

Commission opinion of 21 October 1990 on the
proposal for amendment of the Treaty establishing
the European Economic Community
with a view to political union

At its meeting of 28 April 1990, the European Council confirmed its commitment to political union and took the following decision:

'A detailed examination will be put in hand forthwith on the need for possible Treaty changes with the aim of strengthening the democratic legitimacy of the union, enabling the Community and its institutions to respond efficiently and effectively to the demands of the new situation, and assuring unity and coherence in the Community's international action.'

It went on to issue the following instructions:

'Foreign Ministers will undertake this examination and analysis, and prepare proposals to be discussed at the European Council in June with a view to a decision on the holding of a second Intergovernmental Conference to work in parallel with the Conference on economic and monetary union with a view to ratification by Member States in the same timeframe.'

Following a further in-depth discussion on the basis of an examination conducted by the Foreign Ministers, the President of the European Council, at its meeting in Dublin on 25 and 26 June,

'noted the agreement to convene such a conference under Article 236 of the Treaty. The conference will open on 14 December 1990. It will adopt its own agenda and conclude its work rapidly with the objective of ratification by Member States before the end of 1992'.

The European Council also agreed that:

'Foreign Ministers will prepare the conference. Preparatory work will be based on the results of the deliberations of Foreign Ministers (Annex I) and on contributions from national governments and the Commission, and will be conducted in such a way as to permit negotiations on a concrete basis to begin from the start of the conference.'

Close dialogue will be maintained with the European Parliament both in the preparatory phase and in the conference phase on political union as well as on economic and monetary union.

The European Council considered that the necessary coherence in the work of the two conferences should be ensured by the General Affairs Council.'

Before defining the main lines of the approach that the Commission will be defending at the Intergovernmental Conference on political union, it is appropriate to review the factors behind the growing awareness of the need to give the Community a genuine political dimension in the light of experience from the recent past. These factors are closely linked to recent or ongoing developments in Europe and the world.

(1) The 12 Member States have gradually come to accept the need for a higher profile on the international scene to enable them to give a collective response to a clear demand for Europe, to work together to defend their interests, and to contribute to the creation of a fairer, more efficient world order which respects the values they share, in particular human rights.

(2) The successes achieved through the impetus given by the 1992 deadline, the implementation of the common policies enshrined in the Single Act and the February 1988 agreement, raise the question of how the people of Europe can be genuinely involved in the shared adventure of European integration or, to put it another way, how the challenge of democratic legitimacy can be met.

(3) Despite general recognition and sometimes even envy of these successes there is still room for legitimate disappointment at the Community's overall progress, which falls short of the expectations for European integration over the last 40 years. Furthermore, the Community's decision-making process needs improvement given the rapidly changing world.

The convening of the Intergovernmental Conference on Political Union provides a golden opportunity to (a) broaden the Community's powers and (b) improve decision-making.

The basic conclusion lies at the heart of the Commission's reflections and its contribution to the proceedings of the Intergovernmental Conference. The Italian Presidency has asked it for its opinion on the basis of a proposal for amendment of the Treaty pursuant to Article 236 EEC.

The Commission clearly welcomes the convening of the Conference.

I — A single Community

In the first place the Commission will strenuously defend the thesis — as it did when the Single Act was

being negotiated — that both the historic legacy of the founding fathers and the cumulative commitment to European integration argue in favour of concentrating the revision of the Treaty on the integration of new objectives into a single Community.

The osmosis between economic, social, financial and monetary policy on the one hand and foreign policy on the other is and should continue to be the underlying philosophy of a European Union, as affirmed in the preamble to the Single Act.

Only a single Community with a single institutional structure can bridge the gap that has opened up between progress on common policies on the one hand and advances on political cooperation on the other. Indeed, the challenges that the quickening pace of history has presented to the Community have highlighted the existence of a 'grey area' where the role of the institutions is less than clear. For the Community this points to the need for consistency between the positions it adopts on the world stage and the conclusions it draws in the areas of external economic policy and relations with developing countries.

A single Community implies a single institutional structure flexible enough to take account of:

- (a) the state of public opinion on the future of European integration, which varies considerably from country to country, and the way Member States perceive the joint exercise of pooled sovereignty;
- (b) the need for caution, which militates against defining the final shape of European union at this early stage in favour of keeping to the course charted by the Treaty of Rome, leading eventually to a federal-type organization;
- (c) the likelihood of further institutional change to accommodate enlargement of the Community. Common sense dictates that in a much larger Community the institutions will have to be radically reformed to prevent Europe degenerating into a mere free trade area with loose arrangements for foreign policy consultation.

II — Ensuring unity and coherence in the Community's international action

The Commission is optimistic about the Community's ability to meet the historic challenge of

ensuring unity and coherence in the Community's international action.

Three fundamental questions have to be answered in this context:

- (1) Do the Member States consider that they share vital common interests and do they wish to act together to pursue them?
- (2) What are the ambitions of the Community and its Member States and are they prepared to accept all the economic and financial consequences of their decisions?
- (3) Should a common foreign policy also cover security matters, given that defence is an essential element of security?

The Commission's answer to all three questions is in the affirmative. And although it feels that the establishment of a common foreign and security policy will require a flexible and pragmatic approach, it nevertheless believes that the Treaty should outline the procedures and methods for a common policy leading towards European union.

The term 'common policy' has been chosen deliberately. In these matters it would be unrealistic to speak of political union when it is quite clear that, traditionally, Member States have special relations with certain parts of the world and geopolitical positions which are firmly anchored in their history. More importantly, the Twelve do not yet share the same assessment of their responsibilities or of their general and specific commitments in various parts of the world.

The same considerations have led the Commission to recommend a specific approach to security matters. The Treaty should include a reference to this subject and might incorporate the undertaking contained in Article 5 of the 1948 Brussels Treaty on the WEU which specifies that, in the event of an armed attack against one of the contracting parties, the others are obliged to provide aid and assistance.

More than that, the new Treaty should, in general terms, point the way towards a common security policy, including defence.

It is also in the common interest to bring defence equipment production and trade fully under the discipline of the common market, which would involve *inter alia* the removal of Article 223.

However, security is more than just a matter of military defence. It now covers all means of guaranteeing

cohesion at national and Community level, from the preservation of a common model of society to the protection of citizens against terrorism, serious crime and the other scourges of the modern world.

The definition and implementation of a common foreign policy raises four questions:

- (1) Who will prepare the decisions?
- (2) Who will take the decisions?
- (3) Who will implement the decisions?
- (4) How can the expression of popular sovereignty, first and foremost the European Parliament, be involved in this process?

1. Preparation of decisions

The preparation of decisions should be based on the experience of the existing Community system where by an *ad hoc* institution would act simultaneously as a focus for Community action and as the guarantor of consistency between the common foreign policy and the other common policies.

This observation, drawn from experience, does not mean that the Commission intends to lay claim to a monopoly of the right of initiative in this area. In fact, the very specific nature of foreign and security policy implies that the right of initiative must be shared between the Council Presidency, the Member States and the Commission, if only because of the close links between foreign policy on the one hand and external economic policy and development cooperation policy on the other.

For this reason, the body responsible for preparing decisions should include the present political secretariat — which will be strengthened — and representatives of the Commission, so that they can work together, with the necessary discretion, to draw up decisions on this new common policy. It would be attached to the General Secretariat of the Council.

At the same time, Coreper would be reorganized so that it could be apprised of foreign policy matters before the Council takes a decision.

2. The method of decision-making

The method of decision-making depends on the scope of foreign policy. This must be broadened

gradually but it also needs to be consolidated quickly by joint action.

Should the scope of foreign policy be clearly defined in the Treaty? The Commission feels that this would not be the right approach. Any attempt to compile a list of areas considered to be of vital common interest would come up against insurmountable difficulties of interpretation. This being so, it would be preferable to leave it to the European Council to decide on the areas to be transferred from the scope of political cooperation to that of a common or Community policy.

Once these areas had been defined by the European Council, the Foreign Ministers, meeting within the Council, would take decisions by a qualified majority — except on matters directly related to security. However, this would be an augmented qualified majority requiring the votes of eight Member States.

In other areas, the consensus rule would apply as it already does for political cooperation.

3. Implementation

As regards implementation of the most important decisions, it would be for the Council to choose from a number of formulas depending on the circumstances, all of them involving Commission participation, as in the past.

The essential requirement is that once a common position has been decided on, the Community must speak with one voice.

4. Involvement of the European Parliament

Involvement of the European Parliament in foreign and security policy is less a matter of strict institutional rules than of general working practice. It would be up to those responsible for the common policy to consult Parliament on a regular basis and to keep it informed of the implications for the Community of the most important foreign policy developments either at a plenary session or in the relevant committees.

The revision of the Treaty should clarify the scope for application of the assent procedure to the most important agreements — in particular, association and cooperation agreements — whose purpose would be to define, within an overall framework, the political, economic, financial and cultural dimensions of the Community's relations with its main partners.

On the other hand, this procedure would not apply to ordinary trade agreements which involve implementation in strict compliance with Treaty provisions, notably Article 113, of broad principles of external economic policy defined by the Community's institutions.

III — Strengthening democratic legitimacy: Relations between the institutions and the people of Europe

Further democratization of the running of the Community must be seen from the twin standpoint of its institutions and its citizens.

1. The institutions

Without losing sight of the paramount need to reconcile democracy and efficiency, the objective as far as the institutions are concerned must be twofold:

(a) to strengthen the powers of the European Parliament;

(b) to increase the involvement of national parliaments.

(a) Aside from its involvement in foreign policy and joint security, the powers of the European Parliament must be strengthened *vis-à-vis* the Council and the Commission.

Notwithstanding the fears expressed in certain quarters, the cooperation procedure introduced by the Single Act has not led to disputes between Parliament and the Council or made decision-making more

cumbersome. Parliament has shown that it is willing and able to play its full part as joint legislator. The Commission considers that a radical reform of the Treaty, such as that now under way, should involve an increase in Parliament's legislative powers. It therefore proposes:

(i) increasing the part played by Parliament in the cooperation procedure; one formula which would guarantee that a decision was taken would be a provision to the effect that, following Parliament's second reading, the Commission proposal incorporating Parliament's amendments would be deemed adopted unless the Council rejected it by a simple majority;

(ii) extending the cooperation procedure to all the new areas where qualified majority voting would apply;

(iii) strengthening the role of Parliament in the budget procedure and giving it joint responsibility for Community revenue.¹

With regard to the appointment of the Commission, the only political body genuinely accountable to it, Parliament has consistently demanded the power to appoint, or at least to be involved in the appointment of, Members of the Commission. The formula which seems to have the most support would be a two-tier investiture: the first stage would involve investiture of the President of the Commission, who would be appointed by Parliament on a proposal from the European Council; and the second stage, following the appointment of the Members by agreement between the Member States after consultation of the President, would involve investiture of the Commission as a whole on the basis of its programme. In this way Parliament would be able to confirm the appointment of the entire Commission.

(b) A great deal of confusion still surrounds the request for more involvement of national parliaments in Community affairs. This needs to be dispelled.

In the case of decisions to transfer sovereignty by amending the Treaty, national parliaments are completely sovereign and, when a vote is taken on whether to ratify amendments to the Treaty, approve the principle and extent of such transfers in full knowledge of the facts. The use of mechanisms involving association in decision-making would conflict with the solemn, conclusive nature of ratification.

¹ See the section on public finances (page 81).

In the case of assessing the use made of powers transferred to the Community, it should not be forgotten that in the Community system it is national governments, sitting in the Council, that take the major decisions. Since national governments are accountable to national parliaments, it is for them to involve elected representatives in Community affairs in a manner which respects national traditions.

Having said this, the Commission nevertheless recognizes that a number of proposals have been made for improving relations between the European Parliament and national parliaments.

Should new arrangements prove to be essential, the Commission would favour the introduction of an information procedure, whereby a delegation from national parliaments would be given an opportunity to hear an explanation from the Council presidency and the Commission before major decisions are taken.

But the Commission believes that it is first and foremost for the European Parliament, in consultation with national parliaments, to consider what is the best way to improve relations between the elected representatives of the people.

Lastly, the Commission notes that on the evidence of experience over the last few years, Parliament is still dissatisfied with the quality of its bilateral relations with the Council of Ministers.

2. Citizens' involvement

In the Commission's view, strengthening the institutions will not be enough of itself to ensure that citizens are genuinely involved in the Community's activities at every stage of the definition of policies in fields directly affecting them. That is why the Commission endorses the proposal put forward by the Spanish Prime Minister, Felipe González, for the introduction of the notion of European citizenship. This would take shape gradually, without encroaching in any way on national citizenship, which it would supplement rather than replace. In short, the object would be to encourage a feeling of involvement in European integration.

The basis for European citizenship along these lines could be a statement of rights and obligations focusing on:

- (i) basic human rights, with a reference to the Strasbourg Convention;
- (ii) the rights of European citizens to be written into the Treaty, including:
 - (a) the right of residence and movement, whether the individual is economically active or not,
 - (b) voting rights in European and local elections;
- (iii) the setting of targets for the definition of the individual's civic, economic and social rights and obligations at a later stage.

It must not be forgotten that citizens are also involved in economic and social development. That is why, as far back as 1985, the Commission took the step of encouraging social dialogue at Community level between representatives of employers' organizations and trade unions. That process is now enshrined in the Single Act. But it should be given greater emphasis and its organization improved. This presupposes, *inter alia*, enhancing the status of the Economic and Social Committee and of its members.

Lastly, the Commission considers that the Intergovernmental Conference must take account of the demand for the creation of a body to represent the Community's regions. This is an important parameter of subsidiarity. The wide variety of regional structures in the Member States precludes — and will probably continue to do so — the involvement of such a body in the decision-making process. The Commission's suggestion therefore is that, pending fresh developments, it should hold regular consultations with a body representing all the regions of Europe.

IV — Improving the effectiveness of the institutions

Four questions arise when considering ways of improving the effectiveness of the institutions:

- (1) the question of broadening the Community's powers;
- (2) the question of subsidiarity;
- (3) the question of improving the way the institutions operate while maintaining a general balance;
- (4) the question of the status of the Community's public finances.

1. Powers

As in the case of the Single Act, the question of powers must not be seen in general terms but rather in terms of selecting the means of action the Community needs to ensure the balanced development of common policies.

As part of this selective approach, the Commission proposes that any increase in the Community's powers should concentrate on social affairs, major infrastructure networks and the free movement of persons, all three having a bearing on the optimum development of the single market. As far as the environment, research and taxation are concerned, it feels that the question is one of improving decision-making, in other words the use made of qualified majority voting, rather than redefining powers.

(a) For social affairs, the Commission's proposal is that the provisions of the Treaty be expanded and clarified, in the light of the principles laid down in the Community Charter of Fundamental Social Rights, to allow the Council to adopt directives by a qualified majority in areas such as:

(i) improvement of living and working conditions, in particular the duration and organization of working time, forms of employment other than open-ended contracts and other aspects of employment regulations which have a bearing on the protection of workers' fundamental rights, particularly in the case of cross-frontier operations;

(ii) basic and further vocational training;¹

(iii) information and consultation for workers.

Finally, a legal basis should be provided to allow the Community to develop programmes to prevent and combat major threats to health such as cancer and AIDS, as it has already done at the request of the European Council.

(b) The development of major infrastructure networks to facilitate the movement of goods, services, persons, capital and information should be encouraged by making it possible for the Council to take appropriate action and adopt programmes.

(c) Although the Single Act introduced the concept of a frontier-free area, the Community's powers in relation to the free movement of persons raise difficulties which need to be resolved. The principle that freedom of movement, and the equality of treatment needed to exercise it, are rights enjoyed by Community nationals should be enshrined in the Treaty

once and for all, as should the possibility of adopting the necessary measures by a qualified majority. This does not mean that all the rules would need to be standardized. Coordination or approximation should suffice.

Experience has shown that the provisions of the Single Act are less than satisfactory as far as non-Community nationals entering or residing in the Community are concerned. The Commission also notes that the intergovernmental method, which it supported, has failed to produce any meaningful results. The Commission suggests that this delicate issue, which undermines relations with non-Community countries, notably in the areas of immigration and the fight against drug abuse and serious crime, should be resolved by one or other of the following solutions:

(i) an explicit reference in the Treaty to a Community competence, which would require unanimity, at least initially, in relation to non-Community nationals to the extent needed for the free movement of persons and the creation of a frontier-free area;

(ii) recognition of the problems raised by the status of non-Community nationals, again to the extent to which these involve the free movement of persons, as one of the questions of vital common interest in foreign and common security policy.

(d) In the case of the environment and research and technology, the Treaty will have to be rewritten to increase the effectiveness of operations conducted at Community level and make it possible to create new financial instruments where appropriate. These could also be used for developing major infrastructure networks (see (b) above).

(e) In the area of taxation the aim must be to facilitate the adoption of measures linked to the completion and effective functioning of the single market.

(f) As far as energy is concerned, the treaties could be consolidated into a single chapter making it possible to implement a common energy policy or at least a common energy market.

(g) In line with the principle of subsidiarity, cultural affairs should continue to be a matter for the Member States and the regions. It would be a good idea,

¹ Among other things, this would make it possible to develop programmes similar to Erasmus, Comett and Yes for Europe.

however, to include an article on the cultural dimension of Community activities.¹

2. Subsidiarity

The question of subsidiarity is closely linked to the redefinition of certain powers. The Commission considers that this common-sense principle should be written into the Treaty, as suggested by Parliament in its draft treaty on European Union. It should serve as a guideline for the institutions when, under a new Article 235 freed from its purely economic purpose, they have to take a unanimous decision of principle on new Community action in pursuit of general Treaty objectives. Compliance with the principle could be checked by a retrospective control of the institutions' activities to ensure that there is no abuse of powers.

3. Effectiveness

In the Commission's view, improving the effectiveness of the institutions largely depends on extending the use of qualified majority voting. In theory, this should apply to all areas of Community competence except 'constitutional' questions, and with possible restrictions in the areas of taxation, social security and the status of non-Community nationals.

Assuming that the cooperation procedure would be extended in line with the wider use of qualified majority voting, it would be important to define the time-limits within which the Council and the European Parliament would be required to act. This is a precondition for improving the way our democratic procedures operate.

In general terms, with a view to simplifying and clarifying Community legislation the Commission believes that the common policies can only develop satisfactorily if a clear distinction is made between legislative and regulatory measures.

As far as the delegation of power to the Commission is concerned, efficiency demands that both the letter and the spirit of the Single Act be fully applied in practice. Here a distinction has to be made between the implementation of decisions and the decisions themselves, whether they are legislative or regulatory.

The Commission takes the view that only two formulas should be allowed under the Treaty: the advisory committee and the management committee.

One disturbing fact remains: in the absence of sanctions, Court of Justice rulings are not always implemented. The Commission may consider proposing a system of sanctions to deal with this type of situation.

4. Status of the Community's public finances

This subject has to be considered in the light of the progress made since the adoption of the interinstitutional agreement proposed by the Commission in 1986, which has brought home a number of lessons:

(a) the need to reconsider the distinction between compulsory and non-compulsory expenditure, so as to combine the retention of certain guarantees with greater flexibility in budget management;

(b) the need to restore the institutional balance to allow the Commission to play its full part in the budgetary process;

(c) the possibility of Parliament being given some influence on a limited portion of revenue to increase not only its powers but also its responsibility towards electors;

(d) incorporation of the principles of budgetary discipline into the Treaty.

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The improvements put forward by the Commission are designed to maintain the current balance of the institutional triangle, since the most sensible course in making any substantial changes is to build on the existing model. In other words, we should base ourselves on the existing institutional structure, since its dynamic power is already proven.

¹ In particular, this would highlight the importance of the action taken to ensure the free movement of audiovisual works, to encourage creative artists in Europe, to promote high-definition television, and to expand the Media programme, to quote just a few examples.

The main advantage of the present system lies in its success in maintaining a balance between the institutions. It should therefore be preserved, but adapted to meet the needs of ever closer Community integration. And with the possibility of Parliament being given new legislative powers and the Council having wider decision-making powers in foreign and security policy,¹ it will be important to safeguard the Commission's right of initiative, which has proved to be one of the key factors in the Community's dynamism.²

At all events, the accountability of the executive to Parliament is a vital element in the equation, even if the executive does not have the right to dissolve it.

Alongside the traditional institutional triangle, the Community's new ambitions in terms of economic and monetary union as well as foreign and security policy highlight the need to formalize the 'motor' role of the European Council, which has proved so invaluable in revitalizing the process of European integration over the past six years.

Building and expanding on the Treaty of Rome, political union would have the task of gradually creating the foundations of a future European union through the process of economic and monetary integration, the furthering of social development, the implementation of economic and social cohesion and the pursuit of a common foreign and security policy.

Besides the amendments to Articles 2 and 3 on the principles underlying the Treaty, the introduction of a title on economic and monetary union, the extension of certain powers and the strengthening of democratic legitimacy and efficiency, the revision of the Treaty will involve the inclusion of a new title on a common foreign and security policy — quite clearly the primary driving force behind the new revitalization.

This common policy will have to comprise three sets of provisions:

- (i) a framework for decisions and action in the foreign policy field and provisions on security;
- (ii) a new grouping of modified Treaty articles on the common commercial policy;
- (iii) provisions strengthening the objectives and instruments of cooperation and development aid to make it more effective.

In this way the Community, given genuine political will, will be able to face up to its worldwide responsibilities, however varied the circumstances.

Set firmly on the foundations of economic, social and monetary union, its success and impact will be all the more assured, enabling it to satisfy the expectations placed in it.

Political union and economic, social and monetary union are thus inextricably linked.

¹ As in the area of economic and monetary union, which is discussed in SEC(90) 1659 final (21 August 1990).

² The same should apply to economic and monetary union (see reference above).