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History and Institutions of the EEC

C D E COLLINS

The Creation of the Community

The European Community is a unique political institution. Thus political analysis dependent upon the behaviour of nation states, whether unitary or federal, or upon long-standing international organisations, is of only limited application. Furthermore, since the Community was not created as a fully mature organisation, it is still struggling towards a firmer identity and towards the creation of appropriate institutions. Not only does this mean that judgements must be tentative but, more importantly, that a discussion of its formal workings has little meaning without an understanding of the broader political context within which the Community operates. Although the emphasis in this book is on *economic* policies, which does no more than reflect the content of the Treaty of Rome, in the last analysis the objectives of the Community go beyond the economic sphere which was conceived as a means, rather than an end. In the words of the preamble of the Treaty of Rome, the European Community was to 'lay the foundations of an ever closer union among the people of Europe and by pooling resources is to preserve and strengthen peace and liberty'.¹

The idea of creating a political unit in Europe, although we must recognise considerable uncertainty about the geographical boundaries of such a unity, is a very old one and the classic argument for it rested on the need to preserve peace in a traditionally bellicose part of the world. At both the intellectual and emotional levels there has been a constant interplay between the opposing forces of nationalism on the one hand and, on the other, the desire to create an organisation which would express the enduring sense of common history, culture, ideas and experience in Europe and which would be able to resolve antagonisms in a non-warlike manner. During the twentieth century,

and particularly since 1945, there seemed greater urgency about this task.²

It is hardly surprising that the need to find a new way of conducting affairs should have been felt particularly acutely as the Second World War finally came to an end. The exhaustion of Europe was a fact visible to all in the form of physical devastation, a poor standard of living and immense human loss; her weakness was demonstrated by her inability to restore her economy without aid from the USA and her vulnerability soon exposed by growing mistrust about Russian policy in Europe. Under such circumstances, the psychological barrier which had hitherto prevented effective steps towards integration in Western Europe was pierced.

There remained, however, divergent views about how to proceed and the form taken by the organisations which resulted from the early post-war years reflected several different ideas. It was in 1947 that General Marshall launched the plan of aid from the USA to revitalise the European economy, provided assistance programmes were organised on a continental and not a state basis. The following year saw the creation of the Organisation for European Economic Co-operation to control a joint recovery programme and to work for the establishment of freer trade, although limited to Western Europe only. The organisation was given substantial powers to consider and comment upon the activities of the members and has continued to be a body whose views on the handling of national economies have considerable influence and prestige. It remains an interesting example of West European integration, for although it has no supranational characteristics and in formal terms operates on unanimous voting, governments have never readily vetoed policy. The organisation has developed both means of exerting its influence and investigatory activities in fields which are highly sensitive domestically. It is also the organisation which, by doing so much to ensure European recovery, including the recreation of a West European trading area, provided the context within which a more tightly organised grouping could flourish. Its later expansion, in 1961, into the Organisation for Economic Co-operation and Development to include the USA, Canada and Japan continued, *inter alia*, to give expression to the economic interdependence of a large part of the world as a precondition for the effectiveness of the European Community.³

Defence considerations demanded special arrangements. The Brussels Treaty of 1948 was a pact of mutual assistance between the UK, France and the Benelux countries and in objective was neatly balanced between the perpetuation of the wartime alliance against Germany and the realisation of a newer threat from Russia. Mr Ernest Bevin, the British Foreign Secretary, speaking in the House of

Commons on 22nd January 1948, spoke of the concept of European unity and the need to preserve Europe as the heart of Western civilisation, but also of the fear of Soviet domination which made it necessary for the like-minded to draw more closely together. The realisation of the interdependence of the defence of Western Europe with wider defence concerns was marked by the signature of the North Atlantic Treaty in 1949 by the Brussels Treaty powers in association not only with the USA and Canada, but also Denmark, Norway, Portugal, Iceland and Italy. This brought a new dimension to the integrative process by recognising that Western Europe was part of a larger military grouping, but in a way which ensured that defence arrangements were handled separately from subsequent political and economic developments.

The same period saw yet another attempt to express the unity of Europe through the creation of the Council of Europe in 1949. This body has very broad political and cultural objectives, including the notable contribution to protect the individual by means of the Convention of Human Rights and Fundamental Freedoms. Its statute stresses the belief in a common political heritage based on accepted spiritual and moral values, political liberty, the rule of law and the maintenance of democratic forms of government. The Council of Europe was able to obtain wide support in Western Europe. Today it has twenty members, but it was firmly under the control of a Council of Ministers acting on the unanimity voting rule and it remains a body from which withdrawal is possible. Although it was given a Consultative Assembly, as its name implies this had no real power and it was impatient with the lack of drive towards European unification contained in these arrangements that led activists to try a new approach, which was to result in the setting up of the three European Communities.

It was not long before a means was found through offering a possible solution to certain pressing questions. A working relationship between the western alliance and West Germany had still not been established. The old Germany was in practice now divided, but the western half not yet fully accepted as an independent state, although her economic recovery had begun and with the onset of the cold war she was needed as a contributor to the prosperity and defence of the West, rather than as a burden on it. A way therefore had to be found for her re-establishment, without arousing the historic fears of her recent enemies. In short, a means of reconciliation acceptable to France was required.

The beauty of the proposal for the European Coal and Steel Community (ECSC) was its ability to appeal to so many interests in Western Europe. To the argument that it was no more than rational

to treat the coal and steel industries of the area as a single whole and thus reap the benefits of a unified market operating with greater efficiency could be added the political argument that it was a means of integrating, and supervising, the essentials of war-making capacity, thus making it physically impossible for the members to go to war with each other again. It was to be the first stone in the sound and practical foundation of a united Europe creating a base of economic unity under the guidance of a strong executive. These ideas were contained in a speech delivered by M Robert Schuman, the French Foreign Minister, on 9th May 1950 which marks the formal launching of the Community idea.⁴

The sectoral approach to integration, based upon a pooling system, was familiar to many of those who had experienced the co-operative efforts of the war-time alliance. It was based upon a concept of functional integration which allowed for common action to perform common tasks and the creation of the ECSC was firmly based upon the belief that it was essential to find solutions to common problems. This approach, so different from classical diplomacy, formed the basis of what was to become known as the Community method.⁵ Although operative only in a limited field, its approach concerning the means of promoting the integration of Western Europe found favour as a model in the ensuing years, more especially because the ECSC was rapidly launched and initially worked relatively smoothly. Its early success established the credentials of this method of working to unify Western Europe and it was not long, therefore, before a new project was launched.

On this occasion the immediate problem was the outbreak of the Korean War, together with increased fears that Russia might attack in Western Europe. The question of a military contribution from West Germany was thus inevitably raised and pressed by the USA, on whom the main defence of the West now rested. Since the situation bore at least superficial resemblance to that which had made possible the launching of the ECSC, a similar attempt was made to handle this new problem. A proposal was launched for a European Defence Community (EDC) and the six members of the ECSC initialled a treaty in 1952. As before, the EDC was intended 'to kill several birds with one stone'. Since it required the military rearmament of West Germany, a number of conditions were necessary in order to make this acceptable to her western neighbours. An organisation promoting Western European unity would be a further move to attach Germany and the Germans to the West, both in a political and a psychological sense. Thus institutional arrangements of control were thought to be equally as necessary as the really novel feature of a European army in which small national units would be merged into an integrated force

which would in turn be subordinate to the NATO command.⁶ The parallel with the method of achieving control of the coal and steel industries is striking.

The new proposal, however, did not stand alone and for good reasons. The idea of a unified army, whilst member states still went their own ways in defining foreign policy objectives which such an army might be required to support, or continued to control their own economies including their general defence efforts, was hardly practical. Neither was the notion of an army unanswerable to democratic procedures and control compatible with ascendant Western European thinking. Almost inevitably, therefore, the project had to be enlarged with the proposal for a parallel European Political Authority whose institutions would ultimately absorb those of the ECSC and EDC and which would push forward with more general economic integration.

The total project was, therefore, very much larger and more sensitive than the launching of the ECSC and in the event it failed because of the refusal of the French Assembly to ratify the treaty creating the EDC. Other people, too, had seen a number of practical difficulties in the polyglot army. Mr Winston Churchill, we are told, drew Mr Dean Acheson a picture of a 'bewildered French drill sergeant sweating over a platoon made up of a few Greeks, Italians, Germans, Turks and Dutchmen, all in utter confusion over the simplest orders'. Each time the subject came up, said Acheson 'we went back to the baffled drill sergeant'.⁷

A solution to the immediate problem of West German rearmament was found in a different way and for this, the British can claim part of the credit. The Brussels Treaty Organisation was merged into a new body, the Western European Union, in which West Germany could make her defence contribution and Italy, too, became a member. At the same time it was agreed that West Germany should enter NATO, that the occupation of West Germany should finally be ended, that British forces should remain on the Continent as a counterbalance to rearmament and that West Germany should accept certain restrictions on her military production. A Franco-German agreement foreshadowed a solution to the question of the status of the Saar. Thus although formally the integration of Western Europe had received a set-back, the main steps had been taken towards what was an essential ingredient, that of establishing a base upon which West Germany could become a full member of the Western European community of states. Although the 'German question' was not dead, the states of Western Europe were increasingly able to put the past behind them and concentrate upon solving immediate concerns.

A new attempt at integration was soon made and in June 1955,

the Foreign Ministers of the six ECSC countries met at Messina to discuss the possibility of general economic integration and the peaceful development of atomic energy. The former was, of course, a bigger task than a further sectoral approach and would take longer to achieve. Whilst it was conceived, for example by M Beyen the joint Foreign Minister of the Netherlands who took the initiative on this occasion, as the means towards political unity, it was not thought necessary to stress unduly this further goal which in any case belonged to a somewhat hazy future and whose discussion at that time might well have meant retracing the old arguments for and against political union. The conference established an inter-governmental committee under the chairmanship of M Paul-Henri Spaak, then Foreign Minister of Belgium and who had already resigned from the Presidency of the Consultative Assembly of the Council of Europe in protest at its lack of progress towards unification. The task of the committee was to examine the projects for both a common market and an atomic energy organisation and to prepare the ground for further action. It is in the report of this committee that one finds most clearly stated the ideas which lay behind the Treaty of Rome.

The vision of the Spaak Report⁸ is of a Western Europe which can win for herself a place in the world comparable with that of the super-powers and which, once again, has the capacity to influence world events. It was thus searching for a way to liberate the abilities of the European people and to improve the economic foundation of European society. The chosen method was to be the creation of a common market to provide the necessary productive base and which would require certain collective measures, the establishment of a broadly common economic policy to ensure economic expansion and higher living standards and measures to develop and utilise European resources including her labour reserves. Thus the Treaty of Rome, which resulted in 1957 to give expression to the ideas of the Spaak Report, contained the detailed means of working towards this more general picture, with a heavy concentration upon the measures immediately necessary to create the common market. In many respects the report was content to ensure that the new organisation would be able to take powers by giving it a general capacity to act and, indeed, treaty provisions which tried to lay down specific policies for an unknown future ten or twenty years ahead would have appeared impractical, if not absurd. The treaty also established the institutions necessary for action, but it is noticeable that these were cautious in political tone. Far from developing beyond the institutions of the ECSC towards political unification, they are generally held to be less supra-national in character, reflecting a change of mood in Western Europe and an unwillingness to plunge yet again into the political

debate about European unification. It must be remembered, too, that an organisation charged to integrate the whole of the economy and not a sector was clearly to be faced with larger, more difficult and often unknown, tasks so that states were likely to be more diffident about joining. The price paid for the new venture was thus caution in the political sphere and the institutions of the European Economic Community (EEC) left a great deal of power in the hands of the member states. It is essential to understand these dual features of the Treaty of Rome, namely the lack of policy guidance beyond a transitional period and the conservative nature of the institutions, in order to appreciate the present condition of the Community, for it has both to formulate current objectives and consider what institutions are necessary for their achievement.

The past not only explains one aspect of the Community's present situation, but also makes it plain that it does not exist in a vacuum. The major elements in its immediate environment at the time of creation are worth noting, for they provide the Community with some of its enduring policy issues. The states which came to form the Community were part of a wider grouping, anxious to ensure economic recovery after depression and war and committed to the recreation of a liberal, trading world economy. The efforts of the six countries to go further along the road to economic integration were potentially discriminatory with regard to other trading states such as the UK, the USA, the Scandinavian states and other European nations with whom the six had close trading ties. Thus the pursuit of the economic goal of the Treaty of Rome has always to be balanced against the need to consider relations with outside states, with whose well-being the Community's welfare is inter-dependent. Closely related is the interest of the Community, as a major trading unit, in a peaceful world, including a peaceful Europe, but members have relied primarily on their own foreign policies, defence efforts and American defence protection in this regard. There have been many conflicting views in Western Europe about defence issues, but whilst often resenting the reliance upon America in this area of policy, it has also been found extremely convenient to be relieved of much defence expenditure. This is a field which is riddled with anomalies. It contributes to a close, but often abrasive, relationship with the USA which the Community, as a unit, is ill-equipped to handle since it has no competence in defence matters.

Finally, the members of the Community have been part of a broader European movement which has recognised the need to identify the political and cultural values which are important to the area and to work in common for their pursuit. This aim is expressed through the Council of Europe. In sum, the Community can be seen as a specialised

unit which forms part of several wider groupings. These constrain its overall freedom of action, but at the same time their existence and success have left the different groups free to pursue their own more specific interests. This wider context not only affects the evolution of internal Community policy because of the impact of economic affairs on the outside world, but suggests one of the major institutional weaknesses of the present day Community, namely its lack of an effective responsibility for handling external relations. Until it achieves responsibility for foreign policy and defence, it will continue to lack two basic attributes of a state as we understand that concept, whilst these omissions also inhibit its effectiveness in handling policies in the economic sphere. Despite this enormous gap in competence, and thus in effectiveness, the European Community's great weight makes it highly significant in world economics and thus in world politics, although one of the curiosities of the situation is that it is often considered by the outside world to be more of a unit than it actually is. Its attraction is demonstrated by the first round of enlargement led by the UK and by the second round, currently in the negotiating stage.

Community Institutions

The European Community (EC) in reality consists of three separate entities, each one created by its own treaty: the European Coal and Steel Community (ECSC) set up by the Treaty of Paris in 1951, valid for 50 years; the European Economic Community (EEC) by the Treaty of Rome in 1957, of unlimited duration; and the European Atomic Energy Community (Euratom) by a second, unlimited Treaty of Rome signed in 1957. Subsequently, other texts have added to, or have amended, these basic documents and the more important changes are incorporated in treaties which must be ratified by each member in accordance with its own legal processes. Thus changes in the budget procedures and the agreement to admit the UK, Ireland and Denmark to the Community form the subject of special treaty instruments and the totality of these documents, together with the legislative acts to which they give rise and the case law of the Court of Justice, can be considered as the constitution of the Community. Strange as it still appears to British doctrine, the Community constitution and its legislation take precedence over national decisions and a moment's reflection will show that this is a necessary pre-condition for the Community to work at all, for it would be impossible otherwise to create the single economic unit, to establish the necessary confidence between the members about the environment in which they operate, or to handle external economic relations. The EC can be considered as a special

form of international organisation, given the importance, complexity and far-reaching nature of the matters with which it deals, the integrative elements in its objectives and the close, intensive nature of its working methods. The fact that it does not always demonstrate a capacity to work well as a unit, together with the difficulty which arises because it is not fully competent in all attributes of the modern state, suggest that it is still in a transitional stage.

With the setting up of the EC and Euratom by the same six countries that were already operating the ECSC, there was clearly a problem in the duplication of institutions. Thus, from the start, all three had a single Assembly and Court of Justice and the two later Communities were provided with the same Economic and Social Committee. In 1965, in a document usually referred to as the Merger Treaty, a single Council and a single Commission were established to replace bodies pertaining to the individual organisations and from that time on, it has seemed more logical to refer to the whole structure as the European Community. However, the functions of the institutions still derive from the original treaties and are thus not the same in all circumstances. Important differences relate to the functions of the Council which is responsible for harmonising the work of the Commission with that of governments in the coal and steel sectors, whereas in the overall economic field it must ensure co-ordination of the general economic policies of members and is also given power to take Community decisions. Even more significant are the differences in the responsibilities of the Commission which are more direct and decisive in relation to coal and steel than in relation to the economy as a whole. If the executive (then called the High Authority) was the centre of activity for the regulation of the coal and steel industries, the focal point for the EEC was rather the dual responsibility of the Council and Commission. The following discussion relates to the powers deriving from the Treaty of Rome setting up the EEC, unless otherwise stated, and the emphasis is upon the role of the institutions in the making of policy and the taking of decisions.

Although the treaties provide the basic foundation of the Community and the formal rules whereby it operates, a knowledge of the treaties is not sufficient by itself to understand present policies. This is because there are many issues which were not originally covered and because the treaties did not attempt to write a total blue-print for the future. This is particularly important in the case of the Treaty of Rome which provided reasonably detailed rules for the initial period of creating the common market, but left subsequent problems and the formulation of many positive policies to be decided later. As the Treaty fades further into the distance therefore, it is increasingly less useful as a guide to policy which has to be made through political

processes involving on occasion both Community institutions and national political structures. This introduces an air of uncertainty and fluidity into the functions and relationships of Community institutions, both with each other and with national political machinery.

All formal institutions, created by the treaties, have their part to play in the functioning of the Community. It is the totality of these activities which constitutes the Community method in decision taking which thus depends upon a *modus vivendi* existing between the units to allow the processes to operate. In practice, tensions exist between them and a traditional struggle for power is exhibited internally within the Community, as well as between the Community and the member states. The most critical struggle to date is probably still that between the Council and the Commission which formed an element in the political stagnation affecting the Community during 1965 and 1966 from which the Commission emerged chastened, but the budget debates of 1978 and 1979 demonstrate the reality of a power struggle between Parliament and Council.

A Community decision normally arises as a result of a formal proposal from the Commission to the Council, which must itself take the decision whether to accept or reject the proposal in accordance with the agreed procedure. The Council cannot amend a proposal except by a unanimous vote in order to prevent the emasculation of a general proposition in the interest of certain members. If action is subsequently required, the proposal will take one of two forms. It may become a *regulation* which is directly applicable in its precise form to all members. Alternatively, it may issue as a *directive* which is binding in its objective but allows states to achieve this in their own way. It is also possible to take a *decision* which is binding on those, such as firms, to whom it is addressed, whilst *recommendations* and *opinions*, which can also be made, have no binding force.⁹ These formal acts, more particularly the regulations and directives, are constantly adding to Community law.

Behind this legal structure lies a very complex process which involves a great many people and much political machinery. However, there is little doubt that, in relation to the formulation of policy and its translation into the necessary decisions, the two key units are the Council and the Commission. It is convenient, therefore, to begin with them.

The Council consists of representatives of member governments and meetings are therefore attended by governmental ministers. Its decisions are taken by unanimous, simple, or qualified, majority voting and when the last method is used, the system is weighted both in favour of the larger members and of the necessity to carry at least one of the smaller ones along with the decision. In this way it was

originally hoped to arrive at a method which would ensure that decisions were supported by a wide spectrum of opinion, neither allowing the bigger to ignore the smaller, nor the smaller members to hold the whole Community up. Originally it was intended that, as the Community became established and confidence in it grew, so the Council should increasingly move towards the use of the majority voting techniques, but states have proved extremely reluctant to allow this to happen. In 1965, an agreement was reached recognising that unanimity would continue to be used whenever a member considered the matter under discussion to be of vital national importance and subsequently the Council has used unanimous voting as its general rule with the normal understanding that a member may abstain from voting on a matter which is not of vital interest to it, but which it would rather not support, without preventing the other eight from agreeing the policy. Swifter methods of decision, particularly when no national interest is seriously at stake, are urgently necessary and will become even more essential if the Council is enlarged to accommodate twelve members rather than nine. The issue of the use of majority voting as a normal method must remain a live one and was discussed in the recent report on European Union by M Tindemans.¹⁰

Representatives of the Commission also attend Council meetings and play an active part in helping to reach a decision, although the Commission has no voting rights. It is here, however, that it can perform an important mediatory function between national viewpoints, allowing a position which is acceptable to members, and to the Commission as the representatives of the Community interest, to emerge.

The Presidency of the Council is held by each member state in turn for a six-monthly period and the chairmanship of many Community committees alters correspondingly. It has become the practice for each member to try to establish a particular style of working and to single out certain matters, for example speeding-up business, to which it wishes to give priority. Given that the chairman of any meeting can often influence business significantly, it can be seen that the President may occupy an important, albeit temporary, role. The President of the Council will also fulfil certain representational functions both towards other Community institutions, notably the European Parliament, and in external negotiations where he may act in association with the President of the Commission.

Although there is still some belief that the Council of Foreign Ministers is the most senior, membership depends upon the subject matter before the Council and as Community affairs have developed, so an increasingly wide range of national ministers has attended to Council business. It is not difficult to see that this growth has brought its own problems for national governments, for if Community issues

are handled by various ministers briefed by their own departments, it becomes less likely that any government can see its European policy as a coherent whole. Also, the greater is the possibility that any minister can draw support from Community policy to push his own policy within his government, perhaps distancing himself from his national colleagues in so doing and the greater the problems of co-ordination for the central administrative departments which are involved in problems now surfacing in Brussels. For the Community, too, the greater specialisation of the Council creates difficulties. The ensuing compartmentalisation of business means it is more difficult to negotiate Community policy. One issue can no longer be so readily considered in relation to others, so that the once famous 'package deals' which enabled the Community to arrive at new positions are harder to achieve. The Council of Agricultural Ministers, in particular, appears to have developed a life and status of its own.¹¹

The Council is served by its own secretariat which is separate from the Commission and is supported by a most important body, the *Committee of Permanent Representatives* (Coreper). It was in 1965 that the members gave formal recognition to this group, but the need for an organisation of senior officials to prepare meetings and to handle business between Council meetings had long been felt. Members of this committee are officials of ambassadorial rank, strengthened nowadays by a web of specialist and subordinate committees, often including members of home departments who travel to Brussels when they are required.

This committee is responsible for preparing the work of the Council which may also assign tasks to it and in 1966 it was agreed that it was desirable for the Commission, working through the committee, to make contact with national governments before deciding on the form of any intended proposal. It will be appreciated that a particular difficulty arises for the Community in that there is no hierarchy of relationships between the Commission and national bureaucracies both of whom will have their own responsibilities in substantive matters. As a result of its links with Commission and Council, Coreper is involved in all major stages of Community policy-making, ranging from early discussions to final Council decision taking and it forms an essential link between the Community and national governments. Many matters of policy are in fact today agreed by Coreper and only reach the Council in a formal sense.

Whilst this is one way of attempting to keep Community business, which is growing rapidly, under control, by implication it means that the Council itself is concerned only with important matters or those which, of no great substance in themselves, are yet highly political in nature. When it is remembered that domestic interests are increasingly affected by Community decisions and that such groups will wish to

exert what pressure they can on their relevant home minister to act as they wish in Council, it can be seen that Council meetings have a tendency to become increasingly politicised and to be used as a way of promoting a sectional, not necessarily a total national, interest. This process has been increased by the greater skill now shown in the use of publicity to support a negotiating position. Meetings of the Council are often portrayed by the national press, radio and television networks in terms of victory and defeat for national interests. Although Council meetings are technically secret, ministers themselves will frequently provide press information, often whilst meetings are still in progress, in order to acquire political advantage. This situation is the opposite of what was originally intended when it was thought that the experience of working together would make it progressively easier to reach agreement expressive of the general good for which majority voting would be a suitable method of work.

Practical problems are also encountered by the Council. The great press of business, the fact that ministers can attend only part-time to Council affairs and the highly sensitive nature of their activities all contribute to a grave time-lag in reaching a policy decision. The Council has become a major bottleneck preventing the Community working efficiently and with any enlargement these problems become greater.¹² Suggested reforms, such as the more general use of majority voting, the creation of an inner group to handle bigger decisions, holding Cabinet meetings in all national capitals on the same day of the week in order to release ministers for EC business are resisted by states and it is clear that changes necessary for functional effectiveness in fact challenge national autonomy. Looked at from the point of view of European integration, the remaining Community institutions need to wrest power from the Council in order to restore a more balanced position. During the next few years the European Parliament is likely to be the forerunner in any possible attack.

The second essential element in the making of Community policy is the *Commission*. This now consists of thirteen members, all nationals of the nine member states and chosen on grounds of competence and capacity to act independently in the interest of the Community itself. They are thus charged not to take instructions from governments and accept the responsibility and limitations on action involved in this position. At present, France, Italy, the UK and West Germany have two members each and Belgium, Denmark, Ireland, Luxembourg, and the Netherlands have one apiece. Commissioners are chosen by common agreement of governments for a period of four years with renewable appointments. Both the President and five Vice-Presidents are chosen from the thirteen by governments for a two year renewable period. In practice, an individual can expect two terms of Presidential office, although not all Presidents have remained for so

long. Many of them, however, have been men significant in national politics, thus able to meet ministers of the Council on equal terms and familiar with the type of political pressures with which the Community must grapple. This experience should enable the Commission to retain both the political stature and sense of touch which are essential attributes for its effective functioning.

Each Commissioner has responsibility for one or more major Community policies and although in form the Commission is still a collegiate body accepting responsibility for action as a group, in practice policy rests largely with the appropriate Commissioner, often in association with two or three colleagues. Adoption by the Commission is thus often formal but, unlike the Council, it has always used majority voting procedures. No other arrangements would permit the Commission to deal with the large volume of work now involved.

The Commissioners are supported in two ways. The Continental practice of a private office has been followed and each Commissioner has his own *chef de cabinet*, normally of the same nationality as himself, who is not a career bureaucrat. These assistants take many decisions on behalf of their chiefs. Secondly, there is the Commission staff itself. This is organised into General Directorates corresponding to the main areas of Community policy. In total there are only about ten thousand civil servants, including a large number of translators and interpreters. Thus, if the charges of 'bureaucracy' and slowness made about the Commission have substance, they do not arise because of the large number of people employed and another explanation must be sought. A more likely source of difficulty lies in the complexity involved in the integration of the detail of national economies and the problems of using six official languages.

The *General Directorates* are composed of a staff of various nationalities and it is normal to find that care has been taken to prevent any national viewpoint becoming predominant by ensuring that the holders of the higher posts are drawn from several member states and, in particular, that the Directors themselves are of a different nationality from the Commissioner in charge.¹³ Over time, certain directorates have won a higher prestige than others, whilst the development of Community policies brings the possibility of conflict and rivalry between one directorate and another. Thus, for example, the development of a stronger regional policy might well conflict with certain tenets of competition in the common market,¹⁴ or the desire to use the social fund to contribute to regional policy cut across other social objectives such as improving the employment position of women workers. In the resolution of policy conflicts the relative strength and competence of the directorates is likely to be one factor if not, as yet, the major one.

The General Directorates are not only responsible for the initiation of proposals which will become the basis of a Commission proposal and, ultimately, if accepted, a Community decision, but are also involved in the administration of previously agreed policies. The extent of their involvement varies and it must be remembered that a great deal of Community policy is not executed by the Commission at all, but by national administrations. One area in which the Commission is closely involved is agriculture because of the daily management of markets which the Common Agricultural Policy (CAP) involves, where a structure of management committees brings both the Commission and the national administrations into a system of joint administration. Even so, the day to day execution of the CAP, as well as the application and collection of the important levies on goods from outside, is handled by national ministers for agriculture and for customs collection on behalf of the Community. A second area of work in which the Commission is administratively concerned is competition policy, which requires the Commission to register and investigate certain agreements between firms to ensure that they conform to Community rules. Here it is in direct contact with individual firms and this is also the case in the execution of certain functions relating to the coal and steel industries.

Of rather different character is the work of the Commission in administering the various funds that the Community now possesses. Although the rules governing the operation of such funds reflect general Community policy, there may well be a degree of discretion in the allocation of monies to particular national schemes and it is usual for the Commission to be assisted by an advisory committee in the administration of monies from the social, regional and agricultural guidance funds. Since the monies themselves are disbursed to projects by national administrations, there is again close contact between home civil services and the Commission.

An important function of the Commission is to ensure that the members abide by their obligations or, as it is normally described, to act as the guardian of the treaties. It is essential that the rules of the various treaties are actively applied in each member, otherwise the operation of the common market is defeated. If members were to become cynical and lose confidence in the arrangements and in each other, the whole system would soon spiral downwards. In many cases, keeping states and firms up to the mark results simply from day to day business and through the normal liaison between them and the Commission, but in more important cases, or if there should be a deliberate evasion of the rules, other steps become necessary. The Commission can investigate circumstances where a breach of obligation is suspected and issue a *reasoned opinion*. If matters are not set right

within a stated period, the Commission is entitled to refer the matter to the Court of Justice. Although the Community has few direct sanctions with which to enforce its rules, the main one being the possibility of fining firms which breach certain operational rules, states have so far accepted their obligations to abide by Community decisions. An interesting recent example of this was the British government's willingness to conform to the ruling of the Court of Justice in 1979 that it must apply EEC Regulation 1463/70 concerning the installation of a tachograph in certain road vehicles, despite the domestic difficulties involved in so doing.¹⁵

Most interest, however, attaches to the function of the Commission both as an initiator of policy and the exponent of the Community interest.¹⁶ This arises in a formal sense from the fact that the Council waits upon the Commission to send it proposals upon which it must decide. Thus the Community is dependent upon the activity of the Commission and upon the quality of its work in order to function. Nowadays, since the Treaty of Rome is no longer adequate as a guide to future policy, this procedure places great power in the hands of the Commission to shape developments, even though the regular meetings of the European Council (see below) are now providing broad guidelines within which the Commission acts. In order to formulate a policy proposal, the appropriate directorate will find it necessary to undertake extensive discussions with both governmental departments and representatives of interested firms and groups and this knowledge will subsequently contribute to a Commission proposal. Once a matter has reached this stage it can then be discussed with Coreper and by Parliament and the Economic and Social Committee before finally reaching the Council itself. At each stage, extensive and lengthy discussions may be undertaken in which the Commission will almost certainly be active in order to obtain an agreed position acceptable to the member states and at the same time to enhance the process of European integration along the lines indicated by the Treaty of Rome.

The responsibilities of the Commission can be classified in several ways. Some are executive in nature, but its functions extend to the initiation of policy, the protection of the Community interest, the mediation between national interests and the protection of the treaty structure and subsequent rules. Thus the Commission is a very original body, not paralleled by any national equivalent and this remains true despite the growing importance to decision making of the Council which might have suggested that the Commission would become a neutral body for the implementation of Council decisions. This is prevented by the structure of the treaties alone and it must be remembered that the collective responsibility of the Commission is

not to the Council but to Parliament which alone possesses the power to dismiss it. It is Parliament, too, which debates the annual report which the Commission is obliged to issue and which receives a verbal statement of the Commission's intentions for the year ahead. Thus the treaty prevents the Commission from becoming a creature of the Council. Both Council and Commission have a position safeguarded by the treaty, although the balance between them has tipped in favour of the Council. Since the crisis of the mid-1960s, the Commission has been more subdued and cautious in its functioning and less aggressive in its approach to integration. It may prove to be the case that the integrative function has come to be shared with other institutions, notably through the attempts to build up political co-operation in foreign policy matters (see below). This development has to some extent by-passed the Commission.

The Court of Justice is an integral part of the institutional structure. The Community is a highly complex body, created by treaties which not only cover the responsibilities of its varied institutions and the basic rules of economic integration but which constantly give rise to new legal obligations in the form of regulations and directives. A Court is necessary for several reasons. It must ensure that the institutions act in a constitutional manner fulfilling the obligations laid on them by the treaties, but it must also ensure the observance of an ever growing volume of Community rules by states, firms and individuals. This is not just a question of pronouncing upon any possible infringements of the Community legal system which may be referred to it, although these may include such wide-ranging matters as a refusal to implement a Community rule or slow application due to lax national administration, but also includes the need to guide national courts in their interpretation of Community law. It is obvious that the uniform application of Community law, although an integral part of the Community structure, is likely to be a slow business and to be difficult of achievement since it must be incorporated into nine different legal systems with their own norms and methods of work. The difficulty is compounded since in many areas Community rules continue to operate alongside national ones since the treaty does not fully cover all economic matters and the integration of two sets of law where they overlap is hardly straightforward. It is not surprising that three of the main fields which cause most work for the Court are agriculture, competition policy and social security for migrants where states have pre-existing policies of their own, where both national and Community rules are complex and where overlapping interests occur.

The Court consists of nine judges and four advocates-general, the latter being responsible for preliminary investigation of a matter and

for submitting a reasoned opinion to the judges to help them come to a decision. In its method of working the Court is heavily influenced by the legal systems of the members, particularly of the original six states who created the Community in the first instance. It will hear cases brought by the Commission against member states or against the Council, cases brought by member states against each other or against the Council or Commission or by a natural or legal person against a Community decision which affects him. The Court enforces penalties for the infringement of regulations. It is also responsible for the interpretation of the treaty and subsequent texts if necessary at the request of a national court or tribunal which is trying to apply the treaty. States agreed in the Treaty of Rome to comply with the judgement of the Court and the fact that, in practice, they do so has been an important factor in strengthening the validity of the Community system.

A much younger institution is the *Court of Auditors* which began work in 1977 in response to growing demands, especially from Parliament, for a closer audit and clarification of the Community budget. This is now a complicated affair, made up in a tortuous way and, since it grows by accretion, is likely to become more, rather than less, difficult to understand. It is intended that the Court of Auditors should monitor expenditure much more thoroughly than in the past, by checking on the use made of Community monies by members and on their procedures for the collection of duties and levies.

It is time now to turn to the place of the *European Parliament* in the institutional structure. This depends not just upon treaty provisions, but upon the capacity that Parliament finds within itself to exploit its position. In recent years it has become more skilful in this activity. Its major formal control mechanism is the ability to dismiss the Commission. This is usually considered to be a power of little value for it cannot be exercised without bringing the Community to a halt and Parliament has no responsibility for the appointment of a new Commission. However, there seems no reason why it should not continue to dismiss the Commission until it obtains satisfaction. A vote of censure which stops before the brink can also be a way of expressing a strongly held view on Community policy, carrying the possibility of forcing a change of heart by the Commission or, indirectly, by the Council and Parliament which has experimented with this procedure. A censure vote may, therefore, be developed as a means of preserving the general European interest, despite its use against the Commission, from elimination by the Council where national interests predominate. The importance of this power depends less on the legal form than on the political weight represented by

Parliament, for if this is considerable, both the Commission and the member governments which appoint it, are unlikely to consider it wise to float Parliament's views.

Parliament has also become more effective in the use of its power to ask questions, both verbally and in writing, as a means of keeping both Commission and Council up to the mark whilst it receives and comments on reports from these two bodies. The process of political co-operation has been added to the subject matter which Parliament can scrutinise. Since 1974 the Foreign Ministers have been meeting four times a year with the Political Committee of the European Parliament for discussions on foreign policy issues, whilst in 1976 their work became subject to the question time procedure.

The powers of the European Parliament are not as negligible as is often supposed. The treaties lay down occasions on which Parliament must be consulted before a final decision is taken by the Council and in practice it is normally consulted on all significant issues. This is done by the formulation of opinions on Commission proposals which are studied and reported upon by the appropriate Parliamentary committee. The main Parliamentary committee session will thus debate the report from the committee on a particular proposition. The committees meet between Parliamentary sessions and are normally in close contact with the Commission whilst considering their reports and committee members may develop considerable expertise in particular problems.

The inherent weakness of the present arrangement for Parliament is that its views may be legally disregarded. It is possible that the Council would be foolish to ignore the opinion of Parliament on an important matter, for it may indicate the practicability and acceptability of a line of action in the eyes of informed opinion in the member states. In this sense, and since the Council receives the views whilst policy is still indecisive, Parliament often has an influence disproportionate to its formal powers. To increase these might not do much immediately to enhance the significance of Parliament. The real problem in achieving more power for Parliament is not that of gradually increasing its powers, but of wresting agreement from the Council that it should begin to share decision making responsibility. Suggestions have been made whereby joint responsibility could be exercised in certain matters and progressively extended to all.¹⁷

An important development of Parliament's powers came with the receipt of greater budgetary control. This followed the Council agreement of 1970 that the Community should become autonomous in financial matters over a phased period through allowing the proceeds of the agricultural levies and customs duties to accrue to the Community as a unit. Since it was recognised that these monies would

not provide enough finance for the Community's activities, it was agreed that temporarily members would make up the necessary total by direct contributions broadly related to their relative GNPs, but that this in turn would give way to a situation in which the Community acquired a proportion of VAT levied in all member countries (see Chapter 12). There have been, and remain, grave problems in the setting up and administration of this system. Nevertheless, once the principle that the Community should become responsible for its own monies had been accepted, it was generally agreed that the normal democratic principle of Parliamentary control over public monies must be established and a treaty to give effect to these strengthened powers was signed in 1970 with amendments in 1971 and 1975. The actual stages for the establishment and adoption of the Community's budget have become extremely complex and are unlikely to have reached their final form, not least because Parliament will be anxious to make an extension of financial power a major part of its struggle to obtain a more important position in the Community structure. The logic of this is that it is the means to obtain control over policies and their relative priority.

A draft budget is made up by the Commission, normally by September, for expenditure for the following year which is then adopted by the Council acting on a qualified majority vote. This draft budget is then sent to Parliament for discussion. The key to understanding Parliament's budgetary control lies in the distinction between compulsory and non-compulsory expenditure, the former deriving from the treaty and largely consisting of the costs of the CAP. Compulsory expenditure forms about 70% of the total budget and may be modified in the first instance by a majority of Parliamentary votes cast, but these changes must subsequently be agreed, or rejected, by the Council. Non-compulsory expenditure can be modified by a Parliamentary majority of all members, but there is a given limit beyond which Parliament cannot make increases in non-compulsory expenditure. Although the Council may subsequently amend the decision, Parliament must receive the total draft budget back for a second reading and at this point it may reject the Council's changes in the non-compulsory category. Finally, Parliament is entitled to reject the draft budget entirely and demand a new one, or alternatively, it must formally approve the final form.

Once both Council and Parliament had been given budgetary powers, it was necessary to strengthen procedures for consultation between them by the 'concertation procedure'. This allows for disagreements between them to be resolved by a compromise in which mutual concessions are made and for early discussion of proposals likely to give rise to future expenditure.¹⁸

A major uncertainty still relates to the definition of compulsory and non-compulsory expenditure. It is in the interest of Parliament to ensure an ever-widening definition of the latter and it appears to have been successful in its aim of ensuring that Regional Fund expenditure is so classified. If it can continue to enlarge this category then, together with the possibility of an early discussion of new claims on expenditure, Parliament is well set to encroach upon effective control of new policies. The main stumbling block is the CAP which is firmly established as compulsory expenditure and as long as it absorbs a major share of total financial expenditure, it will prevent not only the development of other policies but also the growth of Parliamentary powers in the policy-making field.

The European Parliament is remarkable for having achieved the first international election. Voting took place in June 1979 and the first sitting of the new Parliament was held in July. At the time of writing, the new Parliament consists of 112 Socialists (including 18 from the British Labour Party), 108 Christian Democrats, 64 European Democrats (including 61 British Conservatives), 40 Liberals, 44 Communists and allies (19 from France and 24 from Italy), 22 European Progressive Democrats and 22 non-attached members, making 410 in all.¹⁹ France, Italy, the United Kingdom and West Germany have 81 seats each, the Netherlands 25, Belgium 24, Denmark 16, Ireland 15 and Luxembourg 6. Whilst no immediate increase in formal powers is planned, it is likely that Parliament now possesses greater moral authority than hitherto and will seek to exploit this strength. Its capacity to do so will be enhanced if party groupings become more effective, for this will allow distinctive and more coherent views on desirable Community policy to develop. Both possibilities suggest that Parliament will seek to become more closely involved in policy matters than hitherto.

In addition, Parliament has several practical problems of great difficulty before it. There are a number of unresolved issues relating to future elections, since the ultimate goal is that of a single voting system throughout the Community whilst the dual mandate, which allows a member to retain a seat in a national Parliament, is believed by most people who have experienced it to impose intolerable strains. A major question relates to the site of Parliament. At present it has a peripatetic life with sittings held in both Luxembourg and Strasbourg whilst most committee work is carried out in Brussels. Yet so far it has been impossible to agree on the way to achieve a more viable plan. None of these matters is entirely within the competence of Parliament to solve, but the first elected Parliament is likely to spend a great deal of time on such issues which concern it closely.

Parliament is still in an evolutionary stage and a belief that it will

develop into an institution akin to a national Parliament is not necessarily correct. Apart from the fact that it now has nine national models to follow, it operates in a different environment from them. The fears that it will become locked in a struggle with national Parliaments, attempting to wrest power from them, may well prove exaggerated, for the European Parliament has to concentrate primarily on its relations with Council and Commission and to formulate its views on matters which are now European rather than simply national in character.

Apart from its specific functions, Parliament plays an important role of a general consultative and informative nature, for it is a major forum within which general views can be expressed. Opinions are thus readily available to the Council and Commission and at the same time Parliament is important as a channel through which information and knowledge about the Community are transmitted back to the national environments. These functions are, however, by no means exclusive to Parliament and a vast battery of machinery exists which acts as another link in the communications chain and which plays its part in the shaping of Community decisions. One of the more formal mechanisms is the *Economic and Social Committee* which was created by the Treaty of Rome with advisory status and designed to represent the various categories of economic and social activity such as employers, unions, farmers and the self-employed, as well as the general public. It has 144 members, appointed by the Council on the basis of national lists, each member being appointed for four years and acting in a personal capacity. For practical purposes the members are considered as coming from three main groups, namely employers, union members and those representing the general interest, each national delegation reflecting this tripartite composition. It is usual to seek the opinion of the committee on all major acts of policy and today the committee is also entitled to formulate views on subjects which it itself thinks are important. The committee has found it extremely difficult to establish an effective voice in Community affairs and for this there are several reasons. Not only did the treaty give it a purely consultative role, but its heterogeneous composition suggests that it is unlikely to be able to produce a single point of view except of a very general nature. Thus the choice before the committee is either to produce an agreed, but bland, report, or to recognise the diverse interests of its members by producing a set of reports on each significant issue. Either way, the committee findings are likely to be of limited effectiveness and the search for agreement which it often undertakes means that the reports frequently appear too late to be useful. Thus the utility of the committee lies elsewhere. It is helpful to the Council and, more especially, the Commission that the views of

these groups throughout the Community should be readily available before policy has hardened and the discussions in the committee provide this information, whilst meetings are one means whereby like-minded people from various countries can meet and discuss and the membership gain knowledge of Community affairs.

The committee, which is paralleled by a *Consultative Committee* confined to the coal and steel industry, by no means exhausts the Community committee structure. It is usual for the Commission to be supported by an advisory committee in the fund-giving operations and by a complex of working parties and committees for particular industries and problems. During the 1970s a *Standing Committee on Employment* was reactivated and strengthened. This is representative of national employment ministers, employers and unions as well as the Commission and is a reflection of the current concern with the state of the economy, the effect of inflation and structural change on employment levels and the particular difficulties experienced by certain groups of workers. To some extent this group overlaps with the Economic and Social Committee and there may be room for rationalisation, leaving the former to the industrial interests and the latter to develop a stronger citizen voice.

In some ways, for both interest groups and for the man in the street who wishes to make the effort, the Community, and particularly the Commission, are far more accessible than a national administration. This is in part due to the cumbersome consultative procedures, but it is also the result of a well-established Commission policy to inform and educate the public in order to mobilise opinion behind the integrative process. The Community seems to have been more successful in creating this awareness amongst opinion formers and those whose work brings them into direct contact with the EC than it has been with the general public. Thus the Community has gained an elitist air, its purpose and intentions being better understood by bankers, industrialists, union and organisational representatives than by the elusive 'man in the street'. Direct elections may start to capture his interest and attention, but it must be admitted that debates in the European Parliament have so far failed to do so.

Standing apart from these institutions is the *European Investment Bank* which was given the task of contributing to the balanced and steady development of the common market in the interest of the Community. It has three main fields of operation: to aid regional development; to help with projects made necessary by the establishment of the common market for which normal financial means are lacking; and to assist projects of common interest to members where other financial means are lacking. The Bank is thus an additional source of finance in many different circumstances, designed to assist

in the development of the EC. It is in no sense, however, a grant-aiding fund but a bank operating normal banking criteria whose capital is contributed by members and by its own ability to raise money on normal markets.

It can therefore be seen that the formal structure of the institutions presents a deceptively simple picture of the working of the Community, perhaps particularly in relation to the process of decision making. There is a constant hum of discussion and negotiation in progress with both formal and informal institutions as well as with interested individuals and this is often duplicated nine times. The problem is not so much one of lack of consultation as of the lack of decisiveness which results from the accommodation of many interests and alignment of national policies in which agreement on something may have to take precedence over the soundness of policy. To this we may add the lack of consideration to points of view which cannot speak loudly enough to be heard above the hubbub and the slowness of action to which these procedures contribute. It is not surprising that the reform of the institutions has become an issue considered as one of the most urgent by several observers and a number of ideas have been put forward ranging from the use of majority voting in the Council to the setting up of a Directorate, or inner circle of states, to take decisions on behalf of the Community as a whole. In December 1978 the European Council appointed three wise men, M Biesheuvel, M Marjolin and Mr Dell, to investigate the working of the institutions and to recommend improved procedures and it is clear that, as the Community further enlarges, existing institutions will steadily become more difficult to operate.

Institutional Changes

Two major institutional innovations occurred during the 1970s reflecting the political evolution of the Community. A new stage had arrived in which major internal objectives had to be formulated and a way found of responding more effectively as a single unit on the world stage. Although these issues were seen separately, and to some extent gave rise to different institutional responses, they are in practice closely linked. The first step was the introduction of summit meetings by the heads of government which were formalised in 1974 under the name of the European Council. These now occur four times a year and are becoming more formally organised than hitherto. Occasional summit meetings had been held in the past, but with the ending of the transitional period, the need for re-commitment to the Community and for the setting of new goals was felt. The first major summit of this period was that held in The Hague in December

1969, at which the six members effectively recognised that they were so closely interdependent that they had no choice other than to continue with the Community and were thus compelled to settle matters such as the agricultural policy and budgetary changes. A vital point was the recognition that the Community possessed the political will to work for enlargement and thus to stabilise the vexing question of relations with the United Kingdom.

The Hague summit also recognised that the international stature of the Community required further consideration, since its formal responsibilities neither matched its economic weight, nor allowed effective consideration of the political aspects of its external economic relations. Individual members were at the same time continuing to handle external affairs themselves, often less effectively than had they been working together and not necessarily in ways which were readily compatible with Community policies. Such issues raised larger ones of great sensitivity including the question of the relations of the Community and individual members to the USA, to the defence of Western Europe and to the Soviet Union. In fact, from a somewhat different route and with a different emphasis, the question of the future political objectives of the Community had again been reached. It is not, however, simply the anomalies that arise because of the Community's limited ability to act as a unit externally, but the underlying problem that any attempt to rectify this situation implies the passing of responsibilities to the EC in the fields of foreign policy and defence which members are still reluctant to accept. A tentative step was taken at The Hague through a request to the Foreign Ministers to study the best way of achieving further political integration on the assumption of enlargement and to present a report. The subsequent moves to achieve political co-operation, a concept which still has an emphasis upon foreign affairs, have been important in helping the EC to identify its common aims and thus to articulate the nature of the group.

Political co-operation constitutes the second major innovation in the institutions of the Community. In 1972 an important summit meeting was held in Paris which involved the three new members in broad policy discussion for the first time and which devoted considerable attention to the strengthening of the social and regional aims of the Community. The deterioration in the international climate and the preoccupation of member governments with economic matters at home seemed to require frequent meetings of heads of government anxious to find ways of maintaining the Community and to make a start on economic and monetary integration whilst dealing with economic difficulties. The emergence of differences of policy and priority between governments in their reactions to these difficulties