Chapter II

The New Institutions

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Even a cursory review of the Treaty indicates that the tasks assigned to the Community institutions range across the entire spectrum of economic activities in the Community, but this general statement is subject to three reservations.

In the first place, the areas in which exclusive jurisdiction has been granted to the institutions are limited. In other areas the institutions have concurrent jurisdiction with national authorities and their primary role is to supplement and supervise national action. In many of these areas their powers of decision are granted for the purpose of "prohibiting certain practices rather than substituting themselves for national authority." ¹ In others the institutions are limited, as a matter of Treaty law, to the issuance of recommendations or opinions addressed to the national governments.

Secondly, because of the very general character of major portions of the Treaty the eventual scope of the power of the institutions cannot yet be assessed. Only the Investment Bank, the Overseas Development Fund and in a lesser degree the Social Fund now have direct operational responsibility, although proposals have been made for the establishment of new agencies, such as a European Fund for Structural Improvement in Agriculture ² or a European Center for Fuel and Power Policy to coordinate action in the energy field. ³

Thirdly, in any organization the legal powers and structure created

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¹ Reuter, Aspects de la Communauté Economique Européenne, 1958 Revue du Marché Commun 160 at 166 (No. 3).
³ 443 Press Bulletin Europe, Euratom and Common Market (supplement) (June 24, 1959) [hereinafter cited as Europe].
by its constitutive document are only a part of the story. An institution, once created, tends to develop in ways which often differ substantially from the intentions of the drafters of its basic document. The United Nations offers a startling example of this developmental process.

In the Coal-Steel Community Treaty, provisions regarding the institutions figure prominently at the beginning of the Treaty. In the E.E.C. and Euratom Treaties these provisions are placed at the end. The former Treaty employs the term “supranational,” the latter two do not. The chapter on institutions of the Coal-Steel Community Treaty begins with the “executive” while the chapters of the latter two deal first with the Assembly. There is reason to believe that these differences reflect an evolution in the attitudes of the national governments toward the role of the institutions in the Communities.

I. THE COUNCIL OF MINISTERS: THE INSTRUMENT OF THE GOVERNMENTS

A. THE COUNCIL AS THE PARAMOUNT INSTITUTION

In the Coal-Steel Community Treaty the “supranational” High Authority, composed of independent Community officials, is conceived of as the central organ. The primary task of the Council of Ministers is to approve the most important decisions of the High Authority and to harmonize its work with the general economic policies of the national governments. In the E.E.C. Treaty, on the other hand, the principal decision-making power is given to the Council of Ministers, whose members are subject to national government control, rather than to the independent Commission. This change from the Coal-Steel Community pattern was due as much to the substantially broader scope of the E.E.C. Treaty as to the political necessity of soft-pedaling “supranationality.” The Coal-Steel Community Treaty extends to the production and some phases of distribution of coal and steel only; it does not deal with the general


economic policies and does not encompass the commercial or agricultural policies of Member States. This relatively narrow scope made an independent High Authority with strong regulatory powers palatable to national governments. The E.E.C. Treaty on the other hand extends to all economic activities and affects national policies in vital areas such as agriculture and commerce with non-member countries. Given the domestic political repercussions which important Community measures therefore might have, the national governments insisted that the political Council rather than the independent Commission be given preponderant power.

The difference between the Coal-Steel and the Economic Community patterns may not be as striking as it first appears. In some important instances the High Authority has acted independently, but as a rule it has hesitated to make important decisions without a prior assurance of support from the Council. The center of decision-making in the Coal-Steel Community has therefore in fact shifted at least in some measure from the High Authority to the Council.\(^\text{5a}\)

The relationship between the Council and the Commission is defined in the E.E.C. Treaty with considerable care. This relationship and the Council voting formula are among the most original features of the Treaty. Both represent a compromise between opposing views as to the relative weight to be given to Community as opposed to national interests. In most instances the Council can act only upon a formal proposal by the Commission, which ensures that Community interests to which the Commission has given recognition will be considered by the Council before it makes a decision.\(^\text{6}\)

In some instances—generally those involving matters of intense political concern to Member States—even though no formal proposal is required, the Council must obtain at least a report, opinion or recommendation from the Commission.\(^\text{7}\) The Council acts without any reference to the Commission only in determining its own

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\(^\text{7}\) France, Assemblée Nationale, supra note 6.
internal affairs or in matters concerning control over the Commission.

B. THE VOTING FORMULA

The Council acts either by a unanimous vote or by "simple" or "qualified" majority.

A vote by a "simple" majority of four out of the six Ministers (in effect a two thirds majority) applies only in a handful of relatively less important instances where the Treaty fails to specify another formula.\(^8\)

Council measures which are most important to the creation and maintenance of the Common Market require a unanimous vote either during a part of, or during the entire, transitional period.\(^9\) In specified matters of essential political interest (including most instances of harmonization of legislation) and in those instances where gaps in the Treaty are to be filled or its provisions are to be modified, unanimity is required during and after the transitional period.\(^10\) The right of veto accorded to any one of the six Member States by these provisions may not be as potentially paralyzing as would appear at first glance.\(^11\) In the first (and most numerous) group of instances mentioned above the veto power is, after all, temporary only and vanishes upon the expiration of the transitional period. In other instances, moreover, unanimity is required to relieve the Members of their Treaty obligations.\(^12\) Finally, in some instances the Treaty itself provides a means for circumventing a veto\(^13\) or at least makes available to Member States measures of safeguard and retorsion in case of paralysis.\(^14\)

A "qualified" majority vote based on weighted voting is required in some instances during the transitional period and will apply to a large majority of all measures after the termination of the transitional period.\(^15\) The weighted voting formula accords four votes to each of the Big Three (Germany, France, Italy), two votes each to

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\(^8\) These matters, it has been said, include either problems in which smaller members have an interest equal to that of the larger, or questions of internal procedure. ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL, supra note 6, at 493 and annex 5, at 510.
\(^9\) Cf. ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL, supra note 6, annex 4, at 508-10.
\(^10\) E.g., Arts. 99, para. 2, 100 para. 1, 235.
\(^12\) E.g., art. 93(2) para. 3.
\(^13\) E.g., Arts. 54(2), 63(2) when no general program has been adopted.
\(^14\) Arts. 70(2), 107(2).
\(^15\) ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL, supra note 6, annex 6, at 510, 511.
Belgium and the Netherlands and one to Luxembourg. Of the total of 17 votes, 12 are required for a measure to be adopted on proposal of the Commission but the Council may modify such proposal by a unanimous vote only. Each Member State, in effect, may therefore exercise a veto in defense of the Commission's proposal. Where no proposal by the Commission is required for Council action, the 12-vote majority must include the votes of at least four members.

This ingenious formula obviously has a number of purposes. In the first place it excludes a veto by any one Member State acting alone or by Benelux acting as a unit in cases where the Council acts on a proposal of the Commission and thus presumably in the Community interest. If the Big Three agree, they can override the three smaller Member States, but only if the Community interest reflected in the Commission's proposal is the basis for the Council's action. The Big Three must enlist the support of at least one of the others—Luxembourg is enough—in instances where no Commission proposal is required. The Big Three are thus encouraged to agree among themselves, and the Community interest as well as the interests of the smaller members are given a measure of protection. If the Big Three do not agree, no two of them can, without the support of both Belgium and the Netherlands, force their position on the third. The purpose of this limitation appears to be to discourage alliances among two of the Big Three to the prejudice of the other members, and is particularly interesting in the light of the much publicized Franco-German “alliance” (or better DeGaulle-Ade-nauer entente) of recent vintage, which apparently has created some concern in the Benelux countries.

A Minister can vote by proxy for not more than one other Minister—a corporation law concept transplanted into public law. Abstention does not prevent a decision even where unanimity is

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16 Art. 148.
17 Art. 149.
18 In three instances the Treaty provides for special qualified majorities. Thus the establishment of minimum agricultural prices is to be decided by a majority of nine of the seventeen votes. Art. 44(6). The budget of the Social Fund is to be adopted by a majority of 67 of the 100 votes, of which Germany and France command 32 votes each, Italy 20, Belgium 8, Netherlands 7 and Luxembourg 1. Art. 203(s). Finally, in administering the Development Fund for the overseas territories, the Council acts by a majority of 67 of the 100 votes, of which France and Germany command 33 votes each, Belgium, Italy and the Netherlands 11 votes each and Luxembourg 1. Art. 7 Implementing Convention relating to the Association with the Community of the Overseas Countries and Territories.
19 Art. 150.
required if the abstaining Minister is present or represented by proxy. Unlike the practice of the Security Council of the United Nations, absence of a Minister would seem to prevent action where unanimity is required.\(^{20}\)

Although the Treaty is silent on the point, the Council has kept its deliberations and its voting secret—which has been a matter of some chagrin to the Assembly.

C. **THE COMPOSITION OF THE COUNCIL**

Since it is composed of Cabinet Ministers, the Council is a political body *par excellence*. Ministers change as governments change so that the Council reflects the prevailing political constellation in the Member States. Even though the Treaty conceives of the Council as a Community organ, it will act primarily as a center for composition of national governmental differences, particularly in the earlier stages.

As Ministers in the national Cabinets the Council members are responsible (to a larger or smaller degree depending on national constitutions) to their national parliaments. Although the European Parliamentary Assembly claims that the Council is politically responsible to it as well, the Assembly has no means of enforcing this responsibility. Acts of the Council, which are legally binding, are subject to attack on specified grounds before the Community Court by states, other institutions and individuals.

A government is free to designate any one of its Cabinet Ministers to represent it on the Council. It appears likely, however, that Foreign Ministers will continue to appear at the meetings of the E.E.C. and Euratom Councils at least whenever basic matters are to be discussed.\(^{21}\) The Foreign Offices seem concerned that they will lose control over "European" affairs if Ministers other than those of Foreign Affairs should sit on the Councils. By the same token no Foreign Office of the Six would, presumably, favor the creation of a new cabinet post of "Minister for European Affairs." The creation of such a post obviously would raise a variety of administrative problems, but it has been suggested as one method of establishing *in fact* a single Council of Ministers common to all three Communities, even if in law under the treaties the three Councils

\(^{20}\) Although there is no specific provision in the Treaty to this effect, this conclusion may be reached from art. 148 (3).

\(^{21}\) Ministers of Foreign Affairs often recess a Council meeting in order to meet as members of the governments of the Member States to discuss such matters as the selection of the seat of the institutions (art. 216).
remain separate organs. The E.E.C. and Euratom Councils sometimes meet jointly to deal with matters pertaining to both Communities.22

In practice Cabinet Members other than Foreign Ministers (for example, Ministers of Finance, Transport, Agriculture) meet on Economic Community matters, but not as the Council, and suggestions have been made that these important meetings should be brought within the official Community framework.

The Councils have built up a Secretariat at Brussels composed of some 270 employees, and the large size of the Secretariat has been strongly criticized in the Assembly.23 Taking advantage of the authorization of the Treaty,24 the E.E.C. Council established a Committee of Permanent Representatives of Member States to which national governments have appointed high ranking diplomats with supporting staffs totalling some 150 persons. The Council has met as a rule not more than once a month 25 and has relied heavily on this Committee for preparatory work and to take follow-up action.26

II. THE COMMISSION: THE COMMUNITY “ADMINISTRATION”

A. THE ROLE OF INITIATIVE AND SUPERVISION

In the Community jargon the Commission is referred to as “the executive,” 27 but the neutral term “Commission” is a substitute for the more impressive “High Authority” of the Coal-Steel Community Treaty and the adjective “supranational” it contained was, as already indicated, omitted in the corresponding article of the

22 In the E.E.C. Council the members are generally represented by their Foreign Ministers except for the Federal Republic of Germany which is represented by the Minister for Economic Affairs. In the Euratom Council the members are represented generally by Foreign Ministers or Ministers for Atomic Affairs. The Council of the Coal and Steel Community, perhaps because of its more specialized and less crucial role, is attended usually by Ministers of Economic Affairs or Ministers of Industry and Commerce and at times by other Ministers principally concerned with the subject under discussion. ANNUAIRE MANUEL DE L’ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE 1958–1959, 127–28. ROBERTSON, EUROPEAN INSTITUTIONS 159 (1959).
24 Art. 151.
25 396 EUROPE item 2274 (April 25, 1959).
27 Thus, the High Authority, the E.E.C. Commission, and the Euratom Commission are referred to as the “three European executives.”
E.E.C. Treaty. These differences in terminology emphasize the fact that the Commission's power of independent decision has been curtailed as compared with that of the High Authority. The Commission's principal power is that of initiative in preparing and proposing action by the Council (and the Assembly). In addition, it ensures and supervises the application of the Treaty provisions and of Council measures. It has a limited power of independent decision ("under the conditions laid down in the Treaty") but it may issue recommendations and opinions "where the Commission considers it necessary" as well as where "the Treaty expressly so provides." Again, the Council may charge the Commission with implementation of its measures. The Commission represents the Community in national courts, in contacts with international organizations, and in negotiations for international agreements (under the direction of the Council). According to a reported internal arrangement between the Council and the Commission, any request from a foreign government for accreditation of a foreign mission is made to the Commission and forwarded by it to the Council which approves the request and the head of the mission. The official accreditation is then performed by the President of the Commission.

The Commission submits an annual report and special reports to the Assembly which are the basis of the Assembly's work. It is politically responsible to the Assembly which can force its resignation in a body (but not that of individual members) on a motion of censure by a vote of a two-thirds majority.

B. THE COMMISSIONERS AND THEIR STAFF

The Commission is composed of nine members, nationals of the Member States, "chosen for their general competence and of indisputable independence" and appointed by the Member States,

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29 Art. 155.
30 Art. 211.
31 Art. 229.
32 Arts. 228, 111 (2) of the Treaty and art. 6 of the Protocol on Privileges and Immunities; cf. art. 238 in connection with art. 228.
33 Cf. the announcement that President Hallstein received the Chief of the Japanese Mission who presented to him his letters of accreditation, [1959] J'L OFF. 1127. As of March 1960, ten governments have accredited diplomatic missions to the Community. (United States, Greece, Israel, Denmark, Japan, Sweden, Switzerland, United Kingdom, Norway, Ireland), [1960] J'L OFF. 526-27.
34 Arts. 156, 144.
35 Art. 157.
"acting in common agreement," for a four year term which is renewable. Thus each Member State has a veto over any candidate. The Treaty directs that the Commissioners act in the Community interest; it specifically prohibits them from accepting instructions from their national governments and obligates the latter to refrain from seeking to influence them. The members are not allowed, while in office, to engage in any other occupation, paid or unpaid, and their obligation of "honesty and discretion" with respect to their official duties extends beyond their term of office under the penalty of loss of pension. They are subject to provisional suspension by the Council and removal by the Community Court for serious misconduct.

At present each of the Big Three has two nationals and the Benelux countries have one each on the Commission. Professor Hallstein, former State Secretary of the German Foreign Office, is the President and there are French, Dutch and Italian Vice-Presidents. While nationality was obviously a factor in their selection (the Treaty provides that not more than two nationals of any one Member State may be appointed), the present group appears competent and well qualified. It includes three former ministers in national governments and represents a variety of educational and professional backgrounds ranging from law, diplomacy, and economics to finance, agriculture, journalism, colonial administration, and social work; it reflects experience in business, government, and university teaching. As a new body it has attracted top-notch personalities; past experience with other bodies points up the difficulties of retaining men of high caliber in similar positions.

The staff of the Commission (the 1960 budget authorizes 1,686 persons) is grouped into eight functional departments (General Directorates), corresponding broadly to the principal areas of the
Treaty, and an administrative department. Each department contains three or four divisions (Directorates). The members of the Commission have organized themselves in eight standing working groups of three or four. Each group supervises the work of one department. A group composed of the President and the three Vice-Presidents has responsibility for the department of administration. The President may place any matter before the Commission for its consideration at any time.

The Commission makes its decisions by a simple majority of five in meetings held, as a rule, weekly in Brussels.

C. POLICY MAKERS OR ADMINISTRATORS?

If one conceives of the Council of Ministers as analogous to the Head of the State in a parliamentary democracy, the members of the Commission could be deemed to have the status of Cabinet Ministers, and the heads of departments of the Commission the status of the ranking civil servants. The Commission seeks to stress its non-bureaucratic and "executive" character. In the words of its President, it sees itself primarily as a policy-making and coordinating authority with direct administrative functions limited to the operational responsibilities for the various Funds mentioned earlier. It is to act as a general staff relying on selected experts and specialists.

There may be some doubt whether the organizational pattern as well as the size and the character of the staff recruited at a brisk pace reflect the "general staff" concept. Unquestionably the staff includes a number of exceptionally able and well-trained experts. Yet, a keen American observer felt that preoccupation with balanced distribution of nationalities throughout all staff levels, coupled with a somewhat elaborate staff hierarchy, created an impression of over-organization and possibly of temporary over-staffing. The latter may be due partly to the fact that the Commission has hardly begun to develop its policy in a number of fields and partly to the fact that,

44 Id., annex B at 131-32.
45 Id. at 21.
46 Speech by E.E.C. President Hallstein of October 21, 1958, Community Publication 2089/2/58/5, at 36-37.
47 At least one Member government was reported as believing that the Commission (and for that matter even the Council of Ministers) have become bogged down in detail. N.Y. Times, July 28, 1959.
because the Council must approve the budget, the Commission fears an early “freeze” of personnel at a too low level.48

The Council did, in fact, reduce the Commission’s first draft budget substantially.49 When the Assembly debated the budget, the Christian Democratic group limited its criticism to what it considered the excessive size of the Secretariat of the Councils, and the Assembly resolution appears to reflect this position.50 The resolution was interpreted, however, (particularly by the Liberals) as censuring also the size of the staff of the Commission, one Liberal speaking of a “pathological inflation” of administration, threatening administrative paralysis and usurpation of the policy-making functions of the Commission by its high-ranking staff.51 The Commission members, on the other hand, complained that the reduction ordered by the Council will gravely impair the preparation of the necessary studies, statistics, analyses of legislation for purposes of harmonization in the tax field and the like.52 The spectacle was, in short, reminiscent of budgetary debates in American legislatures and for that matter in any parliament. More recently the Assembly manifested its concern that the Commission would not be given adequate personnel to perform its tasks, and particularly those in the social field.53

The fact that three “executives” operate independently under three different treaties is an absurdity explainable on political grounds but hardly compatible with effective administration. Efforts have been made to coordinate their work through joint committees and by other means. “Common services” have been established in the legal, statistical and information fields to serve all three “executives,” but apparently only the statistical “common service” in fact operates as a unit.54

48 CAMPS, op. cit. supra note 40, at 5; the nationality key allows each of the Big Three 25% of all positions and the Benelux countries share the remaining 25%.
49 Stein, supra note 4, at 248-49.
51 For a “liberal” view see also Margulies, Die Kosten der Klein-europäischen Gemeinschaften, 2 EUROPAISCHE WIRTSCHAFT 292-94 (No. 12) (1959).
54 The problem of a “European Civil Service” has engaged the attention of the Council of Europe. Its consultative Assembly called—without noticeable success—for standardization of conditions of service, common recruitment methods and coordinated training of personnel in the numerous European organizations. 1959 COUNCIL OF EUROPE NEWS 9-10 (No. 4).
III. THE EVOLVING PATTERN OF COUNCIL-COMMISSION RELATIONS

A. THE TREATY PROCEDURE

The Treaty contemplates a close and continuing relationship between the Council and the Commission. The Commission proposal, as suggested, is a prerequisite of Council action in most instances. On the other hand, if the Commission fails to submit a proposal, the Council may request it to do so; and if the Commission fails to act as it is required to under the Treaty, the Council may bring the matter before the Community Court for adjudication. The Commission, for its part, has the right to request that a meeting of the Council be held and likewise may bring the Council before the Court in specified circumstances. The Treaty calls for consultations between the two bodies and the details of their collaboration are to be settled by "mutual agreement." The essence of the Treaty pattern may thus be described as follows: the Commission develops proposals concerning Community policy, and, if they command the required support, the Council adopts them, after consulting with other bodies as prescribed.

B. THE EVOLVING PRACTICE

In practice the pattern of Council-Commission relations has developed somewhat differently. The Commission has been in close and continuing contact with the Committee of Permanent Representatives representing the governments of the Member States at the Brussels seat of the Communities. Through the Permanent Representatives the Commission obtains the views of national governments before making proposals to the Council. Through them it also arranges for conferences with experts supplied by national governmental departments. A number of mixed working groups composed of officials drawn from national administrations and the Commission staff meet regularly on problems under consideration by the Commission. For example, some nine groups of this type have been working on the general program for the removal of the restrictions on the right of establishment and supply of services which the Commission is to propose to the Council—each group examining

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*55 Arts. 152, 175.*
*56 Art. 147.*
*57 Art. 162.*
the national legislative and administrative provisions governing a given category of activities (insurance, banking, trade, crafts, agriculture, etc.) Similarly, negotiation in a number of working groups under a central group has produced agreement on most items of the common external tariff which the Treaty left to be determined by negotiation among the members. Groups of national experts have been considering with the Commission staff outlines of proposals for a common agricultural policy, and others concerning anti-dumping measures, state subsidies and the like. A conference of national experts under the chairmanship of a Commission member established three working groups on taxation problems.58

Conferences and groups of this type have served to coordinate national action and to provide information to the Commission.59 Experts from national administrations also bring to these conferences complaints against actions of other Member States which they view as violations of Treaty commitments. Even in the field of restrictive practices, where the Community was given powers of direct intervention, the Commission has proceeded with caution: the head of the Commission department concerned with competition chairs conferences of national experts designated by the governments. In these conferences agreement is sought on interpretation of the rather loosely-drawn provisions of the Treaty, and cases of restrictive practices suggested by national experts are examined to determine whether they fall into the categories proscribed by the Treaty.60 While, of course, there are direct contacts between the Council and the Commission, the emerging pattern discloses continuing negotiations between the Commission and the national governments on various levels and particularly through the Permanent Representatives. As a result, where the Treaty requires the submission of a Commission-prepared proposal to the Council, the governments in fact pass upon it before it is submitted to the Council.

In exercising its power of supervision and enforcement the Commission has also communicated with the member governments concerned before concluding that the Treaty has been violated or taking other steps. In several instances where new customs duties, allegedly in violation of the Treaty’s “standstill” provision, were introduced,

58 See the communique of the Commission reported in 443 EUROPE, item 2694 (June 24, 1959).
60 Id. at 86-89. Mixed Council-Commission committees have been established in a few instances, for example, to examine the problems raised by a possible European Economic Association.
the Commission, after discussion with the government concerned, took the preliminary steps of the enforcement procedure envisaged by the Treaty, but there has been no official public notice from the Commission on the outcome of this action. In one instance, the Commission is reported to have issued a "reasoned opinion" under Article 169 advising the French government that the imposition of a customs duty on paper pulp was in violation of the Treaty and inviting that government to remove the duty within a given period. On another occasion the Commission, acting under Article 93(2), rendered a "decision" directing the same government to remove a subsidy in the form of tax benefits accorded to French industries only. The "opinion" and the "decision" respectively are prerequisite preliminary steps to bringing the matter before the Community Court for adjudication. But in both cases compliance by the government concerned made further steps unnecessary. Again, the Commission disclosed in its reply to a parliamentary question that it had instituted an investigation of an agreement concluded between producers and merchants of earthenware to determine whether the agreement infringes upon the antitrust provisions of the Treaty.

The pattern of negotiations, in which the Permanent Representatives play such a major role, may well be the only realistic modus operandi in view of the present powers of the Commission, the lack of information in its files, the time it will take to build up truly expert knowledge, the still limited awareness on the part of the public of Community issues and the unwillingness of some governments to support a stronger role for the Commission. The failure of the governments in the spring of 1959 to support the High Authority’s proposals for the handling of the coal crisis has undoubtedly made the Commission even more inclined to seek to persuade national governments before making formal proposals to the Council.

IV. ADVISORY COMMITTEES: THE VOICE OF "OUTSIDE" EXPERTS AND SPECIAL INTEREST GROUPS

The Treaty creates a number of advisory bodies of which the three most important merit consideration here. The Economic and

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*a* [1959] J’*l* *Off.* 1122–23.

Social Committee is endowed with the broadest advisory functions. It serves both the E.E.C. and Euratom. The Treaty provides that in specified instances the E.E.C. Council or the Commission must seek the Committee’s opinion, which, however, is not binding on them. In addition, the Council or the Commission may seek the advice of the Committee whenever either deems it appropriate.

The Committee membership is rather large, consisting of 101 members serving in their personal capacities and therefore not subject to instructions from their governments. The Big Three are each allotted 24 seats, Belgium and the Netherlands 12 each and Luxembourg five. Each member government submits to the Council a list of candidates containing twice as many names as there are positions and the Council makes the appointments from these lists after consulting the Commissions. Under the Treaty the Committee is to include representatives of “the various categories of economic and social life, in particular, representatives of producers, agriculturalists, transport operators, workers, merchants, artisans, the liberal professions and of the general interest.”

The Treaty reflects an intention of the governments to maintain fairly strict control over this Committee of uninstructed individuals: any Member State may veto in the Council the appointment of any representative; the Council must approve by unanimous vote the Rules of Procedure of the Committee and the Committee is to be convened “at the request of the Council or of the Commission.”

In working out the Rules of Procedure a difference arose between

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64 Katzenstein, Der Arbeitnehmer in der europäischen Wirtschaftsgemeinschaft, 12 DER BETRIEBS-BERATER 1081 at 1083 (1957) is of the opinion that the Committee has a more far-reaching right to be heard by the executive institutions than the European Parliamentary Assembly.

66 Art. 198.

67 Art. 194.

68 Art. 195.

69 Art. 193, para. 2.

The Committee comprises a great variety of interests with emphasis on producers and labor both in industry and agriculture. The precise balance varies from one national contingent to the other. Among the members are officials of labor and white collar employees’ unions and unionists from overseas areas; officials and executives of trade associations (composed of agricultural and industrial producers, merchants, and craftsmen) and of chambers of commerce and agriculture; bankers, shipping and river navigation company executives, import-export wholesale executives; experts in transportation, tourism, radiology, nuclear energy, and nuclear economics; university professors of chemistry and economics; representatives of cooperatives; a few government officials concerned with economic planning and agriculture; a single Italian lawyer representing liberal professions; a housewife-consumer expert, etc. For the original membership, see 1958 REVUE DU MARCHÉ COMMUN 131-137 (No. 3); for a more recent list, see ANNUAIRE-MANUEL DE L’ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE 1958-1959, at 185-94.
the Councils on one hand and the Committee on the other, as to the scope of the latter's right of initiative; a "compromise" was reached after considerable delay under which the Committee may meet on its own initiative and in the absence of a formal request for an opinion but only if one of the Councils or Commissions has given its prior approval and only on those questions on which it "must or may be consulted" under the Treaty. 70

Control of publicity by the Committee may have been considered a possible instrument of pressure upon the institutions: thus the Rules provide that the opinions of the Committee can be published only "under conditions and by means determined" by the institution concerned. 71 No provision is made to preclude publicity originated by an individual Committee member concerning his attitudes or those of other members, however, and the right to seek assistance from outside expert consultants 72 may also provide a method of circumventing the limitation on publicity.

The Assembly recommended that labor and employers be assured parity on the Committee and expressed formally its regret when the recommendation was not heeded. 73 The composition of the Committee was termed "thoroughly unbalanced" in certain labor quarters. 74 An early conflict between labor and employers over the allocation of the offices of the Committee President and Vice-President was solved by a compromise based on an overall increase in the number of Vice-Presidents: 75 it took time and considerable doing to complete the organization of the Committee. 76

The Committee is required by the Treaty to establish "specialized sections" in the fields of agriculture and transportation, in which the Community institutions are to develop common Community policies. It established similar sections in five other fields obviously in an attempt to overcome the handicaps of unwieldiness stemming

70 Règlement intérieur, art. 18, para. 3 [1959] J'ī OFF. 496.
71 Id., art. 45, para. 3.
72 Id., art. 14.
75 The labor group claimed that a Vice-President elected to represent the "general interest" group in fact represented the employers. By way of a compromise the total number of Vice-Presidents as well as the number of Vice-Presidents representing labor interests was increased. 278 EUROPE, item 1350 (November 28, 1958).
76 The Euratom Commission made it clear that the present composition of the Committee reflects only partially its suggestions concerning the number of nuclear specialists. EURATOM COMMISSION, FIRST GENERAL REPORT ON THE ACTIVITIES OF THE COMMUNITY 34 (1958).
from its size. 77 The work is done principally by the sections and by working groups within the sections and any proposed opinions—of which it had already rendered several by the beginning of 1960—are ratified in plenary meetings of the Committee. The institutions may not approach the sections directly. 78

The Committee's relations with the Commissions appear satisfactory. Several E.E.C. Commissioners have already addressed a plenary meeting of the Committee in order to describe the Commission's working plans in the social and other fields in which requests for opinion may be forthcoming, and, although not required to do so by the Treaty, the E.E.C. Commission asked the Committee for an opinion on a proposed directive concerning the application of the right of establishment to the overseas areas. 79

It is much too early to say to what extent this Committee will be more significant than a similar committee of the Coal-Steel Community. 80 It is important in that it offers a forum for private individuals and interest groups in the Community, and despite its circumscribed powers, it may play a useful role.

When the E.E.C. Commission asked the Committee for an opinion on the very topical question of harmonization of certain aspects of national commercial policies, for example, the Committee produced a provisional urgent recommendation addressed to the governments of the Member States urging them to adopt certain positions with respect to imports from third countries with exceptionally low wages, multiple exchange rates, and state trading systems. The Rules of Procedure provide for no such provisional recommendation, but this fact was brushed aside by the Committee.

Another advisory body, the Monetary Committee, may become of considerable importance particularly because the Committee may offer opinions to the Council or to the Commission on its own initiative as well as at their request. 81 Its function is to assist in the coordination of national policies in monetary matters in accordance with a charter (Statut) 82 established by the Council. Each Member State has appointed one executive of its central bank and one high official of its Ministry of Finance and the Commission has designated two officials from its own staff to serve on the Com-

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78 Art. 197, para. 3.
80 ROBERTSON, EUROPEAN INSTITUTIONS 169 (1959).
81 Art. 105.
mittee. The work of the Committee may be facilitated by the fact that the governors of the central banks have been discussing common problems regularly over many years in the sessions of the Board of Governors of the Bank of International Settlements in Basel and have established close personal relationships. The Committee, with the assistance of the Commission staff, has been engaged in a quarterly examination of the monetary and financial situations of the Six, in studies of convertibility and in working out a program for lifting restrictions on flow of capital.83

A third advisory body, the Transportation Committee “composed of experts appointed by the Governments” 84 has been established to advise the Commission on matters relating to transportation.85 In accordance with this committee’s charter (Statut), formulated by the Council,86 each government ultimately appointed two high level officials and three transportation experts (with alternates) to membership. The members serve in their personal capacity and must not receive instructions from their governments.87 The Committee elects its Chairman and Vice-Chairman from among the members who are government officials.88 It may meet and render opinions at the request of the Commission.89

Controversy arose at the outset in connection with the composition of the Committee with the result that it was not formed until more than a year after the Treaty had come into effect. Moreover, the Commission has since been closely questioned in the Assembly because the role of experts as compared with that of government officials in the Transportation Committee was thought to be disproportionately small, the Parliamentary Assembly Committee on Transportation having expressed the view that the Committee should be composed of independent experts rather than governmental officials or spokesmen for special interest groups.90 The labor unions have also demanded that at least one representative

84 Art. 83.
85 This committee must be distinguished from the specialized section for transportation of the Economic and Social Committee mentioned above.
87 Id., art. 3.
88 Id., art. 5, para. 1.
89 Id., arts. 6 and 7.
be appointed to this Committee from their ranks by each government.\textsuperscript{91}

The Committee has already been called upon by the Commission to give its opinion on a proposed regulation for the abolition of certain forms of discrimination in transportation.\textsuperscript{92}

The Treaty provides for other advisory bodies. Because of its "triangular" composition, mention may be made particularly of the mixed Committee which is to assist the Commission in the administration of the European Social Fund. It is chaired by a Commission member and composed of representatives of governments, labor unions and employers' associations.\textsuperscript{93}

\section*{V. THE EUROPEAN PARLIAMENTARY ASSEMBLY: THE VOICE OF THE PEOPLE?}\textsuperscript{94}

\subsection*{A. COMPOSITION AND ORGANIZATION OF THE ASSEMBLY}

The Assembly and the Court of Justice are the two institutions common to all three Communities.\textsuperscript{95} The Assembly's functions under the three treaties differ somewhat. It succeeded the Common Assembly of the Coal-Steel Community which was in existence from 1952 until 1958. Although technically a new institution, the European Assembly has adopted in substance the practices and procedures of the Common Assembly and has been seeking to perfect them. It has been able to profit from the expertise and experience accumulated in the more than five years of its predecessor's work.

When the Rome Treaties were in the process of negotiation, the French delegation insisted that an entirely new assembly be created

\textsuperscript{91} 317 \textit{EUROPE}, item 1622 (January 19, 1959). Only the Benelux countries included labor union representatives among the three experts; France appointed a unionist as an alternate expert. \textit{Ibid.}

\textsuperscript{92} Art. 79(3). \textit{E.E.C. COMMISSION, op. cit. supra note 79, at 25-26 (1959). 246 \textit{EUROPE}, item 1858 (February 24, 1959); 373 \textit{id.}, item 2083 (March 27, 1959); 407 \textit{id.}, item 2381 (May 12, 1959); 415 \textit{id.}, item 2455 (May 22, 1959).

\textsuperscript{93} Art. 124. Cf. also Committee of Control which is charged with auditing the budget. Art. 206. Its \textit{Statut} (charter) is contained in [1959] J'L OFF. 861. For a description of the E.E.C. Administrative Commission for Social Security of Migrant Workers see the chapter of this book by Otto Kahn-Freund. The \textit{Statut} of this Commission is contained in [1959] J'L OFF. 1213.

\textsuperscript{94} This section is based in part upon this writer's article: Stein, \textit{The European Parliamentary Assembly: Techniques of Emerging "Political Control,"} published in XIII \textit{INTERNATIONAL ORGANIZATION} 233-54 (1959); on the European Parliamentary Assembly generally see \textit{HEIDELBERGER, DAS EUROPAISCHE PARLAMENT} (1959).

\textsuperscript{95} Arts. 1 and 3, \textit{Convention Relating to Certain Institutions Common to the European Communities}. Both the E.E.C. and Euratom treaties speak of "the Assembly," but the Assembly assumed the name "European Parliamentary Assembly" in its first session.
for the E.E.C. and Euratom. This would have meant a fourth Assembly in Western Europe, to be added to the Common Assembly of the Coal-Steel Community, the Consultative Assembly of the Council of Europe and the Assembly of the Western European Union. The strong and coordinated opposition on the part of the three Assemblies then in existence was an important factor in creating the single European Assembly.96

The Assembly has been called the most "supranational" of the Community institutions.97 Composed of "representatives of the peoples" 98 independent of national governments and independent of the other institutions, the Assembly has exclusive control over matters of its own organization 99 and votes in most instances by simple majority.100 Yet it is in no sense a legislature and its powers are limited.

The 142 representatives are members of the national parliaments of the six Member States and are selected by them.101 The assembly hall in Strasbourg, borrowed from the Council of Europe Assembly, has the semi-circular design typical of national parliaments and for the first time in the history of international assemblies, the representatives are seated not according to nationality but according to political affiliation.102

Three political "groups" currently exist in the Assembly. These are, from left to right, the Socialists, the Christian Democrats and the Liberals with affiliates. Just as the United States Constitution contains no reference to political parties, so the three treaties setting up the Communities make no mention of political groups. Nevertheless, political groups are as much the mainspring of political action in the Assembly as are political parties in the U.S. Congress. Political groups are regulated by the Rules of Procedure of

96 Robertson, European Institutions 167 (1959); France, Conseil de la République, Session ordinaire de 1956-1957, Annexe au procès-verbal de la 1ère séance du 12 juillet 1957, No. 873, Rapport fait au nom de la Commission des Affaires étrangères sur le projet de loi ... autorisant le Président de la République à ratifier: 1° le Traité instituant la Communauté économique européenne ... par MM. Carcassonne et Biatarana, sénateurs, at 7239. On European Assemblies see Lindsay, European Assemblies—The Experimental Period 1949-1959 (1960); Lindsay, Towards a European Parliament (1958).
98 Art. 137.
99 Arts. 140, 142.
100 Arts. 141.
the Assembly, which require a minimum membership of 17 for the formation of a group, since both political and financial considerations make it desirable to avoid proliferation. There was also some concern that groups under the guise of political affinity might serve as cover for national rather than Community-wide blocs.

The treaties do not expressly prohibit the representatives from receiving instructions from their parliaments, but such instructions would obviously impair the Assembly's role as a representative of Community interests. The practice of the Coal-Steel Common Assembly had already established the independence of representatives from their parliaments, and in order to encourage it, the Common Assembly made arrangements for funds to provide the political groups with independent secretariats. When the Assembly convenes in Strasbourg, one therefore finds the secretariats of the three political groups as well as offices of the national contingents. While the political groups meet frequently under their respective presidents, the national contingents meet only rarely, and it has been said that in the past the French contingent, for instance, met only to note that it was divided. The differences within the national contingents have moreover led to spirited exchanges on the floor.

The key to the composition of the Assembly is nationality: the Big Three (France, Germany, and Italy) hold 36 seats each, Belgium and the Netherlands 14 each, and Luxembourg six. This

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104 There are seventeen members in the smaller of the thirteen standing committees. Resolution of March 20, 1958, [1958] J'L Off. 4.
107 Decision of June 16, 1953, id. at 25.
109 See, for instance, the debate of two German parliamentarians, Mr. Deist (Christian Democrat) and Mr. Burgbacher (Socialist), on the German coal-oil cartel. Parl. Debates (No. 2, Jan. 9, 1959) 38 at 44 and 48.
110 E.C.S.C. Treaty art. 21, as modified by art. 2(2) of the Convention Relating to Certain Institutions Common to the European Communities; E.E.C. Treaty art. 138(2); Euratom Treaty art. 108(2).

The representation of the Big Three in the new Assembly was doubled from what it was in the Common Assembly while the representation of the Benelux countries was increased by 40 to 50 per cent. The object was to equal the number of representatives plus substitutes of each of the member countries in the Consultative Assembly of the Council of Europe in order to permit the appointment of one "set" of European parliamentarians. Belgium, CHAMBRE DES RÉPÉSENTANTS, Rapport fait au nom de la Commission Spéciale, 727 (1956-1957), No. 2, at 23-25; CATALANO, LA COMUNITÀ ECONOMI-
distribution of seats resulted in a larger representation of the Benelux countries than is justified by their population, but the Big Three agreed to it in order to permit the smaller countries to send politically diversified delegations. However, it was pointed out in the German ratification debates that the distribution of seats may have to be reexamined when the Assembly is elected directly by universal suffrage as eventually contemplated in the three treaties.\textsuperscript{111}

In the June 1959 session there were 69 Christian Democrats, 32 Socialists, and 40 Liberals and affiliates.\textsuperscript{112} The Liberals have since increased substantially in number, principally as a result of the shift in the composition of the French National Assembly resulting from the De Gaulle landslide in the 1958 elections.

The national contingents are composed of members of both chambers of the national parliaments, with the exception of that from Luxembourg, which has a unicameral system, and that of Germany. The German upper chamber (\textit{Bundesrat}), with the support of the government, claimed the right to participate in the German contingent, but the lower chamber (\textit{Bundestag}) proceeded to fill the entire German contingent from its own membership on the ground that the \textit{Bundesrat} is an appointed and not an elected body.\textsuperscript{113}

The procedure for designating the national contingents varies from parliament to parliament. As a rule, the political parties within the parliament divide the total number of seats among themselves and select their own candidates; this selection is then formally ratified by the parliament. The national parliaments have excluded the Communists (and the Poujadists) from their Strasbourg contingents.\textsuperscript{114}

In contrast to the national parliaments, the Assembly has no true

\textsuperscript{111} Germany, \textit{Deutscher Bundestag}, 2 Wahlperiode 1953, Drucksache 3440 Anlage C, Erläuterungen zu den Verträgen zur Gründung der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft, 142 (1957). It is reported that the French delegation took the same position during the negotiations for the Rome Treaties.

\textsuperscript{112} [1959] \textit{J'Off.} 791–93.


\textsuperscript{114} Reuter, \textit{Les Institutions de la Communauté à l'épreuve}, 17 \textit{Droit Social} 518, 522 (1954).
“administration” and “opposition” parties. The Assembly is not “organized” by any one of the three groups, but the principal offices (President and eight Vice-Presidents) and the composition of the thirteen standing committees reflect an effort to assure fair national as well as political representation. In this respect the Assembly has characteristics both of an international assembly and of a national parliament.

In the Common Assembly the Christian Democrats were said to have been forced into the position of the “administration” party, particularly because of their opposition to Socialist attacks against the High Authority of the Coal-Steel Community. The Liberal group was composed of a variety of political parties with varying objectives, but they joined with the Christian Democrats whenever the latter took a position favoring free enterprise. When the Christian Democrats were divided on High Authority policy, as was frequently the case, the Liberals tended to use their influence to block action.115 While it may be too early to draw any definite conclusions concerning the European Assembly, a similar pattern apparently is emerging in it. The Socialists, certainly the most cohesive group, would seem to be playing an even more “activist” role than they did in the Common Assembly, pressing for Community planning, action and direct intervention in a variety of fields.

B. INTERNATIONAL ASSEMBLY OR PARLIAMENT?

What are “the powers of deliberation and of control” 116 which are entrusted to the Assembly by the E.E.C. Treaty?

The Commission is obligated to submit to the Assembly an annual general report.117 The Assembly and the individual representatives may address questions to the Commission, which is required to answer orally or in writing.118 The Assembly may force the resignation of the Commission at any time by a motion of censure based on any of the Commission’s activities and adopted by two-thirds of the votes cast representing a majority of all representatives.119 In instances specified by the Treaty, the Assembly must be consulted by the Council: these include important matters of Community policy.

115 HAAS, op. cit. supra note 108, at 436.
116 Art. 137. The German text speaks of “Beratungs-und Kontroll-befugnisse,” the French of “pouvoirs de deliberation et de contrôlè.”
118 Art. 140.
some of the measures affecting national legislation,\textsuperscript{120} “extension” of the powers of the institutions,\textsuperscript{121} the calling of conferences to amend the Treaty\textsuperscript{122} (but not the amendments themselves) and the conclusion of agreements of association with other entities (but not the decision to admit a new member to the Community).\textsuperscript{123} The Assembly must also be consulted on the budget and has the right to propose modifications.\textsuperscript{124} The Assembly “consultations” are not binding on the Council.

In terms of its power the Assembly resembles in some respects an international organization assembly, and in other respects a national parliament.\textsuperscript{125} Like the United Nations General Assembly, it discusses, obtains facts, and recommends. Its powers over the budget are inferior to those of the United Nations Assembly which determines the budget of the Organization. Like a national parliament the European Assembly exercises a measure of control over the “executive” organ and may force its resignation. Unlike a parliament, it has no power to legislate and thus to impose its policy, nor does it possess “the power of the purse” in the parliamentary sense.

Both the Common Assembly and its successor, the European Assembly, have consistently stressed their parliamentary characteristics. One report states, “if legitimate doubt arises with respect to a question concerning the status of this Assembly one must seek the solution in the traditional parliamentary law and not in the unfounded comparisons with commissions, assemblies or organizations of an international character.”\textsuperscript{126}

Since the Council and not the Commission is the principal decision-making body, it could be argued that the Assembly’s power of

\textsuperscript{120} E.g., arts. 43 (2), 75 (1), 87 (1), 100.
\textsuperscript{121} Art. 235.
\textsuperscript{122} Art. 236.
\textsuperscript{123} Art. 238; \textit{but see} art. 237. Although the decision to admit a new Member State is not subject to consultation with the Assembly it cannot be implemented without Treaty amendment and the Assembly plays a role in the amending procedure.
\textsuperscript{124} Art. 203 (3).
\textsuperscript{125} For other instances in which the Assembly must be consulted see Soulé, \textit{Comparaison entre les dispositions institutionnelles du Traité C.E.C.A. et du Traité C.E.E.,} 1958 \textit{REVUE DU MARCHÉ COMMUN} 95, 102 (No. 2); \textit{La Communauté Economique Européenne: Aspects Institutionnels, ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL,} annex 10, at 513 (1957). The obligatory consultation is an innovation not known in the E.C.S.C. Treaty.
\textsuperscript{127} \textit{Avis sur la participation des observateurs du Conseil de l'Europe à l'Assemblée Commune et sur la conclusion d'un accord à cet effet,} as cited in the Poher Report, \textit{id. at} 14, n. 3, this author’s translation.
control under the E.E.C. Treaty is narrower than under the Coal-Steel Community Treaty, according to which the High Authority, the central body, is subject to Assembly motions of censure. Yet, as suggested, the practical difference between the schemes of the two Treaties may be less significant than would appear from the texts. Moreover, even though the Council makes final decisions, the Commission plays an important part as a result of its power of initiative. Thus the Assembly’s control over the Commission and its right to be consulted by the Council have given it a measure of authority, and this it has sought to develop with vigor and ingenuity. In doing so it has drawn upon “general principles” governing national parliamentary procedures and has assumed what it considered implied powers.

C. THE WORKING OF THE ASSEMBLY

The Assembly has sought to assure the continuity and effectiveness of its activities by greatly increasing the frequency of its meetings. In 1959 seven meetings of two to seven days duration were scheduled.\(^{127}\) The schedule reflects the thorny problem of coordinating the meetings of the Assembly not only with those of the national parliaments, but also with the Consultative Assembly of the Council of Europe and of the Western European Union, in view of the joint mandates held by a number of representatives in all of these bodies.\(^{128}\) A Belgian Senator predicted that a parliamentarian will have to spend about 100 days annually on his “European mandates” and at the risk of neglecting his national parliamentary activities.\(^{129}\) The many vacant seats commonly seen in the Assembly are due, at least in part, to conflicting sessions of national parliaments.

The Assembly has established a substantial number of standing committees. Most of the Assembly's work and most of the compromising is carried out by these committees, which meet throughout the year, ordinarily in private sessions, to examine sections of the general reports of the “executive.” On the basis of this examination the committees prepare their own reports and draft resolutions

\(^{127}\) See Speech by Representative Santero, No. 8 ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE, COMPTES RENDUS STÉNOGRAPHIQUES PROVISOIRES 18 (June 1958).

\(^{128}\) See Speech by Senator Motz, Belgium, SÉNAT, ANNALES PARLEMENTAIRES, SÉANCE DU MERCREDI, 27 NOVEMBRE, 1957, at 137. The problem of co-ordinating the work in the European Assemblies and the national parliaments was also mentioned by LINDSAY, TOWARDS A EUROPEAN PARLIAMENT 31, 32, 81 (1958), with respect to the Council of Europe.
which then form the basis for floor debate. A large majority of committee reports has received unanimous approval by both the committee and the Assembly.¹³⁰ This contributes to the impression that no real "opposition" exists in the Assembly. The number of amendments to resolutions offered from the floor during plenary debates is, however, increasing. In debate the rapporteur of the committee introduces and defends the report, and Assembly representatives frequently speak for an entire political group.

In their private meetings the committees hear members of the Commission and of the other two "executives", as well as their expert staffs, and consider whatever documentation is submitted by them. Independent experts and missions of study and inquiry are also employed.¹³¹ One such mission of representatives was dispatched to overseas areas of the Community.¹³² In addition, the social, transportation, and agriculture committees have heard private interest groups representing labor, management and the like. In contrast to committees of the United States Congress, however, the Assembly committees (and for that matter the Assembly itself) do not have the power to subpoena witnesses. Moreover, because most committee meetings are private, they have not performed the public-opinion-forming function which is such a striking characteristic of American congressional committee hearings. In some areas of Community activity, such as the application of antitrust provisions or in dealing with social affairs, public hearings of formal testimony by the committees might well be advantageous, even though foreign to European parliamentary practice.

Voting on the various draft resolutions often takes place in the final plenary meetings after a number of representatives have departed from Strasbourg. As a rule the representatives vote by a show of hands.¹³²a

D. THE ASSEMBLY'S “POLITICAL CONTROL” OVER THE COMMISSION

The members of the Commission (but not staff members) ¹³³ have the right under the Treaty to attend "all meetings" of the Assembly and "to be heard," ¹³⁴ although the Assembly has made

¹³³ Id., art. 29(4), at 226.
¹³⁴ E.E.C. Treaty art. 140.
attendance by Commission members at committee meetings subject to invitation.\textsuperscript{135} Correspondingly, the Commission members have the obligation under the Treaty to reply orally or in writing to questions put to them either by the Assembly or by individual representatives.\textsuperscript{136} Commission members most directly concerned with agenda items have invariably been in attendance at Strasbourg.

As national parliaments do, the Assembly has sought to act as a "watchdog" over the "executive," particularly in connection with the Commission's budgetary functions. The Assembly has done this by means of parliamentary questions, some of them obviously motivated by party politics. The questioning has related to such subjects as the size of the severance payments and pensions of former members of the "executive"\textsuperscript{137} and the involvement of one of the Commission members in a national court proceeding\textsuperscript{138} and the activities of one of the judges of the Community Court.\textsuperscript{139}

More important, however, have been the efforts on the part of the Assembly to influence, and help develop, the policies of the "executive." The technical nature of the problems in the coal and steel industry initially proved to be an obstacle to a similar effort by the Common Assembly. That Assembly urged the High Authority to formulate broad and long-range policies as distinguished from its day-to-day operations and to state them distinctly in its reports in a long-range context lest the trees obscure the forest. When the policy issues were presented, the political groups in the Assembly were forced to develop policy positions, no easy matter in the absence of experience and specialized knowledge.\textsuperscript{140} By now a number of representatives have developed considerable expertise and, as a result, some Assembly committees are capable of producing policy reports whose impact promises to exceed that which the formal powers of the Assembly would give them. This is particularly obvious at present in the fields of agriculture and transportation.

The debates and resolutions reflect the Assembly's desire to encourage the Commission in—and sometimes to prod it into—independent and vigorous exercise of its functions. The Commission has been urged to reject restrictive and formalistic interpretations of the Treaty in dealing with national measures designed to circumvent

\textsuperscript{135} Rules of Procedure, \textit{op. cit. supra} note 131, art. 38 (2).

\textsuperscript{136} E.E.C. Treaty art. 140.

\textsuperscript{137} \textit{J.L Off.} 682, 687.

\textsuperscript{138} \textit{J.L Off.} 686-88.

\textsuperscript{139} \textit{J.L Off.} 849-59.

\textsuperscript{140} See Speech by High Authority President Monnet, \textit{DÉBATS DE L'ASSEMBLÉE COMMUNE} (No. 1, September 11, 1952) 18; Wigny Report, \textit{supra} note 106, at 12-13.
reductions in customs duties 141 and to propose the required directive for the removal of charges equivalent to customs duties.142 The Socialists have pressed strongly for action in the antitrust field; one Socialist has blamed the "executive" inaction for the emergence of the new (and short-lived) German oil-coal cartel.143 The Assembly as a whole has gone on record in support of the Commission's position that the antitrust articles are applicable even before promulgation of the Council regulations required by the Treaty. It called for prompt and practical solutions which would allow present application of these articles.144 The Commission has also been pressed by Assembly resolutions to take an active role in social affairs, in the coordination of economic policies,145 in the development of a coordinated policy embracing the different sources of energy (coal, nuclear energy, oil),146 and in organizing investments.147 In the investment field differences in the Assembly are apparent in the points of view of those who see the European Investment Bank as a main investment source and "liberals" who view it as a source of capital supplementary to private investment.148 Some representatives have even cautioned the Commission not to rely excessively on national governments,149 also warning that the conferences with national experts through which the Commission has become accustomed to seek prior agreement of national governments to its proposals have no standing under the Treaty.150 The Commission has been promised support even if it should take action in areas not clearly within its jurisdiction.151 Suggestions have been made in Assembly reports

142 Representative Kreyssig, speaking on behalf of the Socialist group, Parl. Debates (No. 1, Jan. 8, 1959) 10.
143 Speech by Representative Conrad, id. (No. 2, Jan. 9, 1959) 38 at 39-41; Speech by Representative Deist, id. (No. 2, Jan. 9, 1959) 48 at 56-58.
147 See Speech by E.E.C. Vice-President Malvestiti, Parl. Debates (No. 1, Jan. 8, 1959) 16-19; speech by Representative Deist, supra note 143, at 57; Resolution of January 15, 1959, [1959] J'Off., paras. 5-7, at 166.
148 See speeches by Representative Battaglia, Parl. Debates (No. 5A, Jan. 13, 1959) 185 at 189; by Representative Lindenberg, id. (No. 5B, Jan. 13, 1959) 201-03; and by Representative Nederhorst, id., 193-201.
149 Representative Kapteyn as quoted by E.E.C. Commissioner Schaus, Parl. Debates (No. 5A, Jan. 13, 1959) 165 at 168.
150 Speech by Representative Deringer, supra note 144, at 13.
151 Speech by Representative Kreyssig, supra note 142, at 12.
and statements that Community regulation of transportation, now limited to road, railroad and inland waterway transportation, should be extended to include pipe lines and civil aviation, that the Monetary Committee and the Council be given additional powers similar to those of the United States Federal Reserve System.\textsuperscript{152} Moreover, the Commission has been urged to consult with private interested parties\textsuperscript{153} as well as with governments. Only relatively rarely (for example, in the debates on the budget and on the Free Trade Area negotiations) have complaints been heard on the floor that the Commission has not provided sufficient information to the Assembly.\textsuperscript{154}

In statements before the Assembly, Commission members have expressed appreciation for the Assembly’s support and have sought to explain and defend the steps taken by the Commission, giving assurances of further study of any Assembly suggestions. It is especially interesting that members of the Commission have lectured the Assembly on the Commission’s lack of legal power under the Treaty to take action suggested in the Assembly,\textsuperscript{155} asserting that increases in powers of the Commission in a given field\textsuperscript{156} may not be necessary or desirable, that, since the power of decision currently lies with national governments in some fields such as transportation, negotiation rather than independent Commission initiative is essential\textsuperscript{157} and that the establishment of “joint services” for all three Communities would be illegal in the transportation field\textsuperscript{158} and unwise in the energy field.\textsuperscript{159}

E. THE ASSEMBLY AND THE COUNCIL OF MINISTERS:
AN UNEVEN POWER CONTEST

The legal basis for the development of relations between the Assembly and the Council is limited.\textsuperscript{160} The first problem for the

\textsuperscript{152} Speech by Representative Troisi, Parl. Debates (No. 5A, Jan. 13, 1959) 189 at 191.

\textsuperscript{153} Reference to statements by Representative Deringer in speech by E.E.C. Commissioner von der Groeben, Parl. Debates (No. 1, Jan. 8, 1959) 19 at 21.


\textsuperscript{155} E.E.C. Commissioner Schaus with respect to control of pipelines, supra note 149, at 187; E.E.C. Vice-President Malvestiti with respect to investments, supra note 147; E.E.C. Vice-President Marjolin with respect to fuel policy, Parl. Debates (No. 2, Jan. 9, 1959) 67 at 69, 70.

\textsuperscript{156} E.E.C. Vice-President Marjolin, supra note 155.

\textsuperscript{157} E.E.C. Commissioner Schaus, supra note 155.

\textsuperscript{158} Id. at 170.

\textsuperscript{159} E.E.C. Vice-President Marjolin, supra note 155, at 68.

\textsuperscript{160} Poher Report, supra note 125, par. 13 at 14-15.
Assembly was one of communication with the Council. The Treaty provides that the Council "shall be heard" by the Assembly "under the conditions which the Council shall lay down in its rules of procedure."\(^{161}\) Obviously, it was important to have the Ministers attend. Nevertheless, the Assembly took the position that the Ministers, like Commission members, may attend the meetings of its committees upon invitation only. The Ministers objected, but acquiesced when the Assembly stood firm.\(^{162}\) Nevertheless, the Ministers have made it clear that for practical reasons they will not attend meetings of Assembly committees except in unusual circumstances. At least one Minister now attends part of each plenary session of the Assembly but the absence of all Ministers during important phases of the debate continues to be the subject of strong criticism from the floor.\(^{163}\)

In its rules of procedure, the Assembly asserted its right to address resolutions to the Councils and passed some such resolutions, which have received varying responses from the Ministers.\(^{164}\) The three treaties contain no provision relative to addressing questions to the Councils. The Committee on Procedure of the Common Assembly ruled in 1955 that a written question submitted by a representative could not be transmitted to the Council.\(^{165}\) However, the argument was advanced in the committee drafting the Rules of Procedure for the new Assembly that, since the decision-making process under the new treaties had shifted to the Councils, the Assembly must have the formal power, first, to address questions to the Councils, and second, by way of "a sanction," to adopt a motion of disapproval of the Councils' policies—an idea taken from the Charter of the Western European Union.\(^{166}\) The argument in favor

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\(^{161}\) E.E.C. Treaty, art. 140.


\(^{165}\) Decision of May 12, 1955, Kauvenbergh Report, supra note 105, para. 23, at 28–29. In the Common Assembly, resolutions addressed to the Council in a sense provided a substitute procedure.

\(^{166}\) Kauvenbergh Report, supra note 105, para. 22, at 27–28; Speech by Representative van Kauvenbergh, supra note 161, at 12.
of the power to question the Council prevailed, but the committee decided not to pursue the suggestion concerning the motion of disapproval "at the moment." Accordingly, the Rules were adjusted to create the power of addressing oral or written questions to all three Councils not only for the Assembly itself, but also for the individual representatives. The Assembly agreed, however, that the Councils have no legal obligation to respond. Nevertheless, an interesting provision was included in the Rules to the effect that, if the Council should fail to respond within two months to a question addressed to it, the question will be published in the Official Journal of the Communities. In fact, the Councils have answered in writing questions directed to them by representatives although some answers were quite perfunctory and not at all enlightening. The questions and the answers have been published in the Journal. More recently, the Ministers have taken the position—although not quite consistently—that they shall reply only to questions within the jurisdiction of the Council but not to questions which, although pertaining to the Community, under the Treaty fall within the jurisdiction of the national governments. They have also indicated unwillingness to reply where the Council has not yet made a decision on the matter raised in the question. These attitudes have been criticized by the Assembly.

The Treaty requirement that the Assembly be consulted before certain measures are taken is the most important legal link between the Council and the Assembly. While the Treaty is not explicit, the consultation formula seems to indicate that the Council, having received a proposal from the Commission, will transmit it to the Assembly. The Commission will be able to explain and defend the proposal in the Assembly and, possibly, to modify it on the basis of the Assembly debate before the Council makes a final decision. The Assembly committee which prepared the Rules of Procedure noted that parliamentary concepts would be applied more effectively

167 Ibid.
169 "We are convinced," said Mr. Derenger, speaking for the Christian Democratic group, "that independently of the letter of the treaties, the Council will answer these questions." Parl. Debates (No. 7, June 1958) (mimeo.) 20, (this author’s translation).
171a Doc. No. 71 Assemblée Parlementaire Européenne (Nov., 1959), Rapport fait au nom de la commission des affaires politiques et des questions institutionnelles sur les relations entre l'Assemblée parlementaire européenne et les Conseils de ministres des Communautés Européennes par M. Charles Janssens, rapporteur.
172 E.g., art. 87(1): "... the Council ... on a proposal by the Commission and after the Assembly has been consulted ..."
173 Cf. art. 149, para. 2.
if the Commissions themselves consulted the Assembly before they
made their proposals to the Councils. This would enable the Assem­
by to express its view at the outset of the decision-making process,
although it could obviously not deprive the Councils of their inde­
pendent right to consult the Assembly. A joint Assembly-Commissi­
on position on any question, agreed to before the Council came
into the picture, would have "unquestionable weight" in the eyes of
the Council. The intent of the Treaty formula may have been,
however, to preclude precisely this kind of prior understanding
between the Commission and the Assembly, which could create politi­
cal pressures on the Council, in the hope of encouraging instead co­
operation between the Council and the Commission. The final
text of the Rules of Procedure does not preclude direct Assembly-
Commission consultations. In fact the Assembly committee on
agriculture, in examining the Commission's annual report and pre­
paring its own recommendations, has formulated common policy
suggestions in advance of the Commission's proposal to the Coun­
cil. Although the Commission apparently has cooperated in this
effort and participated in the Assembly debate thereon, it has made
it clear that it feels free to frame its own proposal to the Council
independently of any prior position taken by the Assembly. An
Assembly committee suggested recently that the procedure followed
in connection with the Euratom health rules and the rules for the
European Social Fund has now established a pattern of consultation
along the following lines: the Commission informs the Assembly
committee concerned of any proposals it intends to make to the
Ministers; the committee, "in the normal exercise of parliamentary
control," discusses the proposals and offers suggestions; when the
Commission submits the proposals to the Councils the latter consult
the Assembly.

The Assembly has not been happy about its relationship with the
Councils. As a demonstration of this dissatisfaction it proposed that
a substantial amount be included in the first budget for the purpose
of developing this relationship. The Assembly's resolution on

\[174\textsuperscript{a} \] Kauvenbergh Report, supra note 105, para. 22 at 24.
\[175\textsuperscript{a} \] La Communauté Économique Européenne: Aspects Institutionnels, Annuaire
Français de Droit International 491, 499 (1957).
\[176\textsuperscript{a} \] Rules of Procedure, art. 23, [1958] J'OFF. 224.
\[177\textsuperscript{a} \] 413 Europe, item 2499 (May 20, 1959).
\[178\textsuperscript{a} \] See statements made by Vice-President Mansholt as reported 444 Europe, item
2697 (June 25, 1959).
\[179\textsuperscript{a} \] Rapport Janssens, note 171a supra.
\[180\textsuperscript{a} \] Resolution of April 11, 1959, para. 5, [1959] J'OFF. 548, 549. The Council did not
accept this proposed modification. See Budget of the European Economic Community,
the budget of December 1958 contained 27 paragraphs bristling with criticisms of the Councils and was adopted despite the efforts on the floor by the President of the Council of Ministers to offer explanations and to soothe ruffled feathers. The basic complaint was the failure of the Councils to supply timely information on which the Assembly could form intelligent opinions concerning various budgetary questions.

Other paragraphs of the resolution reflect concern that the Committee of Permanent Representatives, mentioned earlier, may usurp the powers of the Councils of Ministers, and also gradually assume the preparatory functions of the Commission, thus destroying a crucial institutional feature of the Treaty. Primarily because of this desire to preserve the constitutional balance, the Assembly called for reduction of the size of the Secretariat of the Councils and protested the employment by the Councils of another special committee of national experts (not envisaged in the Treaty) for the review of the budget. For the same reason the Assembly formally warned against an undue increase in the staffs of the Permanent Representatives. Still other criticisms were directed at delays in the transmission of the proposed budgets to the Assembly. Indications are that at least some of the difficulties which arose in connection with the first budget will be avoided in the future.

During the recent economic crisis caused by the surplus of coal in the Community, the High Authority appealed to the Assembly after the Council rejected its proposed solutions. The Assembly adopted a resolution, by a vote of 44 to 12, supporting the Authority's proposals and placing principal responsibility for the failure in evolving a Community solution on the Council. German liberals and French Gaullists formed the nucleus of the opposition. Less than one-half of the representatives participated in the vote on a decision which placed the Assembly in open conflict with the Council on an important problem.

The Assembly's power under the two Rome Treaties to file a complaint in the Community Court against the Councils (or against the Commissions) whenever their failure to act constitutes a violation of the Treaty is, perhaps, of theoretical interest only. In any

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180 Stein,"supra note 94, at 250.
181 Id. at 249; also [1959] J'L Off. 550.
183a But see Assembly Resolution in [1959] J'L Off. 1257.
185 E.E.C. Treaty art. 175; Euratom Treaty art. 148.
case it is impossible at this juncture to estimate its practical value. In cases brought before it under the Coal-Steel Treaty the Court has demonstrated no tendency to assert vigorous policy control over the Community of the kind encountered in judgments of the Supreme Court of the United States.

F. THE ASSEMBLY AND THE MEMBER GOVERNMENTS

The United States Congress has the power in the areas defined by the Constitution to determine policies binding upon the States of the Union. The decision-making institutions of the Communities may also determine policies, within the areas defined by the treaties, that have binding effect upon the Member States, but the Assembly’s role in the decision-making process is extremely limited, and its powers over Member Governments are practically non-existent.

Despite the absence of any grant of authority by the treaties the representatives have not hesitated to discuss individual national policies which in their view could impair the functioning of the Communities. The Common Assembly had already asserted the right “to draw the attention of Member States by appropriate resolutions and after debate” to such harmful policies. The Common Assembly had also claimed the right for itself, its committees, and its Secretariat to receive pertinent information from national administrations.

The six governments reserved to themselves under the treaties the important prerogative of appointing the “executive,” leaving no role to the Assembly comparable to that played by the U.S. Senate in confirming executive appointments as required by the U.S. Constitution. The Assembly has, however, sought to influence the appointments by means of resolutions and informal contacts of its President, but concrete recognition of any Assembly role in this important area has not been forthcoming.

The principal complaint of the Assembly against the governments has related to their failure to select a seat for the Community’s institutions as required in the Treaties. The institutions are presently dispersed in Luxembourg, Brussels and Strasbourg.
dispersal of the institutions, requiring, as it does, excessive travel and hindering communication, causes time and energy to be wasted and creates morale problems among the staff. The annual expense resulting was estimated by the Assembly at $2 million. Perhaps an even more important consideration is the fact that concentration of the institutions in "a European district" would provide further impetus for integration. Indeed, this may be one reason why some of the governments seek to delay a final decision on the location of the "single seat."

In response to a request for an opinion, the Assembly suggested in June, 1958 that the seat should be located—in order of preference—in Brussels, Strasbourg, or Milan, and it endorsed the idea of a "European district" similar to the District of Columbia, the seat of the U.S. Government. This suggestion and numerous subsequent appeals by the Assembly have achieved no action by the governments. Because of this lack of progress, which is partly due to the French government's insistence on delay, the Assembly has threatened to select its own seat and to construct its permanent quarters, if the governments do not respond to the entreaties of a special Assembly delegation led by President Schuman.

Because the treaties rely to such considerable measure on the cooperation of the Member States, Assembly resolutions frequently contain more or less urgent appeals to the governments of the Member States to take specified action either singly or jointly with Community institutions.

The Assembly may also attempt to influence national governments through the national parliaments to which they are responsible. This avenue would seem particularly promising in view of the fact that the Assembly is composed of national parliamentarians who could very easily raise Community problems in their respective national parliaments by introducing bills or resolutions or by utilizing the government questioning procedure with a view to obtaining desired action. To date, however, the extent of the influence of the

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191 Ibid.
VI. THE COURT OF JUSTICE

A Court of Justice is established to "ensure observance of law and justice in the interpretation of" the Treaty.\textsuperscript{197} It is a common institution for all three Communities.\textsuperscript{198} It has succeeded the Court of the Coal and Steel Community which existed from 1952 to 1958 and developed a sizeable body of jurisprudence. For most practical purposes, the new Court is a continuation of the Coal-Steel Community Court to which new jurisdictional powers have been given by the E.E.C. and Euratom Treaties.\textsuperscript{199}

A. COMPOSITION OF THE COURT: THE JUDGES AND ADVOCATES GENERAL

The Court is composed of seven judges who must be qualified to be judges of the highest courts of their respective states or "jurists of recognized competence."\textsuperscript{200} They are appointed "by the governments of Member States acting in common agreement" for a six-year term and are eligible for reappointment. This arrangement has been criticized by a distinguished writer because it results in practice in the unilateral appointment by each nation of as many judges as, by agree-

\textsuperscript{191} Apparently only the Netherlands Parliament has debated the Coal and Steel Community problems annually. HAAS, THE UNITING OF EUROPE 407 (1958).

\textsuperscript{192} LYON, L'ASSEMBLÉE COMMUNE DE LA C.E.C.A. 55 (1957).

\textsuperscript{193} For instance, the Assembly urged its members to press for a solution of the problem of the seat for the Community institutions in their national parliaments. Resolution of May 14, 1959, op. cit. supra note 191, para. 5; see speech by Representative Kreyssig, Parl. Debates (No. 1, Jan. 8, 1959) 10 at 11.

\textsuperscript{197} Art. 164.

\textsuperscript{198} Convention Relating to Certain Institutions Common to the European Communities, arts. 3-4.

\textsuperscript{199} The new Court was formally established on October 7, 1958. [1958] J'L OFF. 453. Its Rules of Procedure were published in [1959] J'L OFF. 350. Four of the seven judges sat on the E.C.S.C. Court. For a discussion of the question as to the extent to which the new Court is likely to draw on the jurisprudence of the E.C.S.C. Court, see Chapter VII infra.

\textsuperscript{200} Art. 167.
ment, are to be its nationals. This method of appointment and the relatively short term of office compare unfavorably with those of the International Court of Justice and perhaps attest to a desire on the part of the governments to preserve a degree of influence which may not be compatible with the independent status of the Court.\footnote{201}{Reuter, \textit{Aspects de la Communaut{é} Economique Europ{é}enne}, 1958 \textit{Revue du March{é} Commun} 311 (No. 6).}

The treaties do not specify the nationality of the judges, but the present bench is composed of a national from each of the Six, the seventh judge being the second Italian national on the Court. The judges were drawn from national law faculties, benches and bars. The Chief Justice, a Dutch national, is just over 40 years of age.

The Court is assisted by two Court Advocates General, an institution originating in the French Conseil d'Etat. As institutionalized "amici curiae" they present to the Court independent opinions on the cases before it. They must have the same qualifications and are appointed in the same manner as the judges. Advocate General Roemer of German nationality has primarily private law background in the corporate field. The French Advocate General Lagrange held a high post in the Conseil d'Etat and served as a member of the French delegation in the negotiations concerning the Coal-Steel Community Treaty. The differing experience of these two men, who also served the Coal-Steel Community Court, is reflected in their differing approaches to the problems before the Court.

The discussions of law and the conclusions based on them of the Advocates General—for example, M. Lagrange's classic comparative analysis of the meaning of "détournement de pouvoir" (misapplication of power) as a ground for review of administrative acts\footnote{202}{Case 3-54, Sammlung der Rechtsprechung des Gerichtshofes, Vol. I, at 157–87 (1954–1955).}—are of great assistance to the Court. They acquire added significance in view of the fact that the Court works as a "collegiate body": it renders judgments without any indication of authorship and publishes neither votes nor dissenting opinions. On the other hand the conclusions of the Advocates General are published and, like dissenting opinions, frequently offer alternative solutions which may be of relevance for the development of law. The Court rarely indicates the sources of law on which it relies except to mention the relevant Treaty articles and its own earlier judgments. In this respect also the Advocates' discussions, drawing on a variety of the available sources of law, fill the gap somewhat and facilitate the understanding of the judgment as well as the development of law.
Unlike a common law court, the Community Court is not bound by precedent. Yet this Court, not unlike the common law courts, and particularly those of early periods, will have to play a vital role in the development of law of the Community.

B. THE JURISDICTION OF THE COURT

The Court's jurisdiction is varied and in some respects unique, defying categorization. For the purposes of illustration and at the admitted risk of drawing loose analogies, one might say that the Court's jurisdiction is analogous to the federal jurisdiction of the United States Supreme Court, to the "administrative" jurisdiction of the French Conseil d'Etat or the German Bundesverwaltungsgericht, and is at the same time a "civil" jurisdiction, and in a sense the jurisdiction of an international tribunal. 203

The Court's jurisdiction is similar to that of a federal court in regard to controversies between Member States concerning the application of the Treaty—controversies similar to those between States of the Union which the U.S. Supreme Court is asked to resolve under the Federal Constitution or statutes. 204 The Court's jurisdiction may also be viewed as "federal" in disputes between Member States and Community institutions, between the institutions themselves, and in cases where the Court decides whether proposed international agreements to be concluded by the Community are compatible with the Treaty. 205 Finally, one might mention in this category the jurisdiction of the Court to rule on questions arising in national judicial proceedings which concern interpretation of the Treaty and the validity and interpretation of the acts of the institutions. National courts of last resort are bound to refer these "federal" questions to the Court for binding determination. This obligation on the part of the national courts has been substantially strengthened in the Rome Treaties as compared with the Coal-Steel Treaty. 206

The Court's jurisdiction is "administrative" ("public municipal")


204 It has been argued that the Community Court's jurisdiction in such a case is one of international law. See Jerusalem, Das Recht der Montanunion 44-47 (1954); Mathijsen, Le Droit de la C.E.C.A. 74 (1958); Hay, Book Review, 8 Am. J. Comp. L. 243-244 (1959).

205 Art. 228 (r), para. 2.

206 Cf. Vedel in preface to Cartou, Le Marché Commun et Le Droit Public III (1959). It would seem that the "municipal public law men" in the negotiating delegations for the new treaties prevailed over the "public international law men" who did not wish to press legal integration so far.
where it affords legal redress to individuals and enterprises praying that administrative acts of the Community institutions be annulled.207 The right of access of private parties to the Court—their governments need not intervene—is a necessary corollary to the power of the institutions to act with direct effect upon these parties. This right marks a radical departure from the conventional international tribunal, enables the Court to exercise its powers of control over the institutions and adds to the “public municipal” characteristics of the Communities.

The “civil” jurisdiction (in the common law sense) of the Court extends to cases in tort against the Community and on contracts to which the Community is a party. In contract cases the jurisdiction of the Court must have been stipulated.208

Finally, the jurisdiction of the Court may be said to resemble that of an international tribunal where the Court determines controversies between the Community and a non-member state arising out of an international agreement or possibly out of a contract in which the parties stipulated such jurisdiction.209

National authorities in the Member States are bound to execute money judgments of the Court against individuals and enterprises.

C. THE ROLE OF THE COURT

The Coal-Steel Community Court and the new Court have already decided well over fifty cases—all arising under the Coal-Steel Community Treaty, and most of which on appeals brought by enterprises praying for annulment of acts of the High Authority. Any new move by the High Authority to exercise its power in a manner affecting enterprises has almost invariably caused a flurry of such appeals. Some of these (particularly during the first years) were filed with a primary view to strengthening the hand of the enterprises involved in their negotiations with the Authority and were subsequently withdrawn. In January, 1960, sixty-four actions were pending before the Court, 60 under the Coal-Steel Community Treaty and four under the F.E.C. Treaty, which compares favorably with the work load of the International Court of Justice and of the U.S. Supreme Court in the first years of its existence.

208 Arts. 178, 181, and 215. In at least some Member States certain cases in this group would be viewed as falling within the administrative type of jurisdiction. Complaints brought by Community employees against its institutions (Art. 179) would certainly be considered “administrative.” Pinay, La Cour de Justice des Communautés Européennes, 1959 REVUE DU MARCHÉ COMMUN 145 (No. 12).
209 Art. 181. See also art. 182 for jurisdiction over disputes between Members “in connection with the object of this Treaty” submitted to the Court by a “compromise.”
The exclusive power of review of Community acts and the controlling power of interpretation of the Community law enables the Court to assume an important role in the development of the Community law.

In its first judgment the Coal-Steel Community Court—feeling its way in its novel task—preferred to adhere to the letter of the Treaty. The case involved a decision of the High Authority seeking to support competition in the steel market. The High Authority had interpreted the Treaty obligation of the steel producers to publish their prices and adhere to the published price schedules as one allowing minor deviations from the prices published. Interpreting the Treaty literally, the Court struck down the High Authority's decision. During the brief 1958 recession in the steel market, the ghost of this judgment returned to haunt the Authority. However, the tenor of subsequent judgments suggests that, if the same problem would come before the Court for the first time now, the outcome might be different.

In forty of the forty-eight cases brought against the High Authority the Court upheld the Authority, frequently justifying the Authority's policies by virtue of the spirit of the Treaty. In doing so, however, the Court has not been insensitive to the need of protecting enterprises. It has interpreted the right of appeal for annulment broadly and it has sought to assure "procedural due process" by forcing the High Authority to give sufficient reasons for its decisions. In a case concerning scrap iron the Court protected an enterprise against what it considered excessive and unlawful delegation of power by the Authority to a subsidiary organ. Holding that such delegation would disturb the "balance of power" under the Treaty, the Court developed a constitutional concept of some importance. On appeal from an enterprise in another case the Court struck down, on procedural grounds, certain High Authority decisions concerning the Ruhr coal which apparently had been taken under strong pressure from national authorities and in circumstances impairing the independent position of the Authority.

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213 See Case 9-56, supra note 213.
214 Cases 9-56 and 10-56, Sammlung, Vol. IV, at 9 and 51.
215 See Case 9-56, supra note 213.
216 Case 18-57 of March 20, 1959, advance mimeographed text. For a more detailed discussion of the Court see Chapter VII infra.
VII. ENTERPRISES AND THE COMMUNITY INSTITUTIONS

A. EMERGENT PROBLEMS OF THE SCOPE OF THE "LAW-MAKING" POWER

Article 189 of the Treaty enumerates the various kinds of action which the Council and the Commission may take to accomplish their functions and defines the different legal effects of each. "Regulations," "directives" and "decisions" are legally binding according to Article 189 while "recommendations" and "opinions" have no binding effect on the Member State, individual or enterprise to whom they are addressed.

Two practical problems have already arisen, if in blurred outline only, concerning the scope of the authority of the Council and of the Commission, which are of direct interest to enterprises in the Community.

I. HOW MUCH IMPLIED AUTHORITY?

The first of these questions is whether the Commission may issue regulations, directives and decisions only where expressly authorized to do so by a specific provision of the Treaty or whether it may claim an implied authority to do so whenever necessary to the proper performance of a function entrusted to it by the Treaty. For instance, although the Commission with some exceptions is specifically required in the Treaty only to study, issue opinions and consult with Member States on social affairs, may it also issue a regulation or a decision if it deems it necessary for the achievement of its tasks in this field? Again, where the Council has issued a regulation in accordance with a specific Treaty provision, may the Commission issue a more detailed implementing regulation without specific delegation by the Council and in the absence of any specific Treaty authorization?

This problem actually arose under the Euratom Treaty. The Euratom Commission is to publish production programs indicating targets for nuclear energy activities and types of investment required for their attainment. The purpose is to "stimulate the initiative of persons and enterprises and to facilitate coordinated development of investment." The industry is required under the

218 The Commission clearly may issue non-binding recommendations and opinions without specific treaty authorization whenever it "considers it necessary." Art. 155 and corresponding Euratom Treaty art. 124.
The Treaty to communicate investment projects in this field to the Commission before they are undertaken. The Commission is to discuss with "the persons or enterprises all aspects of any investment projects relating to the aims of this Treaty" and "communicate its views thereon to the Member State concerned." The Council, on a proposal of the Commission, is to establish "criteria" as to the "type and scope" of the projects which are to be communicated to the Commission. 217

After the Council had issued a regulation in accordance with these provisions, the Commission proceeded to enact a regulation of its own establishing an extensive and detailed questionnaire to be answered by the enterprises. 218 The legality of the Commission's regulation was questioned in some quarters on the ground that it was not authorized by any specific Treaty provision or by the Council's regulation, and on the further ground that even if the Commission had an implied power to issue a regulation without specific authorization, the Commission had exceeded its power by extending the scope of the information required beyond the criteria of the Council. If allowed to stand, the argument went, the Commission's regulation would serve as a precedent permitting the Commission to broaden its powers considerably and thereby to upset the balance of powers carefully worked out in the Treaty. 220 It was argued in support of the regulation that the Commission must have the power to specify with a binding effect the information required from the industry if it is to perform its task properly. A working group of the Euratom Council and Commission was appointed to explore possible solutions to this disagreement. Subsequently the Commission issued an interpretative statement under the heading "Application of Regulation No. 1 of the Commission," 221 which provides

217 Euratom Treaty, arts. 40-44.
219 Everling, Die ersten Rechtssetzungsakte der Organe der Europaischen Gemeinschaften, 14 Der Betriebs-Berater 52 (1959); Meibom, Die Rechtsetzung durch die Organe der Europaischen Gemeinschaften, id. at 127. It was argued that the Treaty excludes the implied powers concept because under art. 203 Euratom Treaty (art. 235 E.E.C. Treaty), if any action by the Community appears necessary to achieve one of the aims of the Community, and the Treaty has not provided for the requisite powers, the Council may enact the appropriate provisions. The Euratom Commission relied upon arts. 41, 124 and 161 of the Euratom Treaty. Cf. Glaesner "Obertragung rechtssetzender Gewalt auf internationale Organisationen in der völkerrechtlichen Praxis," [1959] Die Öffentliche Verwaltung 653-58.
that the confidential nature of any communication will be safeguarded and states that if "in certain cases a detailed answer . . . cannot be given because of special circumstances in which a person or enterprise finds itself," the Commission will be able to accept supplementary information in a discussion between the Commission staff and the person or enterprise concerned. Since the Commission is to determine which aspects must be discussed, this statement does not seem to settle the question of how much information the Commission may require. Unquestionably a great deal will depend upon how the Commission applies this interpretation in practice. Although any Member State which considered the Commission regulation illegal or any enterprise which the Commission directed to reply to the questionnaire could have raised questions in the Community Court, none did, and the period for appeal against the regulation itself has lapsed. It was, indeed, probably wise not to bring the matter before the Community Court at this early state of the Community development.

In a subsequent regulation the Euratom Commission again prescribed the information which must be made available to it for purposes of control against diversion of nuclear materials. The Commission did so without any specific Treaty authorization, or in other words, clearly on the theory of implied powers.

2. REGULATION OR DIRECTIVE?

The second problem concerning the authority of the Council and the Commission arises from the fact that in a number of instances Treaty provisions authorize the institutions to act by "regulations or directives," or are entirely silent with respect to the legal form which an authorized act may take. A "regulation," it will be recalled, modifies national law directly, while a "directive" imposes an obligation on a Member State to conform its national law to the rules contained in the directive by whatever means it desires to adopt in accordance with its own constitution. One view is that, because of the basic nature of the Community, its institutions should, in principle, rely on Member States to incorporate Community rules into national laws, and should therefore resort to regulation only where the act, in order to be effective, must directly accord rights to, or impose obligations on, individuals or enterprises. If this standard is the proper one, it could be said that several regulations is-

Some German writers have discerned an inclination on the part of the institutions to favor regulations over other forms. One writer points out that, although the German Constitution sanctions the delegation of law-making powers to international organizations, such as the Community, it requires some measure of democratic control over the law-making process, and regulations—which have a direct effect on national law—are adopted by the Council or Commission without the participation of national parliaments. Moreover, the European Assembly, because of its limited powers (if not because of its composition) cannot today provide the type of parliamentary control required. Thus, the argument goes, excessive recourse to regulations might raise the question in Germany of the Treaty's constitutionality.

On the other hand, the employment of "directives" obviously may raise practical difficulties where uniform rules are required promptly. Thus, when the Euratom Council adopted health and safety standards for nuclear installations by a directive, it was necessary for the European Assembly to urge the Members to adjust their national laws to conform to the directive—an indication of a

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224 Thus, the identical Regulations No. 2 of the E.E.C. and Euratom Councils concerning identity cards for members of the European Parliamentary Assembly ([1958] J'l Off. 387, 403, respectively) did not create substantive rights of immunity for the parliamentarians since those had already been given by a Protocol to the Treaty (Protocol on Privileges and Immunities art. 6); the form of the identity card could therefore have been established by a simple decision. Everling, supra note 219, at 53. Likewise, it is argued that Regulation No. 5 of the E.E.C. Council ([1958] J'l Off. 681) concerning the manner of payment of the financial contributions of the Member States to the Development Fund does not create rights or obligations with regard to individuals and should therefore have been issued in the form of a directive. Everling, supra note 219, at 53; Meibom, supra note 219, at 130. In contrast to these two examples, the E.E.C. and Euratom Council Regulations No. 1 concerning the official languages of the Community ([1958] J'l Off. 385, 401 respectively) and the E.E.C. Council Regulation No. 6 ([1958] J'l Off. 686) were properly issued as regulations. In the former definite rights were given to individuals to be answered in their own language by the Community institutions, while the latter regulation establishes rules for the liability of the auditor and accountants of the Development Fund. Ibid. In between these two sets of regulations are the E.E.C. Regulations Nos. 3 and 4 concerning the social security benefits of migrant workers ([1958] J'l Off. 561 and 597, respectively). Because of the far-reaching impact of these regulations on the national insurance systems, one writer (Everling, supra note 219, at 53) suggests that a directive to Member States would have been the wiser political course to follow, while another writer (Meibom, supra note 219, at 130) points out that this question of political expediency does not change the propriety of these acts as regulations since legal rights were conferred upon individuals.

225 Cf. art. 20 of the German Constitution; Everling, supra note 219, at 55.

226 Art. 24 of the German Constitution. The argument is that art. 24 of the German Constitution requires parliamentary control of some form. Everling, supra note 219, at 55.
problem of compliance which does not arise in this form when a regulation is issued. 227

Finally, an analogous problem arises because the Council is "Janus-headed": it is both the Community organ authorized to adopt regulations and a conference of ministers who possess authority to enter into international understandings and agreements on behalf of the Member States, subject possibly to approval in national parliaments. In some instances the Treaty does not state clearly which of the two methods is to be employed. The Coal-Steel Community practice has already caused some obfuscation. E.E.C. Council Regulation No. 3 concerning social security of migrant workers was first embodied in a convention signed—but not ratified—by the six governments. When the Treaty came into effect, the six governments, instead of obtaining ratification by their parliaments, chose to have the Council of Ministers adopt Regulation No. 3 pursuant to Article 51 of the Treaty. 228

B. LEGAL POSITION OF ENTERPRISES IN PROCEEDINGS BEFORE INSTITUTIONS

Basic to the conception of the Treaty are the relationships among governments and those between the institutions and governments. The E.E.C. Treaty contains substantially fewer rules directly applicable to enterprises, and fewer provisions envisaging direct action by the institutions with respect to enterprises than the Coal-Steel Community Treaty. Instances of both may, of course, increase to the extent that the Council with the Commission draw upon the broad potential powers conferred upon them by the Treaty and enact appropriate regulations. The question thus arises concerning the procedural rights which an enterprise may invoke for its protection in a "quasi-judicial" proceeding in which the Commission by a decision applies a general rule to an enterprise, as well as in cases where the Council or the Commission formulate general rules in the form of regulations or directives.

I. QUASI-JUDICIAL PROCEEDINGS BEFORE THE COMMISSION

The Treaty requires that all decisions be "supported by reason." 229 A "reasoned" decision is specifically prescribed where the

229 Art. 190.
Commission acts to "confirm the existence" of an infringement of the antitrust principles of the Treaty. No decision addressed to an enterprise takes effect until the enterprise is notified of it. The enterprise may appeal to the Community Court for annulment of any decisions addressed to it on grounds specified in the Treaty, an important legal remedy discussed in some detail in the chapter on The New Legal Remedies of Enterprises. The appeal, however, has no staying effect unless the Court orders suspension.

Beyond this, however, the Treaty contains no code of procedural safeguards applicable in proceedings before the Commission, analogous for instance to the Administrative Procedure Act governing federal agencies in the U.S. The Treaty contains, moreover, no provision requiring the Commission to give an enterprise an oral hearing, an opportunity to make written submissions, access to evidence, a right of rebuttal or the like. The Coal-Steel Community Treaty specifically authorizes the High Authority in a number of instances to impose penalties upon enterprises. Correspondingly, Article 36 of that treaty requires the Authority to give the interested enterprise "an opportunity to present its views" prior to imposing a penalty upon it. The E.E.C. Treaty contains no general provision analogous to Article 36, probably because penalties under the E.E.C. Treaty may be imposed only if prescribed by Council regulations. Where the Council prescribes penalties, it may also confer jurisdiction upon the Community Court to impose them.

In a proceeding before the Court the defendant enterprise would receive the basic protection of procedural safeguards including, of course, full hearing. However, the Treaty may be interpreted as empowering the Council to charge the Commission as well with the imposition of penalties. In that case there is no specific Treaty provision for a hearing before the Commission, but the hearing could be prescribed in the Council regulation. In any event the enterprise would, of course, be free to request the Community Court to review and annul the Commission decision imposing the penalty. It is interesting that the Treaty does require the Commission to grant to a Member State charged with a violation of its Treaty obligation an opportunity for "comments" in written or oral form. The Treaty also prescribes consultations with, or notice to, Mem-

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230 Art. 89(2).
231 Art. 191, para. 2.
233 Art. 172. Cf. art. 87 (2) (a).
234 See Chapter VII infra.
ber States before certain decisions are taken including some decisions which may affect enterprises.235

In the absence of Treaty provisions assuring an enterprise the opportunity to present its case to the Commission, the burden of developing minimum procedural safeguards lies, in the first place, upon the Council and the Commission and, secondly, upon the Community Court. As is suggested in the chapter on The New Legal Remedies of Enterprises, there is a basis in the Treaty for the Community Court to establish such safeguards in its jurisprudence by striking down any decision brought before it for review if the decision was adopted in disregard of these safeguards. The French Conseil d'État, despite the absence of a statutory requirement, has progressively imposed procedural safeguards on lower administrative authorities. Moreover, there is substantial support for such a course in the legislation and jurisprudence governing administrative procedures in the other Member States of the Community, even though national systems differ somewhat in the emphasis placed, for instance, on the requirement of an oral hearing.236 As indicated earlier in this chapter, the Community Court has already begun the development of some minimal safeguards. For this purpose the Court has drawn principally upon the rules recognized by the legislation, principles of law, and judicial decisions in Member States.237

2. "LAW-MAKING" PROCEEDINGS

The Treaty provides that regulations of the Council and of the Commission must be published in the Official Journal of the European Communities and that they become effective 20 days thereafter unless the regulations themselves otherwise provide. The Journal, an official publication of all three Communities, is published in the four "official" languages.238 From the viewpoint of the national legal systems, publication in the Journal has the same effect as publication in national official journals as required by national law.239

235 Arts. 169, 170, 79(4), 80(2), 93(2).
236 An international group of experts which recently considered this problem from the viewpoint of procedures for the enforcement of the antitrust provisions in the Treaty prepared a brief survey of national procedures and suggested specific principles for the Commission's guidance. See Nebolsine et al., The "Right of Defense" in the Control of Restrictive Practices under the European Community Treaties, 8 AM. J. COMP. LAW 433 (1959).
239 See Reuter, Aspects de la Communauté Economique Européenne, 1958 REVUE DU MARCHE COMMUN 161, 168 (No. 3).
Nevertheless, in Germany, for example, regulations are also published in the German official journal (Bundesgesetzblatt, Part II) but such publication has only a declaratory effect. Addressee Member States must be notified of directives, and they take effect upon such notification. Directives (and for that matter decisions also) are published in the Official Journal of the Communities for information purposes if the issuing institution so decides, which as a rule has been the case. Again, regulations and directives must be supported by reasons stated therein.

Depending on their substantive content, regulations may be compared to federal statutes or administrative regulations in the United States. In the United States, legislative hearings before congressional committees offer enterprises an opportunity to present their views on contemplated legislation. The purpose of the hearings is to ensure that the legislator has all the relevant facts necessary to the formulation of legislation. Federal rule-making procedures in administrative agencies also provide ample opportunities for interested enterprises to submit their views, even where private rights may not be directly affected. Such a procedure is apparently not part of legislative or administrative "law-making" on the Continent, and the Treaty provides no analogous procedures. Nor does it contain a provision like that in Article 71 of the United Nations Charter authorizing the Economic and Social Council (composed of instructed government representatives) to consult directly with important non-governmental groups, national and international, which are given for this purpose a special status in relation to the Council. Instead, the Treaty allows and even requires the Council and the Commission to consult with a variety of advisory bodies some of which are so composed as to reflect the various economic interests within the Community. Where the Treaty requires consultation with an advisory body as a prerequisite to the adoption of

As to the question of what constitutes notification, the E.C.S.C. Court has held that a party is deemed to have notice of a letter when it has come "within the internal sphere of the addressee." Case 8-56, Sammlung der Rechtsprechung des Gerichtshofes, Vol. III, 189 at 200.

In Germany, decisions are published either in the Bundesgesetzblatt, Part II, or in the Bundesanzeiger, but according to Meibom, the need for publishing "directives" has not been determined as yet. Meibom, *Die Rechtsetzung durch die Organe der Europäischen Gemeinschaften*, 14 DER BETRIEBS-BERATER 127, 128-29 (1959).


See PART IV supra.
a regulation, directive or decision, any such act must expressly refer to the opinion obtained in such consultation under the penalty of annulment by the Court for a defect in form. The opinion of the advisory body is not, of course, binding on the institution which requested it.

Consultations with advisory bodies such as the Economic and Social Committee (and, in a sense, consultations with the Assembly) provide an organizational structure within which interchanges of views between the institutions and private interests can take place, and of course, the national governments will take private interests into account in instructing their Ministers in the Council to the extent that considerations of policy or national laws so dictate.

C. ORGANIZING FOR COMMUNITY ACTION

I. COMMUNITY LEVEL ORGANIZATIONS OF INDUSTRY AND COMMERCE

The organizational foundation for cooperation of European industries with the emerging international organizations was laid by the creation of the Council of Industrial Federations of Europe (C.I.F.E.) in 1949. The Council, established at the initiative of the Organization for European Economic Cooperation (O.E.E.C.), embraces national industrial federations of the 17 member countries of the organization.\(^\text{245}\) The Council's "Steering Committee for Information and Cooperation with the O.E.E.C." has worked with the O.E.E.C. "Group for Liaison with Non-Governmental Organizations." A permanent Secretariat has functioned in Paris and the Assembly of members has met periodically. A number of expert working groups have studied special problems, such as economic co-existence with the Communist world, the coordination of European transportation systems, sources of energy, the influencing public opinion through mass media and, more recently, the problems of a free trade area in Western Europe.

When the Coal-Steel Community became reality, a special Union of Industries of the Six Nations was organized as a special group within the Council. In February 1958, after the Rome Treaties became effective, 10 national federations of industries in the six Member States formed an independent "Union of Industries of the European Community" (U.N.I.C.E.). All but two of these federations are also members of the Council of Industrial Federations of

\(^{246}\) Spain joined O.E.E.C. as the eighteenth member in 1959.
Europe (C.I.F.E.). According to its charter the purposes of the Union are “to stimulate the elaboration of industrial policy in the European spirit” and to act as the authorized spokesman of the industries before the Community institutions “on all problems of general interest or affecting questions of principle relating to the common policy” of the member federations. For these purposes the Union is to assure “permanent liaison” with the institutions, to undertake studies, to coordinate positions and action (démarches) of the member federations, and to foster “common attitudes” of industrial representatives in international organizations. Of particular interest is the undertaking by the member federations to keep the Secretary General of the Union informed and to consult with each other prior to taking a position before Community institutions. The organs of the Union are: the President, the Council of Presidents of the member federations (which is the policy-making body), a Secretary General, a Committee of Permanent Delegates and various special committees and committees of experts. The Council of Presidents has been meeting in Brussels under the Presidency of Mr. L. A. Bekaert of the Federation of Belgian Industries, to examine Common Market problems, particularly those under consideration by the institutions. This examination of problems is reported to have covered policies concerning prices and government controls of prices, commercial policy problems, discrimination in transportation, industrial property, harmonization of indirect taxes and the like. The primary purpose is to establish common positions on matters with which the Community institutions are concerned. Only rarely are such common positions made public.

Special commissions and expert working groups have been organized to deal with problems of cartels, taxation, social questions, harmonization of national legislations, financial and monetary questions, freeing of capital, economic trends, investments and tariffs and quotas.

The Chambers of Commerce in the six Member States created no new organization comparable to U.N.I.C.E. Instead, they organized a “Permanent Conference of the Chambers of Commerce of the European Economic Community.” Each chamber designates up to six delegates (supported by a certain number of experts) who meet every three months in one of the six Member Countries. Re-
ports, prepared on the basis of replies to questionnaires by the individual chambers, and draft resolutions are studied by experts before they are submitted to a General Assembly. The Conference, in meetings held in Strasbourg, Brussels, Berlin, Milan, and Paris, has dealt with such matters as the troublesome distinction between fiscal and "economic" duties, certain items of the future common external tariff, right of establishment, transport organization, and labor costs. 249

In addition to these Community-level organizations comprising all national industries, an impressive number of industrial and trade groups have formed new Community-level associations in their own specialized fields. Other groups have established autonomous sections of their international or all-European federations, or created permanent committees, "congresses," liaison offices, or study and working parties to deal with Common Market problems, or at least held special meetings to consider these problems. A number of these new associations and committees plan to employ liaison secretariats at the seat of the institutions; some have already established offices in Brussels. 250 Where new specialized associations are formed on the level of the six Member States, liaison is established with corresponding associations of broader European or international membership and with U.N.I.C.E. 251 Some of the new industrial associations, although formed because the E.E.C. Treaty has gone into effect, include industrial groups in other European states, such as the United Kingdom, Austria, and Switzerland, in addition to those in the six Member States.

The new Community-level organizations of the various branches

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249 See La Conférence Permanente des Chambres de Commerce de la C.E.E., 1959 REVUE DU MARCHÉ COMMUN 238-239 (No. 15).

250 A partial list of the new E.E.C. level organizations is contained in 1959 REVUE DU MARCHÉ COMMUN 309-311 (No. 17). This list includes some 28 organizations in the field of industry (wood-working, paper, rubber, shoes, clothing, construction, agriculture and food processing, flax, dairy products, fodder, vinegar, beer brewing, malt, fruit juices, sugar, mustard, flour milling, pasta, margarine, edible oil, powdered milk, meat packing, chocolate, vegetable canning), and some 38 organizations in the field of commerce. The Bulletin EUROPE lists the new organizations as they come into being (e.g., Feb. 16, Mar. 3, 10, Apr. 6, 22, 23, May 25, June 26, 1959). See also the list of permanent representatives of producers, users and transporters of coal and steel at the E.C.S.C. in Luxembourg in ANNUAIRE-MANUEL DE L'ASSEMBLÉE PARLEMENTAIRE EUROPEENNE (1958-1959) 241-43. Dr. F. Nagels of the Federation of German Industries lists Community-level organizations among the following industries: chemical, metal workings, non-ferrous metals, clothing, iron producing, food, coal mining, sugar manufacturing, wood working, shoe, beer brewing and construction. Nagels, supra note 246.

251 Thus, COLIME, representing the Metal, Mechanical and Electrical Industries on the level of the Six, maintains close liaison with ORGALIME—the federation of these industries on the level of the 17 (later 18) O.E.E.C. countries—and with U.N.I.C.E. EUROPE, item 1435 (Dec. 12, 1958).
of industry and other European industrial organizations will no doubt wish to represent the interests of their specific industries before the institutions in Brussels. The liaison committee of U.N.I.C.E.—it has been suggested—will have to make certain that where the interests of several branches of industry or of Community industry generally are involved, a uniform position is presented to the Community institutions which would have the support of the national general federations. If conflicting positions were taken, it was said, the institutions would “have the choice of picking from the bouquet of positions presented the most agreeable one.”

In a sense, this organizational surge transcending national frontiers is a corollary to the intensive drive toward concentration and specialization effected by means of agreements among Community enterprises—which is perhaps the most noticeable economic effect of the E.E.C. thus far. The view was expressed in some labor circles that the primary purpose of the new organizational arrangements was to facilitate agreements among Community enterprises, some of which may not be compatible with the Treaty rules governing competition.

2. COMMUNITY-LEVEL ORGANIZATIONS OF LABOR

It is not surprising that labor has not lagged behind in the drive toward Community-level organization, particularly in view of the fact that, with perhaps one exception, all major non-Communist labor unions in the six Member States have been among the most consistent supporters of European integration. All three leading international labor organizations responded promptly to the Rome Treaties.

The mammoth International Confederation of Free Trade Unions (I.C.F.T.U.) with headquarters in Brussels, which comprises some 55 million non-Communist workers on both sides of the Atlantic (including the American AFL-CIO) has maintained a Regional European Organization (O.R.E.) since 1950. In 1958, the I.C.F.T.U. established a new Community-level organization under an executive committee composed of representatives of the national confederations in the Community States which are associated with I.C.F.T.U. The Secretary General of O.R.E. also sits on the executive committee. Two standing committees, one for the Coal-Steel

252 Nagels, supra note 246, at 446.
Community and the other for the E.E.C. and Euratom, and a number of other committees have been established. The General Assembly of the new organization meets bi-annually and its Secretariat is located in Brussels. An I.C.F.T.U. office to effect liaison with the Coal-Steel Community operates in Luxembourg. Several committees of craft unions affiliated with the I.C.F.T.U. coordinate their activities within the six Member States in such fields as agriculture, transport and the construction trades.253

The International Confederation of Christian Trade Unions (I.C.C.T.U.) of some 5 million workers draws its European membership principally from the six Member States. In 1955 it organized a Federation of Christian Trade Unions of the Coal-Steel Community countries. In 1958 it established a European organization under an executive committee composed of representatives of national I.C.C.T.U. confederations in Europe and in the African areas associated with the Community. On Community matters only the representatives from the Six and from the associated African areas have the right to vote. This committee coordinates I.C.C.T.U. activities in all European organizations including the Council of Europe, O.E.E.C., United Nations Economic Commission for Europe, as well as in the Communities. A number of subcommittees have been appointed. The Secretary General has his office in Brussels. An advisory European conference of representatives of national confederations and craft federations meets annually.

In these organizational arrangements one may discern an effort—stemming perhaps from the relative weakness of labor unions in some of the Community countries—to avoid weakening unduly the ties with the powerful trade unions elsewhere in Europe, particularly in the United Kingdom.254

The Communist-dominated World Federation of Trade Unions (W.F.T.U.) which claims a membership of 93 million (with three-fourths in the Soviet Union) established in 1958 a "coordination and action committee" which includes representatives of its national federations in Italy, France, Netherlands, Luxembourg and in Africa. Reflecting the position of the Communist parties (and of the Soviet Union) this group is opposed to the Communities; it sees in the Common Market an effort of "monopolistic capital" to

strengthen its “grip over the working people” and calls for a united action by the people.255

D. Effective Contact Points Between Institutions and Private Groups

One logical function of the secretariats of the private groups at the seat of the institutions is to serve as listening posts for their organizations, and to receive, digest, and disseminate to their members the documentation published by the institutions. Some of the reports 256 are of considerable value both to industry and labor as a source of economic, social, technical, and other information.257 Another function is the representation of the views of their organizations before the appropriate bodies and officials in the institutions.

I. Contacts with the Commission

While the Euratom Treaty provides for contacts and consultations between the Commission and the enterprises particularly for the purpose of coordinating investment and research, the E.E.C. Treaty contains no comparable provisions.258 The E.E.C. Commission has the right “[F] or the performance of the tasks entrusted to it, to collect any information and verify any matters” but only “within the limits and under the conditions laid down by the Council in accordance with the provisions of this Treaty.” 259

The Commission has not developed any regular, formalized procedure for dealing with non-governmental groups, and occasionally complaints are heard from both labor and industry that their views have not been obtained on matters of interest to them.260 The Com-

257 The public information services of the three Communities have been consolidated into a “common service,” but each “executive” has its own official spokesman. See E.E.C. COMMISSION, FIRST GENERAL REPORT ON THE ACTIVITIES OF THE COMMUNITY 28–30 (1958); SECOND GENERAL REPORT ON THE ACTIVITIES OF THE COMMUNITY 17 (1959).
258 E.g., Euratom, arts. 5, 40, 41.
259 Art. 213.
mission's avowed attitude, however, was announced in the First General Report on the Activities of the Community:

9. While the common institutions and the Governments of Member States have a special responsibility for the attainment of the objectives of the Community, it will not be possible to attain them without the cooperation and help of the men who exercise leading functions in all fields, and in the last resort, of the active support of public opinion.

It is for these reasons that the Commission has decided to let its actions be fully known to the public, keeping in the picture the representatives of those economic and social groups concerned, consulting them, advising them, even associating them with the work where possible. In this connection the Commission attaches great value to the advice it will have to ask from the Economic and Social Committee. In its endeavours to take account of all legitimate interests, the Commission will listen to the opinions and comments submitted to it by the representatives of these interests, whether organizations or individuals.

This Commission also notes with pleasure the many endeavors that have already been made to arrange for the exchange of ideas among those responsible for the various fields of activity in the six countries or for a better understanding of the objectives of the Community; in the firm belief that such action will further the realization of the objectives of the Treaty and will develop a sense of community, the Commission gives them its unstinted support.261

In a recent statement before an industrial group, President Hallstein reportedly confirmed that the Commission has been in constant contact with representatives of industry; he welcomed the fact that politicians who make decisions affecting the European idea are subjected to increasing pressures from interested groups.262 Similarly, in Assembly debates Commission members have declared that they will consult interested groups, for instance, in investment matters.263 As could be expected, the Assembly has encouraged the Commission to establish direct contact with both labor and industry particularly in the social field.264

262 456 EUROPE, item 2805 (July 9, 1959); Resolutions of the Assemblée générale des Syndicats C.I.S.L., Nov. 5 and 6, 1959, Brussels.
263 Speech by E.E.C. Vice-President Marjolin, Parl. Debates (No. 2, Jan. 9, 1959) 67 at 70, referring to a statement by Representative Van Campen, id., No. 5B, 210 at 213.
The Commission is reported to have consulted representatives of agricultural producers and labor in developing its proposals for a common agricultural policy.\textsuperscript{265} It also has announced that it will seek the advice of industry and labor groups in drafting the Rules for the Social Fund.\textsuperscript{266} In fact, consultations are reported to have taken place on the basis of a Commission draft with the two non-Communist labor groups (I.C.F.T.U. and I.C.C.T.U.) as well as with U.N.I.C.E., simultaneously with the Commission's discussions with government officials from national labor and finance ministries.\textsuperscript{267} These consultations were in addition to those with the Economic and Social Committee which are required by the Treaty.

In response to a request by the unions, a Vice-President of the Commission and members of its staff are reported to have met in an "economic round table" with leaders of the two labor groups for a general discussion of major Community problems, and suggestions were made in labor quarters to make "round table" sessions of this type a regular feature.\textsuperscript{268} The belief prevails in union circles that labor has not been given as much voice and representation in the institutions of the new Communities as it has in the Coal-Steel Community. Union efforts for closer contact are directed not only at the Commission, but also at the governmental expert groups working with the Commission. Specific suggestions have been urged by the unions upon the Commission, such as the appointment of an African as the head of the Department of Overseas Territories.\textsuperscript{269}

2. CONTACTS WITH ADVISORY COMMITTEES OF THE COMMUNITY

Where the Community advisory committees comprise individuals selected from industry, labor and other such sectors of society, private interest groups will naturally seek contacts with their respective spokesmen. This tendency has already been particularly evident as far as the Economic and Social Committee and the Committee on

\textsuperscript{265} The Committee of Agricultural Associations of the Community (C.O.P.A.) is reported to have been asked for comments on specific memoranda prepared by the Commission staff. \textit{411 EUROPE}, item 2412 (May 16, 1959); \textit{448 id.}, item 2733 (June 30, 1959); \textit{455 id.}, item 2792 (July 8, 1959).

\textsuperscript{266} \textit{E.E.C. COMMISSION, SECOND GENERAL REPORT ON THE ACTIVITIES OF THE COMMUNITY} 114 (1959).

\textsuperscript{267} \textit{377 EUROPE}, item 2110 (April 3, 1959); \textit{451 id.}, item 2757 (July 3, 1959).

\textsuperscript{268} \textit{455 EUROPE}, item 2793 (July 8, 1959).

\textsuperscript{269} \textit{337 EUROPE}, item 1794 (Feb. 13, 1959).

The Euratom Commission will of course be in increasingly close contacts with private enterprises and groups, particularly with the public utilities participating in the construction of nuclear power plants under the EURATOM-U.S. program.
the Social Fund are concerned. Some feel, however, that although the Economic and Social Committee may be suitable for general debates on policy matters and on important aspects of policy implementation, it is not effective for purposes of continuing consultation. The general criticism of some that government officials play an excessive role in certain of these committees—the Transportation Committee, for example—has already been mentioned. Similarly, some members of the Economic and Social Committee have reportedly complained that the Administrative Committee on Social Security for Migrant Workers should not have been composed only of government officials, and both the transportation industry and labor spokesmen have criticized the composition of the Transportation Committee.

3. CONTACTS WITH PERMANENT REPRESENTATIVES, THE COUNCIL AND THE ASSEMBLY

The Permanent Representatives of the national governments in Brussels offer another avenue of contact. Their position is somewhat analogous to that of permanent missions to the United Nations in New York—the United States Mission, for example, which holds regular briefings for American non-governmental organizations particularly during General Assembly sessions. The role of the Permanent Representatives is of importance not only because they prepare documents for the Council of Ministers, but also because of their influence on the Commission as spokesmen for national governments. An important labor group has reported, however, that it has been difficult to establish relations with the Council because not only Ministers of Foreign Affairs but other ministers as well are involved in the Council’s work. Moreover, ministers have tended to consult national employer and labor organizations in their respective countries and to rely on the Permanent Representatives of the six governments in Brussels to work out the problems. “We are categorically opposed to this tendency,” this labor group reported, “because we do not want to lose on the European level what we had gained on the national level in terms of consultation and co-determination.”

The Council appointed a special Committee to assist the Commission in future tariff negotiations with third countries. This Com-

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273 Rapport, supra note 254.
mittee is composed of governmental representatives, and there are no indications that it or the Commission will seek the views of interested private groups by means of public hearings like those conducted by the United States Committee on Reciprocity Information in connection with tariff negotiations or by any other organized means. However, the Commission, through its Department of External Relations, is reported to have been consulting informally on tariff problems with the representatives of U.N.I.C.E.274

A number of European Assembly members have cooperated closely with labor union representatives in Brussels.

If the role of the Assembly in the Community increases, pressures might develop to increase the number and scope of informal hearings of private interest representatives before the standing committees of the Assembly.275 Individuals and enterprises have at present the right to address petitions to the Assembly on matters falling within the scope of activities of the Communities, but no such petitions appear to have been received thus far.276

4. CONTACTS VIA NATIONAL GOVERNMENTS

Because of the important role they play in making the policy decisions of the Community, the executive branches of the national governments remain, of course, the most important avenue of contact for private interests. The Minister of Foreign Affairs who sits on the Council, his ministry, and other ministries concerned, the national experts assigned by the ministries to work with the Commission, and finally the Permanent Representatives and their staffs may all be helpful. A Community enterprise also has access to its parliamentary representatives who may raise questions in the national parliament directed at the Minister concerned. If a given representative is also a member of the European Assembly, he may take similar action in that body and in addition encourage the adoption of positions in the standing committees of the Assembly favored by his constituents. Membership in the Assembly does not thus far seem to have significantly increased the election appeal of parliamentarians running in national elections. However, their service in the Assembly has marked them as experts in the various areas of Com-

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274 Europe, item 2780 (July 7, 1959).
275 Some recent instances were the consultations in the Agriculture Committee, mentioned by Representative Torsi in Parl. Debates, (No. 7, June 1958) (mimeo.) 276 at 278, and in the Social Committee, mentioned by Representative Sabatini, Parl. Debates (No. 4, Jan. 12, 1959) 128.
munity work (such as agriculture, social affairs, transportation), and this fact has measurably strengthened their positions in their own political parties. Political parties have a major, if not determinating, influence on individual political careers—a substantially greater influence, for example, than political parties in the United States. With growing electorate interest in Community matters, an Assembly membership may become increasingly desirable for national politicians who, in turn, may become more sensitive to the views of their constituents on Community matters.

5. A CASE OF INTER-ACTION

An interesting instance of inter-action between private enterprise groups, national governments, and Community institutions arose in connection with a recent acute scarcity of untreated hides which was due in part to extensive purchases by Eastern European countries and which caused a spectacular rise in prices. The affected leather-processing industries demanded export controls, and, in fact, export limitations in varying degrees were imposed by national governments. They were directed not only at exports to third countries but also at exports to other Member States. The industry is reported to have approached formally both the Commission and the Council, but the Permanent Representatives decided to defer submission of the matter to the Council pending consideration by the Commission. In obvious response to a request by the industry, a French liberal member of the European Assembly addressed a parliamentary question to the Commission implicitly presenting the industry position. In its answer the Commission pointed to the undesirable differences among the national export controls and called for an examination of the over-all situation. Shortly thereafter the Commission convened a meeting of national governmental experts and Commission staff in which the suggestions of the industry were considered. It is reported that an agreement was reached on a harmonization of national measures which would decrease the undesirable features affecting industries in other Member States. Subsequently, a Dutch socialist representative addressed another parliamentary question to the Commission. He inquired what measures the Commission proposed to take to prevent what he considered violations of the Treaty resulting from Belgian and French prohibitions of the export of hides. The Commission replied that the French measures

did not constitute a Treaty violation and that the Belgian government had lifted its export prohibitions in response to recommendations of the Commission.

VIII. CONCLUSIONS

In the institutional framework of the Community the Council possesses the power of final decision concerning questions of Community legislation and policy. As the transitional period progresses the number of instances in which the Council cannot act without unanimous agreement of all national governments will be reduced; to that extent at least the control of the individual governments will be loosened somewhat. Surrounded by an extensive Secretariat and served also by the Permanent Representatives of the governments, with their large national staffs in Brussels, the Council has as a rule considered questions only after agreement had already been reached among national administrations or a deadlock had developed in the negotiations which could be resolved by political decision only. A number of important matters relating to Community policy—for instance, in the field of transport and agriculture—are explored outside the Council in informal sessions of national ministers whose departments are directly concerned with the questions under consideration. This development, which is not contemplated by the Treaty, may well advance the policy formation in the Community but obviously detracts from the central role of the Council.279

Experience in the O.E.E.C. and in other organizations has shown that where important national interests are involved governments represented by their Ministers find it difficult to agree. The Commission has been established on the theory that, as an independent "executive," supported by an independent expert staff of civil servants and acting by simple majority vote, it will be able to agree on policy proposals for the Council, thus facilitating the Council's policy decisions. The Commission has also been given supervisory and implementing functions. In the exercise of its tasks the Commission has relied heavily on negotiations with national governments on all levels. This has been required where the Treaty calls for negotiations on matters not resolved by the Treaty itself. Moreover, in these and in other matters national administrations have been the obvious and principal source of factual data required by the

Commission. National governments have responded with varying degrees of readiness to the Commission's requests for information and to its suggestions, frequently insisting on a clear indication of the specific Treaty provision under which the request was made. Some concern was expressed that if the Commission should seek agreement of national governments in all cases before making its proposals to the Council it would dilute its independent position and its right of initiative. Considering the fact that a Commission's proposal cannot become law without the Council's decision, it is not surprising, however, that the Commission wants to avoid rejections of its proposals by seeking to obtain the support of national governments before submitting them to the Council.

In several instances where national governments disagreed the Commission has stepped into the breach and have offered compromises reflecting its own views which have eventually been accepted by the Council. This was essentially the case in the important negotiations for a wider free trade area, in which the French government, finding itself in a minority position in the Council, tended to rely on the Commission despite the opposition in principle on the part of the French government to a strong Commission. Whatever success the Commission has achieved in these instances has been due in a significant measure to the personal ability of its present members, a factor not to be underestimated in the institutional picture. It may well be that in the future the Commission's approach in controversial matters will be first to persuade at least the required majority of the Council members to accept a proposal and then to rely on the European Assembly and on public opinion generally to generate pressures on the national governments forcing favorable action in the Council. Such a plan of action assumes, of course, the existence of an informed and active public opinion and that the Assembly has real political influence, two indispensable factors if the Commission is to play its part successfully as the driving force of the Community.

The fact that both the Council and the Commission have had to devote so much time and energy to the problem of Community relationships with non-member countries explains in part the relative slowness of progress in other areas of Community activities, particularly in the development of common policies. On the other hand the pressures exerted on the Community by the contracting parties of the General Agreement on Tariffs and Trade, by the United Kingdom and by other O.E.E.C. countries particularly during the
unsuccesful negotiations for a free trade area association, have proved a strong unifying factor.

The Court of Justice and the Assembly—the two institutions common to all three Communities—have shown considerable sensitivity to the need for a balanced development of the institutions. The desire to assure to enterprises the broadest possible access to the Court and the incipient tendency to interpret the treaties as constitutions are of particular interest in the judgments of the Court.

The deputies from the six national parliaments to the Assembly have been seated by political affiliation rather than nationality—a historical innovation in international assemblies. The Assembly has, moreover, been remarkably successful in establishing practices and procedures which not only facilitate cooperation with the High Authority and the E.E.C. and Euratom Commissions, but also provide a basis for a measure of control over these executive bodies. It is impossible, however, to state at this juncture that the Assembly has in fact succeeded in influencing or controlling the activities of the "executives" in any significant fashion.

The Assembly has developed fairly successful techniques to bring its views before the Councils. However, evidence of any significant influence, not to speak of control, over the Ministers, remains nonexistent. Decisive power in the Communities remains in the hands of the Councils and, to a substantially lesser degree, in the hands of the "executives." For those who consider parliamentary or popular control an essential component of democratic government, this is a matter of great concern, since the treaties will very likely lead to a substantial concentration of executive-administrative power both on national and Community levels.

On the national level officials of national administrations form the staff of the Permanent Representatives in Brussels, and national official experts are called in to work with the staff of the "executives." These same officials advise their respective Ministers on the Councils as well as their own governments generally. The staffs of the Commission and of the other "executives" as well as the staff of the Councils' Secretariat have been recruited to a large measure from national administrations. Some former Ministers have become members of one of the "executives," and former representatives in the Assembly have become Ministers or members of an "executive." This interplay of national and Community administrations, the growing expertise and the development of vested interests of Com-
Community officials will inevitably increase the influence of a compact bureaucracy.

Under the scheme of the treaties, executive branches of the governments in the Member States, acting through their Ministers in the Councils, will be able to assume important obligations in matters heretofore within the scope of parliamentary control without participation by their national parliaments. The Councils may, it will be recalled, adopt regulations directly modifying national laws and enter into international agreements with third parties of the type normally subject to parliamentary approval. Each Minister is, of course, responsible to his national parliament as a member of his government for what he does in the Council and must follow national law. There is some question, however, as to the effectiveness of this responsibility considering particularly the fact that a Minister can be outvoted in the Council. These implications may seriously impair support for the Communities in the Member States. During the recent coal crisis the French Minister explained in the Council his opposition to the exercise by the High Authority of direct control over French coal production on the ground that the French government and not the High Authority would be responsible for the social and political consequences of such controls. Again, the concern of the German Parliament is reflected in the German statute approving the Rome Treaties. This statute requires the German government to advise the parliament before action is taken in the Councils affecting German law.280 This requirement apparently has been interpreted so broadly as to require parliamentary approval even to conduct factual surveys proposed by the Commission.281 A general trend in this direction would seem to contain seeds of serious difficulty for the Communities.

In these circumstances the case for a strengthening of the European Assembly as a chosen instrument of democratic control over the Community institutions is quite impressive. This control in regard to the "executives" may be in the process of development, but, the influence of the Assembly would increase substantially if it were given a meaningful role in the selection of the members of the "executives." The Assembly has carried its efforts to assert some influence over the Councils about as far as is possible within the

present legal framework. If it is to go further it must have a true "power of the purse," at least over the administrative expenses of the Communities, if not over the operational programs of the various Funds. A logical concomitant would be to give the Assembly a decisive voice in determining the size of the tax presently levied by the High Authority upon coal and steel producers. This raises the question of assuring a similar independent source of revenue to the other two Communities, subject to the control of the Assembly—a system of financing which would replace that of annual contributions by the Member States.

Again, under present provisions the Councils are required to consult the Assembly on specified matters but no such consultation is required on a number of important decisions such as those relating to overseas territories. Moreover, even where consultation is required the Councils are free to disregard the Assembly's advice. It could be provided that decisions on all important policy matters would require approval not only in the Council but also in the Assembly. This change, which would require an amendment of the Treaty, would in a sense elevate the Assembly to a position comparable to the lower chamber of a bicameral legislature in which the Council would play the role of the upper chamber.

There is some question whether the Member States are willing at this time to countenance a significant increase in the role of the Assembly. The De Gaulle government, it will be recalled, has opposed any effort on the part of the French National Assembly to increase its powers in relation to the national executive beyond the strict letter of the new Constitution. One reason for the opposition to such an increase of the European Assembly's power may be the fact that the Assembly has discussed rather freely steps toward further integration. Nevertheless, the Assembly it-

282 The Rome Treaties envisage that the expenses of the two Communities will eventually be financed from their own resources, e.g., for the E.E.C. from the revenue from the customs duties collected on the basis of the common external tariffs (E.E.C. Treaty, art. 201) and for the Euratom from the revenue from Community levies in the Member States (Euratom treaty, art. 173). The Assembly asked the Commissions to accelerate their studies on this subject. Resolution IV of Nov. 24, 1959, [1959] Jl Off. 1261.

283 M. Marjolin, Vice-President of the Commission supported a similar proposition in his interview with Le Monde of Sept. 22, 1959.

284 Cf. N.Y. Times, April 29, 1959; cf. also the decision by the Constitutional Council, as reported in N.Y. Times, July 2, 1959.

285 E.g., the proposal that the three Communities enter into an agreement for closer formal integration among themselves under E.E.C. Treaty art. 238, and Euratom Treaty art. 206. Doc. No. 14 ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE (June 1958), Rapport fait au nom de la Commission des affaires politiques et des questions institu-
self appears determined to press at least in one direction. All three treaties envisage direct elections of Assembly representatives by universal suffrage of the people of the Member States. The Assembly working party has reported progress on a plan which might make such elections possible in 1962 or 1963. In order to conduct such elections the political parties would have to organize themselves on a Community level. An Assembly so elected would not have the direct access to national parliaments which the present Assembly enjoys. On the other hand, if the understanding and support of the public opinion develops sufficiently to permit a meaningful election (and some doubts have been expressed on that score), the new Assembly may constitute an important further step toward integration. Moreover, the increase of its powers might well prove more acceptable if linked with direct elections.

As seen by General de Gaulle, "the realities of Europe" require the cooperation of sovereign states through organized consultations of governments rather than "extranational" institutions with policy-making powers. If this concept prevails, the Community institutions will remain technical agencies for the execution of policies determined by national governments.

See also speech by Representative Van der Goes van Naters, Parl. Debates (No. 8, June, 1958) (mimeo.) 11-12.

286 E.C.S.C. treaty, art. 21, para. 3, as amended by the Convention Relating to Certain Institutions Common to the European Communities, art. 2(2); E.E.C. Treaty art. 138(3), Euratom Treaty art. 108(3). The original version of the E.C.S.C. treaty art. 21 did not contain the requirement of a "uniform procedure in all Member States" which was added by the Rome Treaties and the Convention. The added requirement may make the speedy adoption of a scheme for direct elections more difficult. Spitaels, Les Elections Directes Européennes, 8 Les Cahiers de Bruges 23, 26-27 (1958) No. 1.

The Assembly appointed a working party within its Committee on Political Affairs and Institutional Questions to study the problem. Its composition is given in [1959] J'L Off. 794.

287 See statement by Representative Dehousse, Chairman of the Working Party, 416 Europe, item 2465 (May 23, 1959).

288 It has been suggested that during a transitional period only a portion of the representatives should be elected directly. Doc. 22 Assemblée Parlementaire Européenne, Documents de Séance 1960-1961, April 30, 1960. Rapport . . . sur l'élection de l'Assemblée parlementaire Européenne au Suffrage universel direct par MM. Battista, Dehousse, Faure, Schuijt, Metzger.

APPENDIX

List of Selected Acts of the E.E.C. Council and Commission Issued During the First 18 Months of the Community's Existence

Regulations

Regulation No. 1 (Council)

The official languages are French, German, Italian and Dutch. A Member State and an individual or an enterprise have the right to choose any official language when corresponding with the institutions. The institutions must employ the language of the addressee. [1958] J'L Off. 385.

Regulation No. 2 (Council)


Regulation No. 3 (Council)

This regulation concerning the social security of migrant workers was issued under Arts. 51 and 227, par. 2 E.E.C. Treaty. The regulation covers sickness, maternity, invalidism, old age, accident, death, unemployment, and other benefits. The purpose of the regulation is to assure that migrant workers do not suffer prejudice with respect to their social security benefits as a result of their employment in different Member States. For this purpose the regulation lists in the annex relevant national laws under which migrant workers will acquire the benefits and lays down which of these laws are applicable for the purpose of determining benefits in a given case. The burden of payment is apportioned according to various formulae between the state of origin and the state of residence.

An Administrative Commission promotes cooperation among Member States and acts as a liaison agency and as administrative tribunal in resolving differences arising from the application of the regulation and interpreting its provisions.

The regulation does not provide any direct recourse by individuals to the Community institutions. If a Member State fails to extend its social security benefits to a migrant worker, the latter will have to avail himself of the legal remedies provided by the national law. The case will, however, reach the Community Court on a reference from the national court if a "prejudicial question" is involved (Art. 177 of the Treaty). [1958] J'L Off. 561.

Regulation No. 4 (Council)

This regulation supplements and contains implementing provisions for Regulation No. 3 (e.g. it determines which national authorities are competent, how to "add" the periods of insurance, etc.). [1958] J'L Off. 597.

Regulation No. 5 (Council)

This regulation contains provisions with respect to calling for and transferring financial contributions, budgeting, and administration of resources of the Development Fund for the overseas countries. (See Art. 6 Implementing Convention). [1958] J'L Off. 681.

Provisional Regulation No. 6 (Council)

Regulation No. 7 (Commission)

In accordance with the Council's instruction under Regulation No. 5, the Commission establishes the "réglement organique" of the Development Fund. [1959] J'L. Off. 241.

Directives

None.

Some Published Decisions

3) Commission Decision containing provisions applicable, as regards trade between Member States, to goods originating in another Member State in whose manufacture products were used on which customs duties were not levied or which benefited from drawbacks on such duties. (Cf. Art. 10 par. 2 E.E.C. Treaty) [1958] J'L. Off. 694.
4) Decision of the Administrative Commission prescribing the first series of forms to be used in the application of Regulations Nos. 3 and 4 on the social security of migrant workers. [1959] J'L. Off. 37.

Miscellaneous (examples)


Agreements