commun à marché intérieur: le premier étant formellement établi, l'instauration du deuxième vise à remédier aux insuffisances constatées par rapport à la mise en oeuvre des quatre libertés de circulation).

- l'adoption du règlement financier de la Communauté avec son orientation vers les ressources propres et l'engagement de ne pas le remettre en cause en raison de l'élargissement.

Aujourd'hui, bien que le débat intracommunautaire sur les futurs possibles élargissements n'ait pas encore commencé, il apparaît presque impossible d'établir des liens politiques entre le besoin de régler des problèmes intracommunautaires et le souhait de donner à la Communauté une assise plus large.

Certes aujourd'hui comme alors on reconnaîtra - notamment sur la base de l'expérience acquise - que tout élargissement de la Communauté conduit à un ralentissement temporaire de l'activité, en raison de l'effet traumatique provoqué par l'insertion des nouveaux venus dans un système aussi complexe que celui de la Communauté.

Ce ralentissement peut apparaître comme d'autant plus nuisible que le maintien du rythme de transformation des marchés nationaux en marché unique est un gage du succès économique de l'instauration du marché intérieur, sous le double aspect du maintien d'un équilibre correct entre les Etats membres et de la crédibilité auprès des entreprises. Succès économique qui est d'ailleurs d'autant plus souhaitable qu'il peut contribuer à produire le surplus de ressources cruellement nécessaire pour faire face aux besoins croissants de financement de l'Est européen comme du Sud du monde.

- des procédures de gestion efficace des règles du marché intérieur, y compris les règles de concurrence, tant sur le plan de l'exécution que sur celui de la législation.
- une capacité de gouvernement de l'espace économique créé par l'achèvement du marché intérieur.

Il vaut la peine de rappeler au sujet de ce dernier aspect que le Rapport Padoa Schioppa notait que toute tentative de faire coexister des marchés de capitaux ouverts, de taux de change stables et des politiques économiques autonomes représente une incohérence fondamentale. Par ailleurs l'analyse des conséquences économiques potentielles de l'instauration du marché intérieur a mis en relief le risque de destabilisation des économies nationales résultant du niveau très élevé d'interdépendance résultant de la mise en oeuvre des quatre libertés de circulation.

Le Traité CEE ainsi que la législation dérivée contiennent les dispositions de sauvegarde pour faire face à de situations nationales de crise, aux dépens cependant de l'unité du marché. Alternativement les Etats membres de la Communauté risquent d'être contraint à poursuivre une politique économique déflationniste, en vue de maîtriser sur le plan national les tendances destabilisatrices induites par le fonctionnement du marché intérieur.

Dès lors l'intérêt bien compris des Etats membres comme celui des Etats candidats devrait conduire à faire en sorte que la Communauté des années '90 se dote rapidement des instruments techniques et politiques aptes à maîtriser les tensions auxquelles serait soumise l'économie de l'espace sans frontières qu'elle aura créée.

5. CONCLUSIONS

A) Le débat "élargissement/renforcement" ne paraît pas devoir concerner l'instauration du marché intérieur, qui est très avancée et de fait pratiquement irréversible, malgré un certain nombre de retards et de difficultés. On peut se poser la question de savoir si le rattrapage de ces retards et la solution de ces difficultés qu'on peut resumer par le terme "achèvement" ne devraient pas constituer un préalable à tout nouvel élargissement, à l'instar de l'"achèvement" exigé par le Sommet de la Haye en 1969, avant le premier élargissement. Une réponse négative à cette question paraît appropriée, en raison d'une part de l'état d'avancement du programme et d'autre part du délai qui nous sépare d'un nouvel élargissement, délai qui peut permettre d'affronter avec succès les problèmes encore ouverts.

B) En revanche la stabilité de l'espace sans frontières résultant de l'instauration du marché intérieur ne peut pas être garantie sans un renforcement de la Communauté tant du point de vue de la structure institutionnelle que de celui du gouvernement de l'économie.

A lui seul ce besoin ne paraît cependant pas suffisant à justifier que la priorité soit accordée au renforcement de la Communauté par rapport à son élargissement, d'autant plus que le calendrier prévisible pourrait permettre de réaliser les deux opérations sans que l'une retarde l'autre

S'il ne devait pas en être ainsi, en raison de desaccords importants qui ralentiraient la conclusion des deux Conférences intergouvernementales en cours, alors l'intérêt d'assurer la stabilité du marché intérieur pourrait constituer un argument additionnel, quoique non déterminant, pour que le renforcement de la Communauté précède son nouvel élargissement

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

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WORKING GROUP III

The Development towards a Common Foreign and
Security Policy and its Impact on Enlargement

*The IGC on Political Union
Some Comments on the Proposals concerning Foreign
and Security Policy*

by

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INTRODUCTION

At the Rome Summit in December 1990 the Italian Presidency welcomed in its conclusion the broad agreement on basic principles concerning the vocation of the Union to deal with aspects of foreign and security policy. Its aims should be the maintenance of peace and international stability, friendly relations with all countries, the promotion of democracy, the rule of law and respect for human rights, the encouragement of the economic development of all nations. Special relations of individual Member States should not be disregarded.

In institutional regards the Council is mentioned as the decision-making centre and the Secretariat should be unified. Having a non exclusive right of initiative the Commission should be reinforced, and Parliament has to be informed and consulted in an adequate way.

The rule of consensus should be considered for the decision-making process. Parallel the possibility of recourse to qualified majority voting has to be guaranteed for the implementation of agreed policies.

Regarding the common security policy the European Council agreed to extend it to areas such as arms control, disarmament and related issues. This includes also CSCE matters, certain questions debated in the United Nations, as well as coordination of armaments export policy and non proliferation.

The importance of the Atlantic Alliance and existing obligations of the Member States in defence matters should be taken into consideration in the future discussions about a European Defence Union.

It can be concluded that in the whole process of moving towards a Union the European Council's essential role will continue. Another point is that the extension of majority voting in the Council has to be examined. Extended responsibilities are demanded for the Commission without specifying it further in the Presidency's conclusion. Concerning the other institutions, it was agreed that the conference will examine how to improve their effectiveness and efficiency.

In the preparation stage for the IGC on Political Union and during the discussions in this framework since the Rome Summit, several proposals were brought into the discussions causing different and controversy reactions. Worth mentioning are the so called NON-PAPER of the Luxembourg Presidency issued in April 1991, the COMMISSION PROPOSALS ON "COMMON EXTERNAL POLICY" from March 1991, the FRANCO-GERMAN PROPOSALS ON SECURITY POLICY COOPERATION IN THE FRAMEWORK OF THE COMMON FOREIGN AND SECURITY POLICY of February 1991, the BELGIAN MEMORANDUM ON INSTITUTIONAL RELAUNCH of March 1990 and the DANISH DRAFT TEXT concerning external and security policy of March 1991.

Looking at the substance, it is the Non-Paper and the Commission Proposals which have to be considered of greater importance because of the implications and controversy discussions they caused. Being understood as the centre of debates until the European Summit in June 1991 the Non-Paper was strongly criticized in May and early June. The Luxembourg proposal talks of three pillars of which the Union would consist: economic and monetary policy, foreign and security policy and interior ministry cooperation. Only France, Britain and Denmark spoke up in support of this concept whereas the Netherlands, Belgium, Greece, Spain, Italy, Portugal and Germany backed the Commission president Mr. Delors who criticized the proposal as weakening the Commission's role in the European Community's future constitution. Another argument was the inefficiency of three centres of authority. Therefore the Luxembourg foreign minister, Mr. Poos, had to promise that a new draft, taking into account the criticism, will be presented until the end of June.

A Belgian plan to scrap the idea of a separate organisation for interior ministry work is in discussion.

Discussing the future foreign and security policy, two basic areas of disconsensus are visible. First there seems to be no common agreement to what extent security policy should be implemented in the Community framework. In the second place it is the ongoing dispute about the power of the Commission versus the European Council.

At a meeting of the Foreign Ministers of the Twelve and the Commission's President, Mr. Delors, at Senningen Castle on 26 March 1991 the lines of divergence became clear. The Dutch Foreign Minister stressed the continuation of the role of NATO and American presence in Europe. Mr. Genscher expressed that a unified Germany will integrate to the greatest possible extent into the EC; he underlined the suggestions made in the Franco-German proposal. These suggestions seemed to be supported in particular by Italy, Spain, Belgium, Luxembourg, and Greece. Ireland kept a reserved position, Denmark and the United Kingdom showed signs to be more open. Portugal is said to have taken a position close to the UK's. The most remarkable outcome of the meeting was a mandate handed to the personal representations of the Foreign Ministers. Beyond that the political directions of the Twelve to define possible links between the WEU and the future Political Union and the WEU and NATO were a noticeable result.

Regarding the Atlantic Alliance the WEU could establish the link to the Community. This idea is backed by Denmark and the UK whereas Italy has proposed the merger of WEU into Political Union as soon as the Brussels Treaty expires in 1998. Germany and France share this position.

A clear decision on these respects does not seem visible for the near future. But it seems to be clear, that the commitments made in favour of the Atlantic Alliance and the signing of the Transatlantic Declaration are pointing towards a revived European-US relationship.

The question at stake is once again the role of the nation state versus the idea of a Union. Mr. Delors on 7 March 1991 in his speech at "The International Institute for Strategic Studies" in London mentioned the expression "pooled sovereignty" and explained that the nations of the Community do not have to sacrifice their history. Moreover "they are being asked to build on their synergies for purposes accepted by all". Could this be the formula for the future discussions and a new emerging acquis?

A closer look at the proposals that are forming the basis for the controversion is given on the following pages in order to come to an conclusion.

NON PAPER

Common Provisions

- A Union shall be founded on the European Communities as established by the Treaties ECSC, EEC and EAEC, as well as the Treaty concerning foreign and security and co-operation on home affairs and judicial co-operation [Art. A and B].
- Guiding principles shall be consistency and solidarity [Art. C (1)].
- Based on democratic principles and recognition of human rights [Art. D].
- The European Council shall define the general political guidelines [Art. E (1)].

Principles

- The High Contracting Parties establish among themselves a European Community [Art. 1].
 - Tasks [Art. 2]:
 - promotion of a harmonious development of economic activities,
 - non-inflationary continuous growth, respecting the environment,
 - convergence of economic performance,
 - increased competitiveness,
 - high employment,
 - high level of social protection,
 - raising of the standard of living,
 - economic and social cohesion,
 - Activities of the Community [Art. 3]
-

Common Foreign and Security Policy

Objectives and means

[Art. A (2)]

- Defence of the common values, fundamental interests and independence of the Union;
- strengthening the security of the Union and its Member States in all ways [including the eventual framing of a common defence policy];
- Preservation of peace and strengthening of international security, in accordance with the principles of the UN;
- promotion of international co-operation;
- development and consolidation of democracy and the rule of law, and respectation for human rights and fundumantal freedoms.

[Art. B (2)]

- Consistency of foreign and security policy with external economic relations and development co-operation policy and all other areas of external relations, ensured by the Council and the Commission.
- Any Member State or the Commission may refer matters relating to the observance of such consistency to the Council.

Institutional Framework

- European Council: Definition of the principles and general guidelines [Art. C (1)].
- The Council: Conduct of common foreign and security policy; ensuring unity consistency and effectiveness of action taken by the Union [Art. C (2)].
- Member States and Commission: May refer to the Council asking questions relating to common foreign and security policy and may submit proposals. Council acting unanimously (save Art. J (2) and Art. N) [Art. C (3)]

- In cases requiring a rapid decision, the Presidency, of its own motion or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period [Art. C (3)].
- Permanent Representatives Committee: Preparation of Council meetings [Art. D (1)].
- Political Committee: Monitoring the situation, formulating opinions, either at the request of the Council or on its own initiative [Art. D (2)].
- General Secretariat of the Council: Preparation and implementation of the Union's common foreign and security policy [Art. D (3)].
- Commission: Full association [Art. D (4)].
- European Parliament: Information on basic choices and consulted on the main lines: its views shall duly taken into consideration and it may put questions to the Council [Art. E].
- Troika principle for the Presidency's work, with the assistance of the Commission [Art. F].

Co-Operation

- Information and consultation of the Member States within the Council. The Council shall define a common position [Art. G].
- Loyalty and mutual solidarity of the Member States, ensured by the Council [Art. H].
- Common positions in international organizations and at international conferences [Art. I (1)].

Joint Action

- The Council may decide what should be the subject of joint action [Art. J (1)].
- Joint action adopted by (a qualified majority) (by a majority to be defined) [Art. J (2)].
- Once defined, a Member State shall be bound by the joint line of action in the conduct of its international activity [Art. K (1)].
- National positions in accordance with the objectives of the joint line of action [Art. K (2)].
- In cases of urgent need arising from changes in the situation, and failing Council decision, Member States may take the necessary measures ... in accordance with the objectives of the joint line of action [Art. K (3)].
- The Council shall discuss major difficulties of a Member State in implementing a joint line of action [Art. K (4)].

Security

- Decisions by the Union on security matters which have defence implications may be wholly or partly implemented in the framework of the WEU, insofar as they also fall within the organization's sphere of competence [Art. L (1)].
- Obligations for Member States arising from NATO Treaty and WEU Treaty shall not be affected. [Art. L (2)].
- With a view to the eventual implementation of a common defence policy, provisions of paragraph 1 may be reviewed by the European Council in 1996 [Art. L (3)].

General Provisions

- Measures for implementing the provisions shall be adopted by the Council [Art. M (2)].
- The Council may (by qualified majority) (unanimously) break off, partially or entirely, economic relations with one or more third countries [Art. N].
- The provisions shall not affect the powers of the European Communities [Art. O (1)].

- Non application of the provisions concerning the jurisdiction of the Court of Justice (except Article N) [Art. O (2)].
- Application of institutional and financial provisions of EC Treaties [Art. O (3)].
- Amendments in the case of any review of the security provisions under Article L (3) [Art. P].

Topics for Joint Action Priority

[Declaration by the Member States, Annex I]

- Industrial and technological co-operation in the armaments field;
- the transfer of military technology to third countries and the control of arms exports;
- non-proliferation issues;
- arms control, negotiations on arms reduction and confidence-building measures, particularly in the CSCE context;
- involvement in peace-keeping operations in the UN context;
- involvement in humanitarian intervention measures;
- [CSCE, USSR, transatlantic relations].

COMMISSION PROPOSALS AT IGC ON "COMMON EXTERNAL POLICY"

A. General Presentation of the Common External Policy

The common external policy is composed of three sets of proposals:

- common foreign and security policy (point B),
- external economic policy (point C),
- development cooperation policy (point D).

B. The Common Foreign And Security Policy

Fundamental Principles

- Coherency of Union action,
- notion of progressiveness,
- principle of subsidiarity,
- common policy does not mean single policy,
- coordinating national actions in a common framework,
- Member States comply with an obligation of result.

The common policy would be implemented in the existing institutional framework in order to guarantee the Union's unity.

Contrary to EPC:

Adoption and implementation of decisions are binding for Member States, and agreed on, depending on the case, either unanimously or by a reinforced qualified majority, leaving some room for the so-called opting out formula.

Applicable rules

a) Distinction between:

- questions considered "of vital common interest" by the European Council (deciding by a qualified majority and reinforced by the favourable vote of at least 8 Member States). The European Council can free Member State at its request;
- joint action resulting from intergovernmental cooperation (with regard to the provisions of Article 30 SEA).

b) For questions of vital common interest, the decision-making initiative to be agreed by the Council would be shared between Member States and the Commission.

c) Provisions of common security policy:

- guarantee of automatic assistance by including Article 5 of the WEU.
- Questions of vital common interest (as decided by the December 1990 Council of Rome):

- * Arms control and disarmament;
- * matters of security under the CSCE and the UN;
- * cooperation in the production, the export and non-proliferation of arms;
- * definition of a research and arms production policy [proposal of the Commission];
- * regular meetings of the Ministers of Foreign Affairs and Defence.

- Contrary to matters of common foreign policy:

principles and actions to be implemented in the framework of the common security policy would result from decisions of the Council voting unanimously.

- Decisions concerning cooperation in the area of defence, could be implemented in compliance with the commitments of the Atlantic Alliance through specific arrangements with the WEU, which could act on behalf of the Union (gradual integration).

- Abrogation of Article 223 and 224.

E. General Provisions

- [2°]

..the initiative requesting authorization to open, conduct and conclude negotiations would be the responsibility of the Member States ensuring the Presidency of the

Council and the Commission, according to the "duality" formula. Conclusion would be the responsibility of the Council, acting by reinforced majority, or unanimously in matters of security.

F. Overall Coherency

- [1°]

A provision stating the obligation to ensure coherency and foreseeing recourse, at the initiative of the Commission or a Member State, to a decision by the Council acting under the conditions established for any foreign policy question.

- [2°]

International agreements:

The procedure is characterized by a lesser form of "duality" Commission/Presidency of the Council in the conduct of negotiations. Assent of the Parliament.

- The Commission is responsible for management of matters other than foreign policy.

Heading Y: The Common External Policy Chapter I - The Common Foreign and Security Policy

Aims [Art. Y 1]:

* Maintaining peace and international stability, taking into account the particular relations of different Member States.

General Provisions

- Distinction between questions considered of vital interest to the Union and other questions of this area [Art. Y (2)].

- Determination of questions of vital common interest through the European Council, at the initiative of either its Presidency, the Commission or a simple majority of the Member States, after hearing the EP [Art. Y 3 (1)].

- For questions declared of vital common interests,

* the Council defines the principles of the common policy,

* defines actions to be conducted whether implemented by the Union or Member States [Art. Y 3 (2)].

- For questions, not declared of vital interest,

* Coordination of Member States and the Commission within the Council [Art Y 4 (1)].

- The definition of common positions is a point of reference for national policies [Art. Y a (4)].

- Possibility of individual acting of a Member State, because of particular seriousness, after referring to the Council [Art. Y4 (5)].

- The Council and Commission shall regularly inform the European Parliament, which shall discuss each year the common foreign and security policy [Art Y 5].

- Work of the General Secretariat of the Council and the Committee of Permanent Representatives of the Member States [Art. Y 6].

- Troika representing the Union and representation through one or several member States [Art. Y 7 (1)].

- Commission and Member States: Cooperation of accredited representations in third countries or with international organizations [Art. Y 7 (2)].

- Member States' external policies and the actions of the Union must be coherent. [Art. Y 8].

- Articles 164 to 188 of the Treaty are not applicable to the provisions of the present chapter.

The Common Security Policy

- Cooperation with the WEU and in the end a common European defence in full compliance with commitments within the Atlantic Alliance [Art. Y 11].

- Aid and assistance among the Member States in case of armed aggression [Art. Y 12].

- The Union shall formulate a research and arms production policy [Art. Y 13 (1)].
- For questions declared of vital common interests, the Council
 - * shall define the principles of common policy and decision-making procedures unanimously (abstention is not an obstacle to adoption of the decision);
 - * shall decide actions to be conducted whether they be implemented by the Union or by Member States [Art Y (3)].
- Exception: A Member State can be freed at its request for binding reasons, from some of the obligations [Art. Y 13 (4)].
- Regular meetings of Foreign and Defence Ministers [Art. Y 14].
- By deciding actions to be conducted, the Council shall decide if the Council of the WEU should be referred to for the actions which it has set [Art. Y 15 (1)].
- Arrangements for non WEU members [Art. Y 15 (3)].
- Member States which are part of the Atlantic Alliance shall express the position of the Union [Art. Y 15 (4)].

Chapter IV - General Provisions

Agreements under the Common Foreign and Security Policy

- Agreements with third countries or international organizations are negotiated by the Presidency and the Commission ("duality") [Art. Y 25 (1)].

Common Provisions

- The EP, the Council, the Commission or a Member State can first request the opinion of the Court of Justice on the compatibility of the envisaged agreement with the provisions of the present treaty [Art. Y 29 (1)].
- The Commission is responsible for ensuring all useful operations with international organizations [Art. Y 30].
- Articles 110 to 116, 130N, 130 R par5, 223, 224 [Art. Y 31].
- Heading III of the Single Act is abrogated [Art. Y 32].

FRANCO-GERMAN PROPOSALS AT THE IGC OF THE TWELVE ON POLITICAL UNION

Security Policy Cooperation in the framework of the Common Foreign and Security Policy of Political Union

General aims and concepts

- Developing of a common foreign and security policy [1 a].
- Defending the fundamental interests and common values of Political Union in its external relations [1 H b]
- Contents of a Common Security Policy [1 H c]:
 - * Setting up a common European defence system;
 - * suppression of the indication "political and economic aspects of security" under Art. 30, par. 6 (a) SEA;
 - * no questioning of NATO commitments;
 - * Atlantic Alliance and a US military presence in Europe are indispensable for European security and stability;
 - * WEU should become a cooperation channel between Political Union and NATO. WEU Treaty and the Alliance should be adapted in accordance;
 - * WEU activities are carried out in the perspective of European Union;
 - * a European identity for security and defence should be reflected in the development of a European pillar within the Alliance.

Proposals

- The European Council should have the jurisdiction to decide what areas of security policy should be subject of a common policy [2 a].
- Elements to be tackled within the Union [2 b]:
 - * Disarmament and control of armaments in Europe;
 - * security questions, including peace-keeping measures in the context of the UN;
 - * nuclear non-proliferation;
 - * economic aspects of security, namely cooperation concerning armaments and control of arms exports.
- WEU could be integral part of the European unification process [2 c]:
 - * Organisational relations between Political Union and WEU;
 - * obligations of aid and assistance in accordance with the Treaty of Brussels should be maintained;
 - * possibility of revising the European security structure by 1996;
 - * cooperation in the politico-military area as well as in the purely military field.
- Distribution of tasks between the Union and WEU:
 - * European Council decisions as guideline;
 - * harmonisation of order and duration of the terms of office for presidents of Political Union and WEU;
 - * synchronisation of Political Union and WEU meetings at ministerial level;
 - * finalisation of appropriate provisions by the Secretariat General of the Council and the Secretariat General of the WEU, in order to ensure mutual information;
 - * establishment of links between the EP and the WEU Assembly.
- Revision of the Treaty of Brussels [2 e].
- Transformation of WEU administrative divisions to Brussels [2 f].

Relations with the European States which are not WEU members

- Progressive strengthening of relations with a view to possible WEU membership.
- Cooperation between WEU and European members the Alliance which are not EC members should be increased. Specific forms of cooperation between European members of the Alliance not belonging to Political Union.

UK DRAFT TREATY PROVISIONS ON COMMON FOREIGN AND SECURITY POLICY

Preamble

Aim:

- * Protection of European common interests and independence;
- * maintenance of peace and international stability;
- * friendly relations with all countries;
- * promoting democracy;
- * the rule of law;
- * respect for human rights;
- * encouragement of the economic development of all nations.

Title X

- The European Council formulates and implements a common foreign and security policy [1].
- Consultation and coordination of the Member States [2]:
 - * Consultation shall take place before the Members of the Union decide their final position [2a].
 - Impetus on closer coordination, in particular issues debated in international organisations, steps to counter the security risk from proliferation of advanced technology, exports of armaments, peace-keeping, aspects of counter-terrorism [3a].
 - Maintaining technological and industrial conditions that are necessary for the Member States' security [3b].
 - Regarding commitments in NATO and the WEU [3c].
- The WEU should have the closest possible links to the Atlantic Alliance and can be an integral part in the development of European Union [3d].
- European consultation or cooperation action shall take place within the framework of WEU [3e].
- Members of the Union should:
 - * regard the other partners' positions [4a];
 - * gradually develop and define principles and objectives [4b];
 - * constitute a point of reference [4c];
 - * not act in way that impairs their effectiveness as a cohesive force on the international level [4d].
- Forming a consensus [5].
- Consistency of foreign and security policy and the external policies [6a].
- The Council ensures consistency and the Presidency can call for extraordinary meetings [6b].
- Full association of the Commission and its right to make proposals on the same basis as Member States [6c].
- Responsibility of the Presidency and Commission for the consistency of policies [6d].
- Common position at international conferences and in international organisations [7a/b].
- Close association and information of the EP. Its views should be taken into consideration [8].
- Presidency shall conduct the dialogue with third countries and regional groupings. Association of the Commission [9].
- Intensified cooperation between the representations of the Member States in third countries [10].
- Presidency shall be responsible for initiating action, coordinating and representing the positions of the members of the Union in relations with third countries in respect of common foreign and security policy activities [11a].
- Meetings of the Political Directors [11b].
- Assistance to the Political Committee [11c].
- Common Foreign and Security Policy Secretariat to assist the Presidency [11d].

BELGIAN MEMORANDUM ON INSTITUTIONAL RELAUNCH

- Guaranteeing the Community's credibility as a major actor on the European stage.
- Transfer of political power at Community level and a better definition of the principle of subsidiarity to tackle the "democratic shortfall".
- Solutions to the problems in Central and Eastern Europe.

Aim of the proposals:

- Strengthening the existing institutional machinery in order to make it more effective;
- reinforcing the powers of the Parliament and developing the Community's social dimension;
- **convergence** between political cooperation and Community policy (policy towards Central and Eastern as a starting point).

Institutional Machinery [I.]

- The Council [I.1.]
 - * Qualified majority as general rule.
 - * Unanimity for the extension of the range of subjects over which the Community has jurisdiction (Art. 235) and for constitutional provisions (revision of the Treaties, accession).
- The Commission [I.2.b]
 - * Strengthening the role of the President (nominated by the European Council and elected by the EP).
 - * Reducing the number of Commissioners.

Democratic Shortfall [II]

- The Parliament [II.1]
 - * Extending the co-operation procedure to all legislative decisions taken by the Council by a qualified majority.
 - * Possibility to annul legislative decisions in the co-operation procedure.
 - * Extension of the consent procedure to Article 236, 201, 238 and 138 (3).
 - * Electing the president of the Commission.

Amendments of less importance:

- * Strengthening the powers of committees of inquiry;
- * right of petition in Parliament;
- * right to take the legislative initiative where the Commission fails to act.

- A People's Europe/Human Rights [II.2]

Subsidiarity [III.]

- Principle of subsidiarity should be formally written into the Treaty.
- Member States can appeal to the Court of Justice to clarify if subsidiarity is regarded.

Political Cooperation [IV.]

- Developments in Eastern Europe have shown the limits of Political Cooperation; not only a "common Ostpolitik" is needed, but also new relations with the great powers and the international bodies.
- A pragmatic approach of the Twelve is needed:
 - * The Ministers for Foreign Affairs should define principles and guidelines for Political Cooperation, covering economic and political, bilateral and multilateral (CSCE) aspects. Therefore:

regular meetings of the Ministers; General Affairs Council as political decision making center; preparation by COREPER and Political Directors.

Better definition of the Commission's role. [IV.1]

- "Specialized task force" (diplomats specializing in Eastern European countries, seconded by the Member States, and by some Commission officials) as centre for analysis, study and co-ordination on Eastern Europe. [IV.2]

- Discussing security issues in the broadest sense without restriction in Political Cooperation. [IV.3]

Final Remarks

- Favouring an "intensive Europe" without constituting a barrier to an "extensive Europe". [2.]

Sectors now subject to unanimity to which the qualified majority rule might be applied:

- Internal Market, Art. 100a(2) EEC
- Fiscal provisions
- Free movement of persons
- Rights and interests of employed persons
- Research, Art. 130q EEC
- Environment, Art. 130s EEC
- Coal and Steel, introducing into the ECSC Treaty a provision corresponding Article 113 of the EEC Treaty.

DANISH DRAFT TEXT CONCERNING COMMON EXTERNAL AND SECURITY POLICY

- Foreign and security policy in all areas where unity of view between the Member States is possible.
- Military collaboration should respect the Member States responsibilities within the alliances they belong to.
- Common foreign and security policy established unanimously by the Council, assisted by the Secretariat General.
- Proposal can be submitted by the Presidency, the Member States and the Commission.
- Fully association of the Commission.
- Close association of the Parliament.
- External representation of the policy by the Presidency (Troika).
- Coordination policy of the Member States in the fields where common external and security policy will be applied.

ANNEX

The European Parliament's position to a European defence and security policy found its expression in a resolution of 10 June 1991 (Pöttering Report). In the following this report will be presented in a short form, regarding only the most significant aspects.

PÖTTERING REPORT

(10 June 1991)

Resolution of the EP concerning the perspectives for a European security policy:
The significance of a European security policy and its implications for the
European Political Union

Premises

- In the Gulf crisis there was no coherent acting of the Community, showing its incapacity to act [J].
- The WEU as a framework until the Community is able to take responsibility concerning military aspects [K].
- Denmark and Ireland could be invited as visitors to WEU sessions [L].
- No adequate foreign- and security-policy coordination of the Twelve [S].
- The interdependence of states and important regions, as well as the shift from bipolarity to multipolarity, demands the Community's foreign and security capability to act [T].
- The Community should demand to participate in the START-Talks [ZC].
- The political changes in Central and Eastern Europe avert the danger of confrontation or military threat in Europe [ZD].
- Many third countries welcome the development of a common security policy of the Community [ZG].
- The Community has the obligation to contribute solving the problems of poverty and under-development, to bring through human rights, to reduce conflicts and to secure peace [ZH].

Common provisions

- Rationalization of the foreign policy instrument (based on Martin Report A3-047/90) [I.1].
- Common foreign and security policy shall be beyond the intergovernmental character of EPC [I.2].
- Transformation of competences to the institutions of the Community [I.3].
- A common policy for the export of military goods has to be developed [I.4].
- Support for a new Article 130u EEC and item 61-63 as well as 65 of the resolution of 12 December 1990 [I.5].

The Council

- Merger of the regular meetings of the Foreign Ministers on EC and EPC level [II.6].
- Formation of a defence council [II.7].
- In certain cases the Foreign and Defence Ministers shall discuss and decide basic questions of security policy in a security council [II.8].
- Introducing mechanisms to build a consensus, regarding the view of the majority (based on resolution D. Martin of 10 November 1990, Article 130 u, al. 3 c) [II.9].

- Integration of the EPC-Secretariat into the Council-Secretariat [II.10].

The Commission

- Structural adaptation to the demands of a foreign and security policy [III.11].
- Has to be informed about the Member States' arms exports and has to inform the Parliament [III.12].
- Setting up an independent agency for the observation of arms production and exports [III.13].
- Right of initiative not exclusively for the Commission [III.14].
- The Parliament has to be informed about the coherent foreign and security policy [III.15].

The European Parliament

- Complete involvement in the foreign and security activities of the Community through [IV.16]:
 - a) co-determination and rights to control;
 - b) the Council's and Commission's obligation to inform the Parliament regularly;
 - c) consultation procedures between Council, Commission and Parliament;
 - d) assent of the Parliament with an absolute majority of its members in cases of basic foreign and security policy decisions;
 - e) assent of the Parliament to the conclusion of agreements with third countries, international organisations as well as arms control agreements.
- Regarding the importance of foreign and security aspects in the Parliament's organisational and administrative structure [IV.17].

Relations with other security policy organisations

- Close cooperation with the institutions of NATO [V.18].
- Regarding the commitments made in the WEU treaty [V.19].
- Institutionalized CSCE as a positive supplementation to the Union [IV.20].
- Participation of the EC, beside the member states, representing the three institutions on all levels of the CSCE; as well as the inclusion of the EP in a parliamentary representation of the CSCE [V.21].

Aims

- Development of a common security policy, corresponding to the aspects mentioned at the Rome summit [VI.22].
- Inclusion of the armament sector into the common market and the industrial and technological activities of the Community; therefore: immediate non-application of Article 223 EEC [VI.23].
- Arms export policy [VI.24].
- Cooperation in the field of armament conversion [VI.25].
- Harmonisation of the legal grounds for military as well as social civil service [VI.26].
- Coherent security community in the UN-framework; possibility of EC-peace troops [VI.27].
- Orientation at defensive strategies [VI.28].
- Continuation of the disarmament process in the field of ABC and conventional weapons [VI.29].
- If defence costs can be reduced, resources should be used to contain non-military threats (environmental problems, North-South cleavage) [VI.30].

CONCLUSION

In front of the different proposals, several questions can be asked and a first conclusion should be drawn, even though the latter might be revised after the summit at the end of June 1991.

The controversial discussion along the "pillars" of the Luxembourg NON-PAPER has already been mentioned. But this is not the only aspect that seems to be unclear. The whole paper is held in a rather general way and compared to the Commission proposals many questions are left open. As it is mentioned in point 1 of its introduction, it has to be understood namely as an intention "to provide a general framework for further negotiations", not aiming "to reflect individual Member States' positions". In point 2 a further explanation can be found, why the paper offers no decision about the dispute if qualified majority or unanimity should become the general rule for the voting procedure. Point 2 states that "the draft does not cover the question of amending voting procedures, on the scope of the co-operation procedure, issues which have been reserved for the final stage of the negotiations".

Some other articles under the heading common foreign and security policy also do lack a more detailed explanation. Article H, concerning co-operation, regulates that the Council shall ensure that the principles of loyalty and mutual solidarity are complied with, but no provision is found for the case that one or several Member States are not regarding these principles.

The same question can be asked for Article K, concerning joint action. It says that the Council shall discuss difficulties in implementing a joint line of action and seek appropriate solutions. No reference is made for the situation in which the Council fails to offer an appropriate solution. Finally, in the sphere of security, Article L talks about the implementation of decisions by the Union in the framework of the WEU, falling within that organisation's sphere of competences. The problematic aspects for non WEU members are not mentioned.

The Non-Paper in its present form is a general framework but it is probably not the paper that can be the principle guideline for further negotiations. Therefore the revised version has to offer some modifications.

Contrary to the Non-Paper the COMMISSION PROPOSALS are going into details and the comments to the articles do serve as an explanation and specification. Therefore the working document has to be read with regard to its comments, otherwise it might be misunderstood. Some of the specific aspects of the proposals are worth mentioning once again.

Article Y 3 defines clearly the hierarchy of power in the Union: The European Council, at the initiative of either its Presidency, the Commission or a simple majority of Member States, determines after hearing the European Parliament, questions of vital interest. This means that the Parliament is kept out of the initiating process in areas of vital interest.

In Article Y 15 (3), the member States of the Atlantic Alliance are asked to express the position of the Union in questions declared of vital interest and for questions dealt within the framework of the WEU. Does this initialize a drifting away from NATO, or is it only a sign for the growing importance of the Community, without questioning the commitments to the Atlantic Alliance? In the comment to this article an answer can be found. It has to be understood as a "contribution to reinforcement of the European pillar of the Atlantic Alliance". With the same understanding paragraph 4 of the respective article is to be analysed, talking about WEU's integration in the Union as the final objective.

Two other aspects are finally worth mentioning. One is the expression "duality formula", meaning joint initiative by the Presidency of the Council and the Commission. The second one is the proposal to define a research and arms production policy. Such a policy could overlap into R&D policy and would probably cause a tremendous influence on the idea of a gradual integration of the WEU in the Union.

In conclusion, the Commission proposals are a sophisticated attempt to contribute to the future construction of the Union, with clear distinctions in the hierarchy of power. It keeps the Parliament out of the vital areas but on the other hand it shows the Member States, that the Commission demands more power preventing pure intergovernmental policies.

In the FRANCO-GERMAN PROPOSAL the commitments undertaken in the framework of the Atlantic Alliance are not questioned. Moreover a reference is made to the importance of a permanent US military presence in Europe. Paris and Bonn are describing how they understand the future relations between the Community and NATO: "WEU would become the cooperation channel between Political Union and NATO" and the "WEU Treaty and the Alliance should be adapted in accordance".

WEU and the Union should be brought closer together and a distribution of tasks has to take place. Through this form of cooperation the conclusion can be drawn that the WEU is not understood as a framework dealing with purely military aspects. It could become a new forum for cooperation and for coordination of military and political questions.

Nevertheless the proposal is a guarantee for NATO commitments. The Kohl/Bush meeting in May 1991 as well as the French decision to sign the nuclear non-

proliferation treaty in June 1991, as a reaction to the Gulf War and as a rapprochement to principle Western allies, are pointing into the same direction.

The UNITED KINGDOM in its DRAFT draws on the UK's paper on security and on discussion in the IGC on Political Union. It is intended to replace Title III of the SEA and that it should be outside the framework of the Community treaties. The British ideas were announced as constructive but they should not be expected to be something totally new.

It was stressed that defence aspects belong to the Ministers of Defence gathering in defence organisations. The WEU should be an instrument to come closer to the United States without causing any danger and damage to the Alliance. NATO is regarded as the main forum for planning and consultation on defence matters.

The British Draft expresses the leading role of the Member State as nation states in the defence area. Cooperation should be improved amongst themselves and the control of arms in the CSCE framework should be extended. Close contacts between the WEU Secretariat and the Secretariat of EPC does not imply that the nation state should be weakened.

The Commission and the European Parliament are not treated extensively, and the proposals concerning these two institutions are no major step forward towards a real Union. But looking at the British position in the past, such an assumption would be not very realistic.

The BELGIAN MEMORANDUM is insofar different from the other proposals as it is stressing the need for the Community to guarantee its credibility as a major actor on the European stage. The transfer of political power at Community level and a better definition of the principle of subsidiarity is claimed necessary, in order to counter the growing "democratic shortfall". Another characteristic can be found in the strong impetus the paper puts on the developments and problems of Central and Eastern Europe.

Released in March 1990, the Memorandum already covered important future aspects. In retrospective it is an important and far looking proposal that influenced the following discussions.

Finally the DANISH DRAFT has to be mentioned in short. Like in the Belgian memorandum a reduction of Commissioners is demanded. A proposal which is not too new, recalling the Spierenburg Report of 1979. It calls for a full association of the Commission and a close association of the European Parliament, but at the same time it is obvious that the Member States are the one and only determining actors. "Unity of view" as the basic condition for foreign and security policy means

unanimity. The role of the Member State is therefore not threatened by supra-nationality.

Concluding it is correct to assume that the need to establish a common foreign and security policy has been realized by the Member States of the Community. A closer association of the WEU to the future Union seems acceptable, even though big differences exist when talking about the question to what extent this can be possible. Solutions must be found, regulating the voting procedures and the principle of opting out.

Through the IGC on Political Union the Community is moving closer together in the idea to built a European Union. But problems arise looking at the proposals discussed earlier. It seems rather vague to assume that a coherent Community is discussing a compromise which could lead to a Union.

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**The Scope of a Common Foreign and Security Policy
and its impact on Enlargement.**

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(Introductory note for Bruges Colloque, 5th July 1991).

In mid-1991, the debate on CFSP is so unfocussed, so caught up in the gulf between grand objectives and hard detail, that the implications of whatever new commitments and institutional arrangements may be decided by the current members of the 12 - or by some sub-group of the 12 - within the next two to three years is almost impossible to assess. Most of the participants in the CFSP debate have further enlargement in their minds, if at all, only as a second- or third-order consideration. Nevertheless, the way in which the current members of the EC approach the issues of closer integration of foreign policies - and, even more importantly, of defence policies - will carry direct implications for the enlargement process: making accession easier or more difficult for different countries, influencing the domestic debate on entry in Switzerland or Norway in different ways, increasing or decreasing the Community's willingness to offer generous terms for accession to countries for strategic reasons, even influencing the EC's



attitude towards the encouragement or discouragement of applications from Turkey, Rumania or Bulgaria, Malta or Cyprus.

The extent of potential enlargement is also highly uncertain. The lessons of Mediterranean enlargement suggest that it is difficult for the EC to resist applications from countries emerging from authoritarian regimes , even when their economic levels of development and administrative capacities leave room for severe doubts about their ability to shoulder the full obligations of membership. In what follows, the following assumptions are made:-

1) We have to consider this question within a ten to twenty year timeframe. Decisions taken within the next two to three years may have implications for the shape of the 'European Union' in 2010. The EC-6 which happily signed association agreements with Greece (in 1960) and Turkey (in 1964) which offered the prospect of membership in 20-25 years' time appeared to have been more concerned with the expansion of the EC's nascent external competences and the compatibility of association agreements with the GATT than with the future extent of an integrated European Union; but expectations were aroused, assumptions made, with which the Community in the 1980s has been forced to grapple. The 'small print' of agreements to be negotiated, even already under negotiation, the opening or closing of alternatives to full membership (as in the EEA negotiations) thus carry immense potential importance ; especially at a time when so many questions about the future shape and structure of Europe are unsettled.

2) The majority of EFTA countries will apply for membership between now and 1994; most probably all except Iceland. There are no insuperable economic obstacles to accession, even if agriculture and fisheries provoke negotiating crises. The scope and obligations of a CFSP may thus prove a central issue in negotiations; potentially tipping the balance in Norway in favour of membership, in Austria and Switzerland against membership.

3) The EC is now in effect committed to membership for the three 'East-Central European' countries. The timescale may well be long; but the principle is already conceded.

4) There are many within the current EC who would love to stop there (even those who will go that far extremely reluctantly). But we are now painfully aware that there stretch behind these a lengthening queue of potential applicants, of states and would-be states, all claiming to be 'European' within the definition of Article 237 Treaty of Rome ('Any European State may apply to join the European Community'). Assumptions about the EC's foreign and security ambitions and responsibilities are crucial to our response:

a) Who else will 'keep order' in the Balkans if we decline to take over the role which the Russians have now abandoned, and which was contested over previous centuries between the Germans (or the Hapsburgs) and the Turks?

b) Do we hope that the USA will continue to dominate security and order in the Mediterranean and the Middle East, thus enabling West European Governments to leave aside the most difficult questions of Euro-Arab relations - or do we include the development of a European foreign policy towards the Middle East, and European responsibility for maintaining security and stability in the Mediterranean and around its shores? (To put this question graphically and historically: which flags will the warships in Suda Bay, where Venetian galleys gave way to Turkish, where the British Mediterranean fleet gave way to the US Sixth Fleet, fly in 10-20 years' time?)

c) How central a role should Western Europe as an entity play in managing the dissolution of the Soviet Empire? Here again, the question is partly one of how far we wish to leave the leading role to the United States, partly how far we wish to pull in Japan (the Soviet Union's eastern neighbour), how far we see this as a 'European' responsibility.

d) Does the assumption of responsibility for Europe's peripheral regions imply eventual incorporation of most of them into a future European Union as equal (or at least, as junior) partners? Do we envisage a European system in twenty years' time which resembles in some ways the 19th century 'Concert': in which the major powers arrange the affairs - and if necessary the boundaries - of their weak and peripheral neighbours, treating the Balkans and the Mediterranean regions as objects of European concern but not as partners in the management of European politics? Or do we still cling sufficiently to the early ideals of European integration to want to include all democratic states within the European region in an institutionalised European Union - not necessarily by 1999, but certainly by 2009 or soon thereafter? There lurk behind this question some of the most difficult questions about 'Europe': about treating the countries of 'Western Christendom' more favourably than those of the Orthodox tradition, about the boundaries between 'Europe'

and the 'Islamic world', about what the taxpayers of rich West European states will be willing to support in terms of 'solidarity' towards poorer communities to their east and south. The evidence available of current political and public attitudes towards Lithuania as against Bulgaria, towards Slovenia as against Albania, suggest that these divergent assumptions run deep.

How far is the Community in control of its own agenda?

Two years beyond the collapse of the socialist regimes in Eastern Europe, with unpredictable developments - in Yugoslavia, in Albania, within the USSR, even in Poland and in the Czech and Slovak Republic(s) - pushing the EC and 'the Twelve' along, it would be absurdly optimistic to hope that the Community can dictate the terms and the pace of its own development in the whole field of CFSP. All the evidence available to an outside observer suggests that all member governments would prefer to limit progress towards CFSP within the next 3-5 years to symbolic gestures and minor adjustments of practice and institutional frameworks: the political difficulties of addressing issues so close to national sovereignty and identity as joint diplomatic representation and majority voting in foreign policy, let alone joint command structures and common decisions on the use of troops in the pursuit of shared security objectives, are immense. But the Community is not the master of its own fate.

US commitment to European security has enabled West European integration to limit itself to 'civilian' international issues since the failure of the EDC in 1953-4. America's sense of

'mission', its domestic consensus that it is 'Bound to Lead' in world politics (and that, as Henry Kissinger used to argue, the European allies are therefore bound to follow), has allowed West Europeans to avoid the most difficult questions of foreign policy and international role: to follow US initiatives in the Middle East and Mediterranean, sometimes happily, often reluctantly, to negotiate with the Soviet Union alongside the superpower relationship rather than instead of it. Current arguments over the links between closer defence and security aspects of European Union and the North Atlantic Treaty Organization reflect the reluctance of most (in reality all, whatever the rhetoric of the French position) West European Governments to contemplate a CFSP which was not contained within a broader Atlantic framework. Washington policy-makers on security and Europe reinforce this reluctance through the alarm signals they send every time West Europeans within EPC or WEU appear to be acting independently.

But US attention to Europe is markedly declining; and US security commitments to Europe are likely to fall sharply over the next five years. Congressional discussions currently assume a ceiling of 100,000 US troops in Europe in five years' time, against the 300,000 plus here now. Those that remain will presumably be stationed to support US priorities rather than European. It matters a great deal to West European interest whether their balance is tipped towards the West German ports and the UK, as bases for reinforcement for central Europe (and as forces in being

to accompany a continuing nuclear commitment), or more towards the 'Southern flank' as bases for the pursuit of US and Western interests in the Mediterranean and Middle East. European governments will have to contribute to the debate within Washington over the future structure of US deployment in Europe - which will require West European governments to define more precisely which of the US's previous responsibilities they are now willing to shoulder, which not. But European governments will also have to recognize how much of the US debate will be driven by domestic considerations - in terms both of competing demands for federal expenditure and of domestic ethnic and economic lobbies - and will have to use the diplomatic skills and instruments available to them to influence that debate.

'Some seek greatness, some achieve greatness, and some have greatness thrust upon them'. My argument is that progress towards a CFSP is more likely to be thrust upon the 12 than to result from their own halting efforts; but that external pressures - the recurrence of crises in Eastern and South Eastern Europe, rising instability in North Africa and the Middle East, and a cumulative shift in US assumptions about its European interests - will indeed thrust upon the 12 responsibilities which they prefer to have left to the USA. Washington's approach to economic assistance to Central and East Europe, and more recently to the crisis in Yugoslavia, indicate a marked shift towards thrusting responsibility for European security onto the Europeans. On the Mediterranean and

Middle East Washington appears far readier to assume that its security responsibilities will continue. Whether European Governments will be happier to leave the security of the 'South' in the hands of the USA or to shoulder the burdens of security in the 'East' and 'South-East' is a question none have yet addressed.

Widening and Deepening, welcoming or discouraging.

The above suggests that some of the current argument about widening and deepening is artificial. Pressures to accept enlargement are building up; external responsibilities are pressing in. To some extent the EC will find itself forced to tackle both at once. The way in which the 12 and the EC Commission tackle the issues will however carry major implications for the process of enlargement, the number of countries which enter, and the future structure of Europe as a whole.

This is the area on which our discussions should focus. I offer the following propositions, to spark off debate:-

1) CFSP offers few problems as far as the three Central and East European applicants are concerned. They see the prospect of EC membership as a security guarantee (as, after all, did the Mediterranean applicants); they would welcome a clearer security dimension for their own self protection. They have at present few foreign policy preoccupations of their own which would cut across those of the existing 12. There is thus no conflict between deepening and widening in relation to CFSP and Poland, Hungary and Czechoslovakia - unless Soviet resistance to any extension of Western security arrangements to the former members of the Warsaw Pact is seen as a block to enlargement which will continue to hold in 5-10 years' time.

2)The EFTA countries present much more active problems. It would be possible for the EC to use its commitment to CFSP as an effective block to EFTA enlargement. There are indeed suspicions that the enthusiasm with which the French Government is pursuing the principle of a common foreign and defence policy inseparable from the Community partly reflects concern about the far more German-centred and northern Community which EFTA enlargement would create.

3)This is partly a question of rhetoric, partly of timing. It has implications for Switzerland above all, but also for Austria, Finland and Sweden. For all of these countries security (and 'neutrality') is tied up with their concepts of national identity; they need time to adjust to the implications of the end of the East-West confrontation and the logic of European integration. The Community is in the process of educating their Governments about the obligations of Community membership - the only continuing purpose of the EEA negotiations now that the EC has, in effect, closed off the hope of any long-term alternative framework to membership. Their Governments have, in turn, to educate their publics about the implications of integration. We should not ignore the domestic difficulties they face in shifting public opinion with the same insouciance with which the EC-6 ignored the difficulties which a Common Fisheries Policy would cause the Norwegians in 1971-2.

4)In the long-term, a European Union which does not include Austria and Switzerland (and Sweden and Finland) would be weakened by their exclusion. This is not just a matter of communications across the Alpine passes: though European transport policies and air traffic control would be complicated by this 'hole' in the centre. The fiscal contributions these states should be making to the development of Eastern Europe and the Mediterranean, their role in European industrial and financial integration, their contribution to European influence in the management of the global economy, are all significant.

5)The desirability of pursuing further progress towards a CFSP (most probably of making further and faster progress towards a CFSP than any of the 12 Governments is yet prepared to contemplate) in parallel with EFTA enlargement makes the use of the WEU as the means through which to define the terms of security and defence integration preferable to insistence on a wholesale transfer of security and defence issues to within the EC framework. There are, after all, now plenty of precedents for moving forward in developing new policies within smaller groups, from EMS to Schengen. Insistence on embarking on a painful and lengthy process of institution-building among the 12, if indeed this is seriously intended to

replace use of WEU, is a commitment to postponing - or even blocking - EFTA enlargement.

6) The costs of managing the security and instabilities of South-Eastern Europe from the outside might well prove almost as high as the costs of including the region within the EC; Balkan membership should therefore be accepted as a reality over a ten to twenty year timescale. It might of course be argued that this issue was settled when Greece was accepted into the EC (those of us who argued against early Greek accession to what was then very much a West European Community being swept aside). Bulgaria and Rumania - let alone Yugoslavia and Albania - desperately need the external support and external constraints which EC membership (perhaps even its prospect) can provide. South-Eastern Europe thus provides both a crucial test for the EC's development of CFSP and a critical set of choices about the management of enlargement.

7) The Mediterranean orphans also have nowhere else to go: their future is one of external dependence on the EC, or of acceptance into the EC, or of revolt against the EC. The Community should not extend full membership or its prospect to Turkey (by far the most important) or Malta, or Cyprus; but it must find institutional mechanisms for associating these states as closely as possible, and accept its responsibilities towards their political and economic development. Nor does the Community's Mediterranean burden stop with these three. The EC now dominates the Mediterranean basin economically as fully as the European powers dominated it politically and militarily 100 years ago. Instability in North Africa would have as direct an impact on the EC in terms of refugees and the overspill of conflict as instability in the Balkans; a much higher proportion of the populations of Algeria and Morocco is resident within the EC, after all, than of the populations of Serbia and Macedonia. I would indeed argue that the development of a coherent foreign and defence policy towards the South will prove a tougher test of EC commitment to a CFSP than policy towards the countries of East Central Europe.

8) The future of the Soviet empire also has awkward implications for enlargement. The Baltic is now re-emerging as an entity, towards which the three Soviet/Baltic states are drawn both economically and politically. Acceptance of Sweden and Finland into the EC carries the long-term implication that Estonia, Lithuania and Latvia will follow. Public sympathies in northern Europe will be with them, for historical and cultural reasons; economic obstacles will not be insuperable, given the small size of their economies and populations. They also have nowhere else to go. For the other Western Soviet republics we should make it clear that we regard association as desirable, but membership - even over a 20-30 year timescale

- as impossible. The Ukraine and ByeloRussia are comparable to Turkey in their size, intractable economic prospects, and - dare one say it? - different cultural and historical identity. The Russian Republic presents even more problems.

9) Few travel as far as those who don't know their direction. The EC could easily drift into commitments to enlargement - in the distant future, which politicians sometimes seem to regard as infinite, but which in 20-30 years' time may present real challenges - in response to immediate crises, without having worked out an overall strategy. Alternatively it could drift into a crisis of relations with its neighbours provoked by its incoherent approach to enlargement - as it has risked doing through its incoherent approach to the EEA negotiations. It is tempting to use the commitment to deepening as an excuse to postpone consideration of the implications of enlargement; but it would be highly damaging to the EC's international security and political interests to do so. The agenda of the political union IGC of 1991 has in some ways reflected the unreality of avoiding the enlargement issue while claiming to pursue institutional and political deepening. It is no easier to work out the implications of a Community of 20-25 member states than it is to agree the structure of a European system of common defence, or a European diplomatic service with common bilateral and multilateral representation. But it is no more difficult either.

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

WORKING GROUP 3

The Development Towards a Common Foreign and Security
Policy and its Impact on Enlargement

*The Institutional and Procedural Aspects of a
Common Foreign and Security Policy*

by

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**The wider Europe: widening and deepening
the European Community**

Working Group 3:

The development towards a common foreign and security policy and its impact on enlargement.

**Session 2: The institutional and procedural aspects of a common
foreign and security policy**

Patrick Keatinge, Trinity College Dublin

I: The institutional approach

1. Rules of the game

Although the axiom that 'form follows function' should not be forgotten, the analysis of institutional structures and procedures can be revealing. Institutions reflect important norms and arouse expectations; they channel information and thereby influence perceptions; they are essential for the legitimization of outcomes. It is no coincidence that the unprecedented development of the industrialised world since 1945 has been accompanied by an extraordinary proliferation of the institutions of multilateral diplomacy. This twentieth century success story is no doubt based on a particular pattern of power, but the role of institutions in stabilising that pattern while at the same time allowing for peaceful change should not be underestimated.

2. The European Community in multilateral diplomacy

The institutional characteristics of the EC's diplomatic persona are the result of incremental adaptation, punctuated by self-conscious attempts to maintain a minimal capacity to act. Gradualism has been the hallmark of the evolution of European Political Cooperation, from its inception in 1970 to the formal codification of the Single European Act in 1986. The model for EPC was, ironically, the bilateral Franco-German treaty of 1963. Its essence lies in regular and frequent contacts between foreign policy elites, at all levels from head of government to junior officials on working groups, covering general orientations to the minutia of implementation. The professional socialisation and mutual understanding thus acquired may owe as much to the development of air travel as to more recent technologies of electronic communication. Is this institutional model adequate for a more diffuse and less stable international system, and one moreover in which an enlarged EC may be expected to play a central role? After six months work what answers seem to be emerging from the Intergovernmental Conference on Political Union?

II: The Political Union IGC so far: finessing the orthodox?

1. The IGC is about the rationalisation of existing structures

On the basis of initial submissions and the Presidency's non-paper of 17 April, much of what passes for 'innovation' in the area of Common Foreign and Security Policy (CFSP) consists of institutional streamlining. Council procedures are simplified, and the EPC secretariat - the institutional innovation five years ago - is incorporated in the Council secretariat. The Commission may acquire a non-exclusive right of initiative, which may add little to the influence it has already developed defacto. All of this may improve the efficiency of the policy process, but does not look like a 'saut qualitatif'.

2. Political authority remains diffuse

The Commission's attempt to bring the CFSP into the domain of Community policy-making seems to be making little headway. Consensus decision-making may be the stated preference of only a minority of member states, but attempts to experiment with some measure of majority voting have not as yet been pressed with conviction. The distinction between 'cooperation' (i.e. EPC) and 'joint action' (i.e. a common policy) in the Presidency non-paper appears meaningless without the discipline of the possibility of majority voting. Another discipline, that of the Court of Justice, is again kept at bay as in the Single European Act.

3. External representation: one voice - but which one?

The rotating Presidency, as well as remaining the internal manager of CFSP business, is still expected to 'front' the putative Union to the rest of the world..... with a little help from the troika. The Commission looks after its own (enlarged?) competences in the fields of economic and development policy, with its own diplomatic representatives. With the increasing importance of Political Dialogues, covering a 'global' range of issues, all of these institutional voices come together. Who speaks first, last, or loudest? And what does the listener hear?

4. Legitimacy is still elusive

The European Parliament's enhanced influence in the SEA, through its right of assent to association agreements and enlargement, has not been supplemented in the IGC. Member states tend to insist that real accountability in foreign policy lies in the retention of their right to say yes or no in the Council. The degree to which these national decisions are accountable depends on national parliaments, some of which may be in an even weaker constitutional or political position with regard to foreign policy than the European Parliament.

III: The EC and security/defence: an Augustinian delay?

1. The expectations of 1989/90 recede

The end of the cold war provoked a fundamental reappraisal of the institutions of European security, in a context in which it was often difficult to separate creative from wishful thinking. The blocs would dissolve into a pan-European structure, the Atlantic military alliance would become a balanced security partnership, and the European element in that partnership, the WEU, would be merged with the EC. The integrative effects on the latter could hardly fail to be positive. These expectations have not

materialised, perhaps because one bloc has dissolved in increasing disorder while the leader of the other faces 'decline' with equanimity. Whatever the reason, the 'security' element in the CFSP is more tentative than had been expected twelve months ago.

2. The IGC: an agenda for soft security, [but hard security next time?]

The IGC seems to be moving away from the SEA/London Report formula which confines EC security to 'political and economic aspects'. The new approach is not, however, comprehensive. Issues related to 'soft security', i.e. which rely on preventive policy instruments (e.g. arms control, UN peacekeeping) are admissible. There is also recognition of the growing importance of transnational security issues (terrorism, crime, migration) in the Presidency non-paper's inclusion of a sketchy intergovernmental framework for cooperation on 'home affairs and judicial cooperation.' However, issues involving military coercion - defence - are still contentious. Even a statement of intent to consider a mutual assistance commitment in the mid-nineties, or to develop 'links' with the WEU appear in the non-paper inside the square brackets which denote a divergence of views.

3. Links with security organizations: more questions than answers.

This hesitation is also reflected in the EC's relations with other networks of multilateral security. The Gulf crisis underlined the privileged position of two member states as permanent members of a partially revived UN Security Council, at the very least putting a premium on the obligation of prior consultation (even between the 'Big Two!'). The CSCE offers a forum for the continuation of conventional arms control and verification, but no longer enjoys the bleak discipline of its former West/NNA/East group diplomacy. The struggle to escape the bounds of consensus through some form of 'emergency mechanism' is evident, but has yet to be tested; the internal rather than inter-state nature of many potential conflicts may also serve to diminish its relevance.

The preoccupation of the IGC in this regard has, however, been with 'the alliance'. The vision of a progressive merger between the EC and the WEU - by way of guidelines from a European Council serving both organizations - has had to give way to more traditional warnings of the perils of decoupling. Security institutions still come mainly from the 'anglo-saxon' mould, though in an international system still in the throes of major transformation. It may be expected that there will be pressure to include the word 'defence' somewhere in treaty amendments, even in the form of a general statement of intent. That might be reassuring for some would-be members, which have little enough in the way of security assurances at present. It might not be such good news, however, for neutral applicants - or indeed member states - which have to ratify negotiated changes by popular vote.

IV: A Common Foreign and Security Policy in an enlarged EC

1. The numbers game

Would the institutions and procedures of a CFSP, on the lines which seem to be attracting agreement in the current IGC, work efficiently and effectively for an enlarged Community or 'Union'? Let us assume, both for the sake of argument and so as not to offend the growing crowd of applicants, that we are now dealing with a membership of twice the present size. Imagine allowing for a tour d'horizon of twenty four national positions - even if like-minded - at meetings of the European Council or Council of Ministers. At the very least the level of intimacy which is just about possible in the present Community would be difficult to sustain; would the arguably more important

socialisation of officials be similarly affected? Would governments have the political incentive or administrative 'self-programming' to cope with a Presidency which came around every twelve years instead of every six? What impact would this large and varied chorus have either on the rest of the world or on its own citizens?

2. 'Numbers' + 'diversity' = policy overload

It is hardly realistic to assume that a Union of Twenty Four will contain the same homogeneity of interests as the existing Community of Twelve, itself more diverse than the original Community of Six. It may be possible to consider the additional twelve in three groups (EFTA, Central and East European, Mediterranean), but variations within these groups must be added to those which exist between them. It might take a very serious external threat (sorry, 'risk') to counter this tendency towards an increasing heterogeneity of interests.

In a world of only moderately serious risks we may expect policy overload: frequent recourse to increasingly confused European Councils, preceded by an ever more byzantine bilateralism. From the point of view of legitimacy, it may be just as well that the transparency of this 'bloated' EPC process remains limited. The exposure of policy overload would represent a crisis for the system's legitimacy, which could lead either to its collapse or to demands for reform.

3. Delegating authority within an intergovernmental CFSP

There may be ways to tighten the focus of political direction without abandoning the concept of national foreign policy altogether, but they are not without cost. That of a straightforward Directoire of the larger states is born by the rest. None of the potential new members is an obvious candidate for a Directoire, and it is a moot point how many existing members might qualify. It might be possible to devise 'joint extended Presidencies', on the basis of regional differentiation (though thankfully not within the confines of this paper). However, at some stage on the road to this Union of Twenty Four the federal alternative may become a more attractive option simply because of the problems imposed by the number of members.

4. Crossing the 'federalization threshold'

The decisive steps in the direction of federalism are the acceptance of majority voting in the Council and an active role of an independent EC body, like the Commission, in initiating policy and representing the EC abroad in foreign and security policy' (Finn Laursen, 'Towards a Common EC Foreign and Security Policy: Phases of European Political Union', ECSA paper 1991, p. 24). These steps are not being taken in the present Political Union IGC; applicants for membership are not as yet faced with the 'federal question'. However, the success of their application might bring it that much closer... in the next IGC (1996?).

5. The question of neutrality

The conventional view holds that a federal union necessarily includes the competence of defence, based on a commitment to mutual assistance. Alternative propositions have been advanced by recent applicants, whether in the form of an Austrian reservation or a Swedish assumption, and may even linger (in a less tangible way) in some Irish second thoughts. Even if these positions are generated by domestic circumstances, they serve to raise the question whether it is possible to accommodate 'neutrality' once the federal threshold has been crossed.

Legal or institutional answers can be devised in the abstract. For example, the model of 'polyarchic federalism' envisages 'a shared competence in foreign policy with certain policy areas transferred to the new Political Union, but many areas remaining national' (Laurson, op.cit., p. 25). To make such a model permanent comes up against the principle of 'unity'. However, to limit it, for example, by subjecting any exception to the oversight of the Commission, another member-state, or ultimately the Court of Justice (on the model of Article 100 A 4) would sooner or later conflict with neutrality law.

Thus the durability of such an arrangement would be uncertain. In practice its acceptability (to others inside the Union) and its credibility (to those outside the Union) would be governed by non-institutional factors. 'The issue boils down to one question - will the New European System require Neutrals?' (Karl Zemanek, 'Austria and the European Community, German Yearbook of International Law, Vol. 33, 1990, p. 165). At present the transitional system probably does 'require' them in northern Europe, and cannot contemplate the extension of alliance in central Europe, but the situation in '1996' - when the federal threshold is (again?) at issue - may be very different.

V: From institutions to values

The institutional debate cannot proceed very much further without becoming a much broader debate about political values. What are the purposes of a common foreign and security policy, and what means may legitimately be applied in order to achieve them? The contrasting visions of 'civilian power' and 'superpower' perhaps merit reappraisal in the context of the changing international system. Yet international life goes on, and the shape of the future CFSP is as likely to be determined by events as by institutional blueprints or normative debates.

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THE EUROPEAN COMMUNITY IN THE 1990s :

WIDENING VERSUS DEEPENING ?

Bruges, 4-6 July 1991

WORKING GROUP IV
The European Identity

L'identité de l'Europe. Quelques réflexions d'historien

par

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Prof. Gilbert Trausch

L'IDENTITE DE L'EUROPE .QUELQUES REFLEXIONS D'HISTORIEN

1 - On constate depuis peu de temps un intérêt croissant pour la question de l'identité européenne et une approche nouvelle de l'histoire de l'Europe se fait jour. On peut y voir, entre autres, trois raisons principales:

- la réussite de la Communauté européenne - car dans la perspective de la longue durée ses lenteurs qui peuvent nous irriter, sont moins agaçantes - en tant que communauté de droit est une expérience unique dans l'histoire. Une remarquable prospérité économique semble légitimer cette réussite.
- la Commission des Communautés européennes s'est rendu compte que l'œuvre à laquelle elle préside possède un passé qui mérite, en tant que tel, d'être analysé et expliqué et elle essaye de stimuler cette recherche par un certain nombre d'initiatives (Action Jean Monnet, Groupe de liaison des professeurs d'histoire contemporaine auprès de la Commission des C.E.).
- les grands bouleversements que l'Europe a vécus depuis trois ans ouvrent des perspectives tout à fait nouvelles, insoupçonnées il y a cinq ans encore. Or, les grandes remises en cause sont propices à des efforts de réflexion et à des prises de conscience. On l'a vu au moment où la guerre froide s'est installée. Tant la division de l'Europe en deux blocs que ses retrouvailles aujourd'hui amènent l'Europe à se définir ou plutôt à se redéfinir.

2 - Il s'avère extrêmement difficile de définir l'Europe. Des sociologues et des politologues s'y sont essayé, souvent de façon fort brillante (Edgar Morin, Jean-Marie Domenach et d'autres encore). Leurs travaux sont stimulants et pleins d'idées. Par

leurs généralisations et affirmations globales, par leurs formulations audacieuses et parfois provocatrices, ils mettent l'accent sur des rapports passés jusque-là inaperçus et des perspectives souvent nouvelles.

Les historiens ne les ont suivis qu'avec une certaine réticence. De par leur formation ils sont particulièrement attentifs à « ces vilains petits faits qui ruinent les plus belles hypothèses » (Marc Bloch). Les hommes vivent en société à la fois dans le temps et dans l'espace. Toute affirmation globale sur l'identité européenne, brillante et éclairante, paraît aux historiens vraie pour telle époque ou pour tel espace européen mais pas forcément pour d'autres. Nombre de controverses proviennent de malentendus dus à un cadrage chronologique trop lâche. Mais à force de nuancer et d'introduire des distinctions, les historiens risquent aussi de perdre les vues d'ensemble.

Le seul point de convergence est probablement la définition géographique: elle fait de l'Europe un continent qui s'étend de l'Atlantique à l'Oural. Cette définition est purement conventionnelle et n'est pas d'une grande utilité pour l'historien. Sur le plan politique et culturel elle est plus au moins inopérante.

Un grand historien français, ayant une vue universelle des choses, J.B. Duroselle a essayé de donner une définition globale de l'Europe en dégagant un espace qui lui paraît doué d'une cohésion fondamentale. Il a dessiné un quadrilatère dont le 1^{er} côté, partant de l'extrême Nord de la Norvège, longe la côte Ouest de la Finlande, des pays baltes, passe par Varsovie, Budapest et rejoint Otrante dans le talon de la botte d'Italie, en face de l'Albanie. Le 2^e côté passe au Sud de la Sicile, au Nord de la Tunisie, puis par Gibraltar. Le 3^e côté va de la côte Ouest du Portugal à la côte Ouest de l'Irlande tandis que le 4^e côté, partant de la côte Nord-Ouest de l'Irlande s'infléchit vers le Nord-Est pour atteindre la côte norvégienne au Nord.

Pour J.B. Duroselle ce quadrilatère recouvre l'espace européen par excellence. Il y constate « une extraordinaire succession de phases "communautaires" » par lesquelles il entend des « ensembles religieux, philosophiques, de civilisation ». Son survol de la civilisation va des mégalithes de la préhistoire à l'Europe des églises romanes et gothiques. C'est de ce quadrilatère que les hommes partent à la découverte, puis à la conquête du monde. C'est dans ce quadrilatère que l'esprit scientifique s'épanouit et que la révolution industrielle se fait avant de se répandre dans le monde. C'est de cet

espace qu'est partie «l'étincelle, devenue flamme, puis brasier, de la liberté humaine». C'est dans le genre de l'approche globale par l'histoire ce qu'on a fait de mieux. La démonstration de J.B. Duroselle est bien faite et nuancée. Elle court toutefois le risque de faire de l'Europe «une communauté qui existe, de façon d'abord embryonnaire, depuis des temps reculés». Ici on rejoint des objections que les partisans de l'unité européenne font, à juste titre, à certaines conceptions de l'Etat-Nation. Celui-ci n'a pas toujours existé et est appelé à évoluer. En d'autres mots, il n'est pas pour ainsi dire inscrit d'avance dans le plan de l'histoire. Ces mêmes remarques s'appliquent à l'Europe. Elle n'est pas plus que les Etats-Nations une nécessité de l'histoire. Elle aussi est le résultat d'une évolution historique. Pas plus que les Etats en qui certains penseurs allemands du XIXe siècle ont vu l'accomplissement de l'histoire, l'Europe ne se postule pas. Elle se cherche. Les historiens sont bien placés pour le faire et J.B. Duroselle en a donné un bon exemple.

3 - Essayons-nous à formuler quelques déductions à partir du concept central de Duroselle. Une communauté européenne existe. Elle repose sur une certaine identité qu'il est cependant difficile de cerner de près et de définir de façon exhaustive.

a) Cette communauté n'est pas récente. Certes, il est peut-être excessif de parler de « 28 siècles d'Europe » (Denis de Rougemont), mais elle est sûrement pluriséculaire. Pour d'autres elle a 1200 ans déjà, ce qui permet de remonter jusqu'à l'Empire de Charlemagne, pour d'autres elle en a 800, ce qui fait référence à ce grand siècle qu'est le XIIe (« A partir du XIIe siècle l'Europe est une réalité unitaire », K. Pomian). Quoi qu'il en soit, cette identité et la conscience qu'en avaient les Européens ne les ont pas empêchés de s'entredéchirer pour des questions d'intérêt, d'idéologie et surtout d'hégémonie.

Montesquieu a si bien exprimé ce sentiment d'identité, cette conviction d'appartenance à un même ensemble: «les choses sont telles en Europe que tous les Etats dépendent les uns des autres. La France a besoin de l'opulence de la Pologne et de la Moscovie, comme la Guyenne a besoin de la Bretagne et la Bretagne de l'Anjou. L'Europe est un Etat composé de plusieurs provinces».

Et pourtant, ce XVIIIe siècle, européen s'il en fût, a été déchiré par sept guerres sans compter les guerres de la Révolution française (à partir de 1792).

La guerre faisait tout naturellement partie de la panoplie des moyens dont disposait la diplomatie européenne pour régler les problèmes de l'Europe. L'idée qu'entre Européens elle était en réalité une guerre civile n'apparaît qu'après la Première guerre mondiale. Jusque-là les peuples européens célébraient sans complexes leurs victoires, comme p. ex. les Allemands «la journée de Sedan».

b) Le quadrilatère que Duroselle dessine pour définir les frontières culturelles de l'identité européenne ne comprend pas la Russie tandis que Montesquieu, dans la citation donnée plus haut, les étend jusqu'à Moscou. C'est que Duroselle travaille dans la longue durée et Montesquieu juge à partir d'un moment privilégié. Il est évident que la Russie pose problème. Elle entre dans l'Europe assez tard, sans doute seulement avec Pierre le Grand et Catherine II. Sa place y semble bien assurée. Elle est largement présente au XIXe siècle, tant sur l'échiquier diplomatique que sur la scène des arts. Elle en est probablement sortie en 1917, peut-être pour y revenir avec la perestroïka de Gorbatchev et son slogan de la « maison commune ». Le récent vote des habitants de Leningrad en faveur du nom de St-Petersbourg est l'expression de cette volonté de retour vers l'Europe. Les choses ne sont pourtant pas simples. L'Union soviétique n'est pas la Russie et la Russie d'aujourd'hui n'est pas la Moscovie.

A la question jusqu'où il faut pousser l'élargissement de la Communauté européenne, l'histoire ne peut fournir une réponse univoque. La véritable réponse est du ressort de la politique. Pour un historien il est évident que la Bohême et la Hongrie faisaient et font partie de l'Europe. Charles IV, le grand empereur de la maison de Luxembourg, est là pour le rappeler, lui qui a fondé l'Université de Prague et a essayé de mettre la main sur la Pologne et la Hongrie. La Russie du XVIIIe et du XIXe siècle n'avait pas de mal à prendre sa place dans le concert des États européens car elle n'en faisait pas éclater l'équilibre. Tel n'est pas le cas de l'URSS de nos jours. Certes, l'avenir est soumis aux contingences mais les diplomates qui sont rarement à court d'imagination, sauront trouver une formule assurant à l'Union soviétique - ou à ce qui en restera - une place en Europe. Un grand historien allemand, W. Loth, ne vient-il pas de proposer de résoudre le problème de la sécurité en Europe en admettant l'URSS dans l'OTAN.

4 - L'Europe, dans sa longue histoire, est surtout faite de rencontres. Paul Valéry fait allusion à une de ces rencontres décisives quand il affirme qu'«est européen tout ce qui porte la marque de Jérusalem, d'Athènes et de Rome». Un homme comme T.S. Elliot a mis en évidence (1948) avec beaucoup d'éloquence tout ce que l'Europe doit au Christianisme au point de conclure: « If Christianity goes, the whole of our culture goes ». Jean-Paul II ne cesse de rappeler les valeurs d'une Europe chrétienne. Jacques Delors a cependant eu raison de rappeler à ce sujet l'apport de «l'athéisme contemporain, porteur lui aussi de valeurs de générosité». Les valeurs que symbolisent à beaucoup d'égards les lumières du XVIIIe siècle sont indéniablement intégrées dans l'identité européenne.

Au-delà de la rencontre des idées il y a celle des peuples. Celle des Celtes et des Romains et surtout celle des Celto-Romains et des Germains qui marque si durablement l'Europe et donnera naissance à la chrétienté. Dernière grande rencontre, celle avec les Slaves. Une Europe sans les peuples slaves est une Europe mutilée. L'identité de l'Europe est faite de la somme de ces rencontres et de leurs effets les uns sur les autres (on pourrait en nommer d'autres, moins importantes par leurs conséquences mais pas moins significatives, p.ex. avec les Arabes et les Turcs). H. Brugmans a trouvé une belle formule pour caractériser l'unité culturelle de l'Europe: « tout ce qui est arrivé aux Européens de vraiment important, leur fut toujours commun ».

5 - Parmi ces aventures communes aux Européens figure aussi l'invention de l'Etat - Nation. En tant que tel il n'est peut-être pas aussi récent qu'on le croit. Certains Etats, telles la France, l'Espagne, l'Angleterre ou les Provinces-Unies, datent de la fin du Moyen-Age ou du début de l'époque moderne. Il est vrai aussi que sur le plan de la théorie il ne date que du tournant des XVIIIe et XIXe siècles sous une double impulsion, celle du message d'émancipation de la Révolution française et celle des doctrines des penseurs allemands. L'Europe, si portée à l'universalité de ses valeurs, a généreusement exporté le modèle de l'Etat-Nation dans le monde entier, y compris jusqu'en Afrique où il masque mal les réalités tribales.

En Europe, au lendemain de la Seconde guerre mondiale, l'Etat-Nation était affaibli, voire discrédité sous sa forme la plus chauvine (Deutschland über alles; Right or wrong, my country!) Les pères-fondateurs de la Communauté européenne, les J.

Monnet, R. Schuman et K. Adenauer, ont su en profiter avant que son retour ne s'annonce. Si la Communauté depuis lors a progressé si lentement, si tant d'hommes en sont déçus, c'est que les responsables politiques avaient sous-estimé la vigueur du fait national. La nation est restée une idée étonnamment vivante, ici en Europe occidentale mais aussi en Europe centrale et orientale où l'ordre soviétique a réussi si longtemps à en cacher la survie. L'élargissement de la Communauté européenne vers les pays de l'Europe centrale et orientale est une nécessité - seule la date est incertaine - mais il se fera dans un cadre national sans doute plus exacerbé que nous y sommes habitués en Europe occidentale.

En ce qui concerne cette dernière, l'historien anglais A.S. Milward a établi la thèse que les Etats de la Communauté n'ont accepté un certain degré d'intégration (et donc certains abandons de droits souverains) que dans des domaines où l'Etat-Nation n'était plus en mesure d'agir efficacement. Paradoxe étonnant, l'Etat-Nation serait sorti plutôt consolidé du rapprochement européen des années 1950. Les négociations actuelles pour faire avancer l'union économique et monétaire ainsi que l'union politique se heurtent constamment aux intérêts nationaux, parfois très étroitement conçus. L'examen des archives des années 1950 ne donne pas une image fondamentalement différente.

Les progrès vers une plus grande intégration sont pourtant réels et non négligeables. L'historien allemand H. Kaelble montre dans deux livres récents (1987 et 1991) que des convergences sociales rapprochent depuis environ un siècle les pays de l'Europe et que ce processus s'est accéléré depuis 1945 (p.ex. législation sociale, Etat-providence, conditions de l'habitat, manière de vivre etc). L'Europe communautaire s'intègre donc aussi, avant tout sur le plan des phénomènes de société, et par là affirme son identité. La forte activation de ce processus depuis 1945 (surtout à partir des années 1970) pèse lourd dans la perspective de l'élargissement vers les pays de l'Est, car ceux-ci n'ont pas participé à cette évolution. Kaelble explique notamment que la convergence sociale est particulièrement nette entre la France et la RFA. Il y a donc interaction entre facteurs politiques et sociaux. Pour Kaelble les convergences sociales sont plus fortes que les convergences politiques, constatation qui nous renvoie vers cette étroite défense des intérêts nationaux qui caractérise les relations entre les Etats-membres de la Communauté.

Il n'en reste pas moins que la Communauté européenne, association volontaire d'Etats souverains, respectueux des règles du droit, n'a pas d'équivalent dans l'histoire. Elle a, de ce fait, contribué une part essentielle à l'identité de l'Europe.

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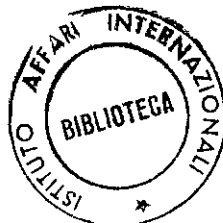
WORKING GROUP IV
European Identity

*L'Europe en Mutation - L'analyse sociologique des
convergences et des disparités entre pays européens :
une terrain insuffisamment exploité*

par

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L'EUROPE EN MUTATION

L'analyse sociologique des convergences et des disparités entre pays européens: un terrain insuffisamment exploité.

La question dans quelle mesure il convient d'approfondir et d'élargir la Communauté Européenne demande des décisions politiques. L'analyse économique et sociologique peut y contribuer par un diagnostic de l'état des pays concernés, de leur potentiel de coopération et des difficultés prévisibles. Pour ne pas se dérouler dans le vide, le débat sur l'intégration européenne devrait donc être accompagné d'une analyse comparée de l'évolution des sociétés européennes et de leurs problèmes sociaux, régionaux et nationaux.

Une telle analyse est d'autant plus nécessaire que l'évolution des sociétés européennes et leur transformation rapide à la suite de bouleversements technologiques, économiques et de l'ouverture des frontières fait l'objet de préoccupations de plus en plus intenses. Elles sont la meilleure preuve que l'Europe, c'est-à-dire un espace d'interactions multiples qui remettent en question le cadre habituel des traditions nationales, devient une réalité. Elle commence à toucher les sociétés européennes au coeur même de leur identité.

Ce processus ne se limite pas au cadre de la Communauté Européenne: celle-ci se voit elle-même entraînée par un processus d'internationalisation économique qui affecte profondément non seulement les industries et leur marché, mais aussi les structures sociales et politiques et les modes de vie des consommateurs.

En même temps, l'implosion des régimes communistes et la disparition du rideau de fer ont rappelé le fait que l'espace européen ne s'arrête pas aux limites des états hautement industrialisés de la Communauté Européenne et de l'AELE mais que les sociétés

européennes seront profondément affectées par les évolutions, les déstabilisations et les migrations prévisibles en Europe centrale et orientale, de même que par les pressions et les flux migratoires en provenance du Sud méditerranéen.

L'Europe des années 90 ne peut donc devenir une *"forteresse Europe"* sous forme d'une construction étatique homogène. Elle se présente d'une manière assez différente de l'idée d'une *"Europe des patries"* où les états délèguent certaines compétences à des institutions communes pour permettre l'ouverture des marchés sans que cela affecte leur nature profonde. En réalité, le processus des transformations politiques, technologiques et économiques a atteint le point où il entraîne une mutation des sociétés concernées qui commencent à la ressentir avec étonnement et parfois avec angoisse. Cette évolution ne manquera pas d'avoir des répercussions politiques à tous les niveaux.

Il est donc grand temps d'en prendre connaissance et - pour utiliser la formule d'Edgar MORIN - de ne pas seulement *"Penser l'Europe"* mais de s'intéresser à l'homme européen dans sa condition sociale et culturelle.

1. Les spécificités nationales: une réalité culturelle mouvante

Tout en subissant des influences internationales analogues et des interactions de plus en plus intenses entre eux, les pays européens sont cependant loin de devenir uniformes. De puissants facteurs historiques et structurels empêchent la formation d'une société européenne homogène. On ne commence qu'à mesurer la portée d'éléments à la fois culturels et sociaux, comme par exemple les différences entre les systèmes d'enseignement qui constituent certes une difficulté mais aussi une des richesses principales de l'Europe ou l'importance des cultures politiques nationales profondément enracinées.

Cependant la réalité sociologique européenne est plus et autre chose que la simple addition de données nationales qui juxtaposées cachent souvent les évolutions transnationales. Pour comprendre l'Europe en mutation, il faudra mettre en évidence à la fois les tendances communes et les spécificités nationales et régionales. Pour être utile, le développement d'une sociologie de l'Europe devra donc procéder à la fois d'une manière globalisante en essayant de comprendre des évolutions communes à plusieurs pays européens et d'analyser en même temps d'une manière comparative les différences qui subsistent entre les entités nationales ou même régionales.

Ces différences ne concernent pas seulement les faits mais également leur perception, leur interprétation et les conséquences idéologiques et politiques qui en sont tirées. Une sociologie de l'Europe n'aura donc d'impact véritable que si elle comporte une analyse comparative des manières d'interpréter les évolutions socio-économiques et culturelles. Dans la mesure où l'Europe change, les images que s'en font les Européens se transforment sans conduire nécessairement à une convergence des vues et de comportements.

Une telle analyse qui n'existe que d'une manière embryonnaire pour les pays d'Europe occidentale s'avère encore plus difficile pour les sociétés postcommunistes de l'Europe centrale et orientale qui se trouvent en plein bouleversement. Dans ces pays, les données, même les plus élémentaires, sont incertaines, les structures sociales provisoires, l'économie entre la faillite progressive et des transformations hésitantes, les sentiments nationaux exacerbés sans que l'on puisse prévoir la portée véritable de ces nouveaux nationalismes, les sentiments troublés et la réflexion politique et culturelle d'autant plus intéressante que les intellectuels ne cherchent pas de nouvelles certitudes, mais la remise en question même de leurs propres espoirs. L'analyse des réalités du postcommunisme devrait donc procéder d'une toute autre manière que l'étude des sociétés relativement structurées et stables de l'Europe occidentale.

2. Entre convergences et divergences: pour une clarification des concepts et des méthodes

Une approche pour saisir la spécificité sociologique de l'Europe à travers ses disparités nationales qui, regardées de trop près, risquent de cacher des évolutions communes, consiste dans la comparaison de données européennes avec d'autres pays industrialisés notamment avec les Etats-Unis et le Japon. Dans cette perspective, on constate que les pays européens ont beaucoup plus en commun qu'on ne le pense et que leurs convergences se sont accélérées et approfondies au cours du dernier siècle. C'est le message du livre de Hartmut Kaelble: *Auf dem Weg zu einer europäischen Gesellschaft. Eine Sozialgeschichte Westeuropas 1880-1980. München: Beck 1987*. A travers les chapitres famille, structures de l'emploi, entreprise, mobilité sociale, inégalité sociale, urbanisme et qualité de la vie, protection sociale et conflits de travail, Kaelble montre l'évolution d'un "projet de vie" européen, qui pourrait être résumé par le slogan certes trop schématique de "social-démocratisation".

Cependant, l'ouvrage de Kaelble rend manifeste la difficulté des problèmes méthodologiques d'une telle histoire sociale comparée. Il part de données statistiques condensées et traitées de telle façon qu'elles permettent effectivement les comparaisons en vue desquelles elles ont été élaborées. Il faut cependant se demander si ce procédé ne fait pas disparaître une bonne partie des différences substantielles qui continuent à exister entre les pays européens et qui sont d'une importance primordiale dès qu'il s'agit de promouvoir une meilleure compréhension et coopération entre elles. La question décisive pour l'avenir de l'Europe qu'on risque d'éluder en utilisant d'une manière non différenciée les termes de similitude et de convergence, est la question si une plus grande ressemblance des structures sociales entraîne une plus grande proximité des comportements et des finalités. Kaelble est lui-même conscient du problème: "Il ne faut pas se faire d'illusion: la convergence croissante des sociétés européennes n'entraîne pas d'elle-même une communauté politique européenne. Du point de vue d'une histoire de la longue durée, les structures et les

cultures politiques de l'Europe paraissent posséder des forces de résistance au changement et à l'intégration, beaucoup plus fortes que l'économie et les sociétés européennes." (p. 159)

C'est ce phénomène du rythme différent des transformations économiques, sociales et politiques qui suscite un nouvel intérêt pour les questions historiques, culturelles et sociologiques dans le cadre de récentes études consacrées au processus de l'intégration européenne. Il apparaît notamment dans les deux synthèses publiées par William WALLACE: *The transformation of Western Europe*. London: Royal Institute of International Affairs 1990 et William WALLACE (Ed.): *The dynamics of European Integration*. London: Royal Institute of International Affairs 1990.

WALLACE attire l'attention sur le décalage entre les forces de retardement et les forces de mutation inhérentes au processus politique et économique: *"Political, economic and cultural developments follow different timescales. (...) Europe's nations-states (...) are themselves relatively recent constructions, assuming their modern structure at most a century ago, and are affected by the same underlying economic, technical and social trends which are gradually reshaping Europe as a whole. (...) Social and cultural changes follow yet other timescales. The social evolution of Europe since 1945 has been marked by rising interaction across frontiers, under the impulse of radio, television, motorways and charter aircraft; while the impact of communication on attitudes has been delayed by the slow passage of assumptions from one generation to another; and limited in a geographical spread by the physical boundary between West and East. This cultural evolution has been marked by pronounced Americanization, or globalization of popular tastes. But it has been marked as well by a persistent desire, on the part of intellectuals and politicians, to differentiate between 'Europe' and 'America', which has found an echo in popular attitudes. Underneath, the Atlantic framework, the postwar West European order have lain: cultural and historical images from previous eras (...) History and identity go together, both at the national and the European level".* (Transformation, p. 2ss.)

Là encore, il s'agit d'évaluer avec plus de précision les forces et les conséquences de la mutation: *"Values and attitudes are not static. They have shaped by experience and social learning, by mutual interactions over time, by the imagery and persuasiveness of intellectual and political leaders, and by shifts perceived in the external environment. The social integration of Western Europe has altered elite popular assumptions about one another's national identities and about the space and the culture which they share. (...) 'Modern man is not loyal to a monarch or a land or a faith, whatever he may say, but to a culture.'* (Transformation, p. 33) Mais les grandes difficultés consistent à saisir concrètement ces transformations que WALLACE évoque sans pouvoir les décrire: *"But the experience of the past 30 years suggests that the relationship between political and economic developments is by no means as straightforward as the normative theorists of European integration were arguing in the optimistic years after the signing of the Rome Treaties. Politics follows its own logic, not simply those of economics and technology."* (Dynamics, p. 7) *"Values, loyalties, shared identities are the stuff of political rhetoric, and of intellectual and cultural history. They are, however, the most difficult phenomena for social scientists to study. Economists prefer to exclude them altogether, substituting a model of rational man entirely motivated by calculations of interest. Political scientists and sociologists cannot take this conveniently reductionist way out. Authority, legitimacy, community, all moderate the naked pursuit of power and interest in societies and political systems; the strength or weakness of shared values tipping the scales between solidarity and disintegration when interactions appear to impose more burdens than benefits."* (p. 16)

Malheureusement, les études comparatives concernant les valeurs et la culture politique dans les différents pays européens restent loin derrière ces questions précises et urgentes mais dont la complexité réclame des réponses qui nécessiteraient une coopération interdisciplinaire et internationale intensive. Les anciennes études sur la culture politique par ALMOND et VERBA et leur version postmoderne par INGLEHARD sont fortement

marquées par des concepts et des valeurs américaines¹⁾. Au niveau européen, les analyses comparatives s'arrêtent à l'évaluation du premier sondage d'opinions comparatif sur les valeurs des Européens présenté par STOETZEL et dans une autre manière par HARDING, PHILLIPS et FOGARTY²⁾. Ce n'est que dans une monographie nationale que NOELLE-NEUMANN et KÖCHER ont essayé de pousser plus loin ce type d'analyse en intégrant des résultats de sondages dans l'histoire spécifique d'un pays³⁾. Il faudra attendre la publication des résultats de la deuxième enquête européenne sur les valeurs réalisées en 1990 et leur analyse comparative qui, pour être fructueuse, ne devra pas se limiter à la seule évaluation des données démographiques, mais les mettre en relation avec d'autres méthodes d'analyse comparative⁴⁾. Les résultats des nombreux sondages d'Eurobaromètre et d'autres institutions sont certes intéressants, mais prêtent à toutes sortes de confusions, si on ne réussit pas à les mettre dans un contexte à la fois historique et social.

Il serait trop demander à un recueil de contributions de colloque comme celui présenté par Dominique SCHNAPPER et Henri MENDRAS: *Six manières d'être Européen*. Paris: Gallimard 1990 de pouvoir résoudre tous ces problèmes. L'intérêt principal de l'ouvrage consiste dans le fait qu'il les pose d'une manière plus systématique. Le décalage entre le rythme et les conséquences de l'histoire économique et de l'évolution culturelle et politique apparaît d'une manière contradictoire dans les conclusions de Jean-Claude CASANOVA "*Bourgeoises et homogènes*" et de Dominique SCHNAPPER "*Le citoyen, les nations et l'Europe*". De son point de vue économique, Jean-Claude CASANOVA prévoit une

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- 1) Almond, G.A./Verba, S.: *The civic culture. Political attitudes and democracy in five nations*. Boston/New York 1963 et Almond, G.A./Verba, S. (Ed.): *The civic culture revisited*. Boston 1980. Inglehart, R.: *The silent revolution, changing values and political styles among western publics*. Princeton: Princeton University Press 1977.
 - 2) Stoetzel, J.: *Les valeurs du temps présent. Une enquête européenne*. Paris 1983. Harding, S./Phillips, D./Fogarty, M.: *Contrasting values in Western Europe*. Londres 1986.
 - 3) Noelle-Neumann, E./Köcher, R.: *Die verletzte Nation. Über den Versuch der Deutschen, ihren Charakter zu ändern*. Stuttgart 1987.
 - 4) Voir le rapport de Joachim Schild. *Vergleichende Länderforschung und europäische Integration. Stand und Entwicklungsmöglichkeiten in der Bundesrepublik Deutschland*. 27. - 29. Juni 1990. Ludwigsburg: Deutsch-Französisches Institut 1991.

inévitabile uniformisation des sociétés européennes: *"Les économistes ont observé depuis longtemps que les modes de consommation des populations européennes se rapprochaient de plus en plus les uns des autres; de même pour les niveaux de rémunération. Des populations disposant à peu près des mêmes revenus, ayant la même efficacité, adoptant progressivement des genres de vie semblables et se fournissant auprès d'entreprises dont la dimension dépasse la dimension nationale (processus largement entamé pour l'alimentation, le vêtement, le sport etc.) seront de moins en moins définies en termes économiques par leur appartenance nationale et de plus en plus par les caractères et les contraintes du marché unique. La machine économique, de toutes ses forces, conduit à l'uniformité."* (p. 229s.)

Dominique SCHNAPPER rappelle, par contre, l'importance du cadre national qui dépasse de loin sa fonction purement politique: *"La nation reste pourtant une instance de régulation et un lieu d'identification privilégiée. (...) Le monde communiste peut nous aider à voir que dans les pays de l'Europe de l'Ouest aussi, les institutions et la valeur identitaire de la nation, malgré son déclin, n'en restent pas moins une source de différences profondes."* (p. 243)

Henri MENDRAS est conscient du caractère provisoire de ce genre d'hypothèse: *"Toute une géographie morale de l'Europe (comme on disait au siècle dernier) reste à faire, si l'on veut évaluer la persistance des diversités et des contrastes et même peut-être leur revitalisation par les moyens nouveaux fournis par l'enrichissement et les progrès de la technique (...). Pour lors, dans l'état des données, nous en sommes réduits à ausculter les attitudes et les valeurs à l'aide des sondages qui sont de merveilleux outils, mais qui n'atteignent que le niveau des opinions et se prêtent mal à identifier les transformations des attitudes profondes."* (p. 46s.)

Sergio ROMANO insiste lui aussi sur le rôle de l'Etat dans les différences qui subsistent entre les pays européens: *"Il est vrai que l'Espagne, la Grande Bretagne, la France,*

l'Allemagne Fédérale et l'Italie ont vécu au cours des dernières années des chapitres parallèles d'une même histoire économique et sociale. Mais deux observations s'imposent. Le fait que des résultats analogues aient été atteints de façon si dissemblable et que l'Etat ait joué un rôle si différent dans les transformations des dernières années aura certainement des répercussions sur l'histoire future des pays étudiés et sur leur capacité d'adaptation aux règles de l'Europe communautaire" (p. 24s.)

Ce recueil, comme tant d'autres, essaie de résoudre le problème par la juxtaposition de monographies nationales et nullement comparatives. Dans son analyse du cas anglais, Vincent WRIGHT constate toute la complexité de la mutation européenne: "*Dans le vaste processus de changements qui a lieu en Europe de l'Ouest, des facteurs économiques, sociaux, culturels et politiques apparaissent intimement liés les uns aux autres et nous entraînent vers des modèles de convergence. Pourtant, les agrégats masquent des variations ancrées au sein des nations européennes. L'Etat, le marché, les groupes sociaux et professionnels jouent un rôle de médiation dans ces changements et tous ont été modelés par des expériences politiques et historiques distinctes.*" (p. 102) "*Nous avons remarqué (...) qu'il y avait des tendances en Europe de l'Ouest qui poussaient vers l'interdépendance et l'intégration, et que certaines d'entre elles conduisaient à des convergences dans certains domaines. Pourtant, l'interdépendance et l'intégration peuvent conduire, par le biais de réactions - à la fois positives et négatives - à une différenciation accrue et à la diversité, à la fois du point de vue économique et du point de vue social. Les marchés locaux devront sans doute se spécialiser pour survivre. Il y aura des résistances à l'homogénéisation culturelle, car des groupes et des individus chercheront à réaffirmer leurs identités. Il s'ensuit qu'à travers les médiations des pressions communes vers le changement l'Europe converge dans une certaine mesure, mais les réponses à l'intérieur de chaque Etat européen varient, ce qui crée des modèles de sous-cultures transnationales comme ceux de la classe ouvrière industrielle traditionnelle, des jeunes consommateurs en ascension sociale, des immigrés pauvres et marginalisés.*" (p. 117).

Pour la France, Alain TOURAINE arrive au même genre de constatations apparemment contradictoires: *"Le changement le plus profond qui s'est opéré dans l'expérience des Français au cours du dernier demi-siècle est qu'elle a cessé en grande partie d'être nationale. L'économie s'est internationalisée, et tout autant la culture. (...) Ce qui marque l'histoire de la France contemporaine, c'est que cet éclatement de la société nationale atteint un pays qui avait identifié son Etat national à la fois à une longue histoire, pensée comme celle d'une personne, et au principe des Lumières. C'est donc du champ politique et de la nature de l'Etat qu'il faut partir si l'on veut comprendre les formes particulières de la vie sociale et culturelle en France. A partir de réalités sociales, on risquerait d'introduire des références constantes à une société française dont c'est précisément l'existence qui est devenue problématique. Si l'on voulait, à l'inverse, pour analyser la transformation de la France, partir de la consommation et des études qui nous informent sur ses évolutions, on privilégierait les aspects généraux du marché européen et on laisserait échapper tout ce qui fait que la France ne ressemble pas à la Grande Bretagne, alors que sa production et sa consommation sont proches de celles de sa voisine. Car l'expérience humaine est au moins autant déterminée par la capacité de réponse d'un individu ou d'un pays que par les stimulations qui lui viennent de son environnement. Nos choix se forment à travers une culture, des institutions, une éducation."* (p. 145ss.)

TOURAINE conclut par un appel presque désespéré aux sciences sociales, à cette sociologie de l'Europe qui devrait permettre aux sociétés européennes de se comprendre elles-mêmes: *"La société française sait aujourd'hui que les images qu'on lui a données d'elle-même ne sont que des vieilles photos retouchées. En fait, elle ne se voit plus et cherche des mains sur le visage des autres, un jour les Américains, un autre les Japonais, parfois les Allemands ou les Italiens, des expressions qu'elle voudrait s'attribuer à elle-même. Cet aveuglement ne peut pas durer. Les sciences sociales, qui portent encore le poids d'une conjoncture idéologique défavorable, ont la responsabilité de déchirer les discours opaques et de laisser entrer la lumière qui permettra à la société française de voir son propre visage, bien différent des souvenirs maintenant lointains, qu'elle en a*

conservés. Mais elle ne pourra le reconnaître qu'en le comparant à ceux de ses frères et soeurs d'Europe qui vivent la même histoire, car le sens de notre situation ne peut être compris qu'à travers les différences entre les réponses que nous apportons aux mêmes questions." (p. 170s.)

Pour les pays postcommunistes de l'Europe centrale et orientale, tous les témoignages confirment¹⁾ que le décalage entre la rapidité du bouleversement politique, la lenteur d'une transformation économique incertaine et les évolutions profondes des sociétés prennent des formes dramatiques. Pour que le "*retour à l'Europe*" si ardemment souhaité puisse se réaliser, trois conditions devraient être remplies selon l'analyse de Ralf DAHRENDORF: l'établissement d'un état de droit; l'introduction d'une véritable économie de marché et le développement d'une société civile. Comme Jacques RUPNIK le soulignait lors d'un récent colloque de la Fondation Européenne de la Culture à Vienne, les mesures politiques peuvent être prises dans un délai de six mois, la transformation économique nécessiterait, dans le meilleur des cas, six ans et l'évolution d'une société civile soixante ans. Comment coordonner ces trois niveaux si étroitement interdépendants?

3. L'incompréhension des spécificités culturelles: un obstacle à la coopération européenne

Le besoin d'une analyse comparée des sociétés européennes ne concerne pas seulement la prise de conscience des réalités politiques et sociales. Il correspond aux besoins immédiats des entreprises qui dès qu'elles essaient de passer de l'échange international de produits vers de véritables synergies ou de fusions avec des partenaires étrangers se heurtent à des

1) Voir par exemple, Rupnik J.: *L'autre Europe*, Paris 1990; Dahrendorf, R.: *Betrachtungen über die Revolution in Europa*, Stuttgart 1990; Moïsi, D./Rupnik, J.: *Le nouveau continent. Plaidoyer pour l'Europe renaissante*, Paris 1991; Lesourne, J. et Leconte, B.: *L'Atlantique à l'Oural. L'après-communisme*, Paris 1990.

obstacles non seulement linguistiques, mais à un véritable *"mur culturel"* qui subsiste entre les manières de penser et de procéder, entre les hiérarchies sociales et les styles de gestion.

En effet, toutes les études sur la coopération économique et le management comparé le confirment: au-delà des problèmes linguistiques, les différences socioculturelles mal comprises constituent un obstacle majeur à toute coopération approfondie même à l'intérieur de l'Europe. Le même phénomène apparaît dans le domaine universitaire si l'on veut passer des échanges traditionnels à une véritable coopération scientifique ou pédagogique. Les différences de comportement et les difficultés de communication font problème dès qu'il s'agit non seulement d'organiser des échanges, mais de remettre en question ce qui pour chaque partenaire *"va de soi"* (c'est ainsi que le psychologue HOFSTÄTTER définit la culture). Ces différences sont généralement interprétées en terme de *"mentalité"*, c'est-à-dire des comportements psychologiques considérés comme étranges ou aberrants. En les analysant de plus près, on constate cependant que la plupart des malentendus et des comportements divergents sont le résultat de différences sociologiques parfaitement compréhensibles comme surtout les différences entre les systèmes d'éducation, des modes de pensée, des comportements et des structures sociales qu'elles produisent, des structures institutionnelles et des hiérarchies dans les administrations, les entreprises, les universités et dans la vie sociale et politique.

Tout en étant à la mode, l'étude des *"cultures d'entreprise"* n'a pas encore conduit à des études comparatives approfondies à l'échelle européenne, mise à part l'enquête déjà ancienne et consacrée à une multinationale assez particulière de Daniel BOLLINGER/Geert HOFSTEDE: *Les différences culturelles dans le management. Comment chaque pays gère-t-il ses hommes?* Paris: Les éditions d'organisation 1987. Le livre de Philippe d'TRIBARNE: *La logique de l'honneur. Gestion des entreprises et traditions nationales.* Paris: Seuil 1989 qui combine des monographies sur trois entreprises en France, aux Etats-Unis et aux Pays Bas avec des considérations historiques et sociologiques sur l'évolution des trois sociétés est méthodologiquement très stimulant

mais encore largement spéculatif. Dans la pratique, on en reste donc aux simples recettes de comportement épicées de considérations d'anthropologie culturelle trop générales ou horriblement stéréotypées comme l'ouvrage d'Edward T. HALL/Mildred Reed HALL: *Les différences cachées. Comment communiquer avec les Allemands*. Hamburg: Gruner + Jahr 1984, consacré à la comparaison franco-allemande.

Une des raisons majeures de cette défaillance dans la comparaison concrète d'un secteur central des sociétés européennes réside dans le fait que l'analyse des systèmes d'éducation tout en prenant de plus en plus conscience des phénomènes d'internationalisation n'a pas encore réussi à dégager d'une manière cohérente et comparative le rapport entre les structures institutionnelles, leurs conséquences sociales et la manière de laquelle les formes et les contenus de l'enseignement et surtout des examens conduisent à des manières de penser et à des comportements qui se retrouvent dans la vie des entreprises, dans l'administration et dans la vie sociale. C'est ainsi qu'une étude comme celle de Jean-Michel LECLERCQ et Christiane RAULT: *Les systèmes éducatifs en Europe. Vers un espace communautaire?* Paris: Documentation Française 1990, reste institutionnelle et statistique et se limite à une notion technocratique de la politique de l'éducation. Les études plus différenciées comme celle de Jacques LESOURNE: *Education & Société. Les défis de l'an 2000*. Paris: La Découverte/Le Monde de l'Education 1988 ou pour l'Allemagne celle de Sebastian MÜLLER-ROLLI (ed.): *Das Bildungswesen der Zukunft*. Stuttgart: Klett-Cona 1987 restent essentiellement mononationales. Une analyse comparative des systèmes d'enseignement et des styles d'enseigner et d'apprendre serait d'autant plus nécessaire qu'elle permettrait de mieux préparer les échanges universitaires dans le cadre de programmes comme ERASMUS¹⁾. Pour donner toute leur efficacité aux programmes d'échange qui sont en effet le meilleur moyen pour promouvoir la compréhension entre Européens et une réflexion commune sur l'avenir de nos sociétés, une telle comparaison

1) Ces déficits ont été relevés dans le rapport de Baumgratz-Gangl, G./Deyson, N./Kloss, G.: *L'amélioration de la préparation et de l'accompagnement linguistiques et socioculturels des étudiants participant aux programmes interuniversitaires de coopération ERASMUS*. Bruxelles 1989.

approfondie des systèmes d'éducation et de leurs conséquences sociales et intellectuelles serait un outil élémentaire.

4. Intensifier la recherche et la formation

Notre bilan - nécessairement provisoire - a fait apparaître toute une série de questions auxquelles les publications existantes apportent peu de réponses satisfaisantes. Elles dépassent de loin la recherche sur l'intégration européenne telle qu'elle est habituellement réalisée dans les sciences politiques, économiques et juridiques. Malgré un nombre croissant de publications à base de données statistiques comme par exemple Gérard MERMET: *Euroscopie. Les Européens: Qui sont-ils? Comment vivent-ils? Paris: Larousse 1991*, la sociologie comparée de l'Europe n'en est qu'à ses débuts. Etant donné son importance scientifique, politique et pratique, elle mériterait des efforts particuliers..

La sensibilisation aux problèmes de la communication interculturelle tels qu'ils ne se posent pas seulement entre sociétés mutuellement exotiques mais à l'intérieur même de l'Europe devrait faire l'objet de l'éducation à tous les niveaux.

L'initiation aux méthodes de la comparaison internationale devrait être intégrée dans les études européennes. En effet, la formation initiale et continue dans le domaine de la sociologie de l'Europe constitue une contribution importante pour son approfondissement et ses élargissements éventuels.

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