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ECONOMIC AND SOCIAL POWERS OF THE EUROPEAN UNION AND THE MEMBER STATES: SUBORDINATE OR COORDINATE RELATIONSHIP?

by

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The European Policy Unit

The European Policy Unit, at the European University Institute, was created to further three main goals. First, to continue the development of the European University Institute as a forum for critical discussion of key items on the Community agenda. Second, to enhance the documentation available to scholars of European affairs. Third, to sponsor individual research projects on topics of current interest to the European Communities. Both as in-depth background studies and as policy analyses in their own right, these projects should prove valuable to Community policy-making.

In October 1984, the EPU, in collaboration with the University of Strasbourg and TEPSA, organised a conference to examine in detail the Draft Treaty Establishing the European Union. This Working Paper, presented at the conference and revised in light of the discussion, will appear in book form later in 1985 along with other studies of the Draft Treaty.

Further information about the work of the European Policy Unit can be obtained from the Director, at the European University Institute in Florence.

For a quarter of a century Europe has lived on the political capital invested in the Treaty of Rome. Industry, trade and agriculture have been transformed by the common market, the commercial and the agricultural policies laid down in that treaty. The European Community has held fairly firm against the fragmentation of the market that bedevilled relations between its member countries in the 1930s; and it has become a trading power on the scale of the United States. But the institutions and instruments that made this possible were inherited from the founding fathers. Far too little has been done to build on that inheritance.

"Far too little": those are normative words. The norms of economic union to which they relate include a completely open internal market, for services and high technology products as well as the more ordinary manufactures; enough monetary integration to ensure against beggar-thy-neighbour devaluations within the Community and to provide a means of defence against American interest rates and the Japanese exchange rate; a common energy policy that offers a stronger defence against the effects of disruption in the international petroleum market; a common industrial policy to promote a European information technology that can compete with the Japanese and the Americans. Without such measures, our efforts to recover a dynamic and competitive European economy will remain hamstrung. With them, there should be no cause for inferiority to the great economy of the United States.

The root cause of the Community's failure to develop may be identified in the right of veto. "How can the complex and diversified unit that the Community has become", as President Mitterrand put it in his address to the European Parliament on 24 May 1984, "be governed by the rules of the Diet of the old kingdom of Poland, where every member could block the decisions? We all know where that led."(1) The European Parliament's Draft Treaty proposes to eradicate this cause of Europe's impotence through the principle of Union legislation enacted by majority votes of both Council and Parliament.(2) The importance of this proposal can hardly be exaggerated. Instead of spending years discussing matters critical to our future before reaching either weak decisions or none at all, this method of legislating is designed to enable the Community to take action on them in good time: to convert common action from an unsatisfied need into an effective reality.

The voting system for enacting laws by codecision of Council and Parliament is stipulated in articles 17, 23 and 38 of the Draft Treaty, where obstruction by veto finds no place. Unanimity is, it is true, required for amendment of the Treaty (art. 84), appointment of the Commission's President (art. 24 - it is assumed that the European Council will continue to use the unanimity procedure) and integration of defence and foreign policy (arts. 66-8). But it is fair to suppose that, under the procedures proposed in the Draft Treaty, economic policy would not be obstructed by individual member governments.

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(1) *Europe Documents* No. 1312, 20 May 1984, Brussels, p.6.

(2) J.P. Jacqué identifies these as the heart of the Parliament's proposals: "instaurer le vote a la majorité qualifiée du Conseil" and "doter le Parlement d'un droit de participer à la prise de décision législative et budgétaire". See "Bilan et perspective sur le plan institutionnel", in R. Hrbek, J. Jamar, W. Wessels (eds), *The European Parliament on the Eve of the Second Direct Election: Balance Sheet and Prospects*, Bruges, De Tempel for the College of Europe, 1984, p.93. But see also the possibility under the Draft Treaty of enacting Union laws with a minority vote in the Council (p. 9 below).

The Draft Treaty gives the Union the Community patrimony[3] together with the right to legislate over a vast field of economic and social policy, which includes the essential powers implied by the norms indicated above and a lot more besides. The Union's right is, properly, to be exclusive with respect to the completion of the common market and the common commercial policy (arts. 47-8, 64); and it is to share with the Member States a concurrent right to legislate on almost the whole of economic policy and a large part of social policy. This paper will go on to show, article by article, why the field for Union legislation on economic and social policy may be regarded as too extensive. But since the Draft's endeavours to deal with this problem are to be found for the most part in its general and institutional provisions, it is necessary first to consider these in so far as they bear upon the issue.

Concurrent competence: a risk of over-centralisation?

"If the system of the Union is to be uniform, the law of the Union must take precedence over national law ... This is not a question of political supremacy, but simply a condition of consistency."[4] If the European Union is to establish the essential elements of an economic union its laws must clearly have supremacy over Member States' laws as far as those elements are concerned. But where concurrent competence reaches beyond the essentials, the case for Union supremacy is not so clear. For although the term has a fine ring about it of share-and-share-alike, concurrent competence turns into exclusive competence with respect to any matter on which the Union has legislated. As Wheare put it, the authority which, "in case of conflict, is to prevail ... will possess, in my opinion, potential though not actual exclusive

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(3) Article 7 of the Draft Treaty includes in the Community patrimony the EC treaties, conventions, protocols and acts, together with "the measures adopted within the context of the European Monetary System and the European Political Cooperation".

(4) K. de Gucht, "Working Document on the Law of the Union", in *Report drawn up on behalf of the Committee on Institutional Affairs on the substance of the preliminary draft Treaty establishing the European Union, Part C: Preparatory Documents*, European Parliament Document 1-575/83/C, 15 July 1983, p.11, para. 32.

jurisdiction";[5] and Biehl observes that concurrent competence has been the most important basis for centralisation in the relations between Bund and Länder in the Federal Republic of Germany.[6]

Thus it appears that the scope of concurrent competence in the Draft Treaty would allow the Union to fix the rate of any tax anywhere within its territory, to control the budgets of national or local authorities, to stop any research programme, to drive a road through any part of a member country, to determine the school curriculum and to run the health service. Although it may be objected that the Union would not in practice for a very long time, perhaps would never do such things, it is necessary to examine very carefully any aspect of its constitution that could be more centralising than those of the existing democratic federations such as Australia, Canada, the German Federal Republic, Switzerland or the US.

One reason why the European Union needs to be less centralised than the existing federations, not more, is to reflect the cultural and social diversity which is such a cherished value for the peoples of Western Europe. To err on the side of an over-centralised economic policy would moreover be particularly inappropriate when there is so much uncertainty as to which policy can deal successfully with the contemporary economy. Experiments with a variety of policies are needed; and the Union's solidarity could only suffer from attempts to enforce on the Member States a policy that failed. Much of the diversity of social policy reflects diversities of culture and society, which should be respected not suppressed; and social policy too can only benefit from variety and experiment.

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(5) K. C. Wheare, *Federal Government*, London, Oxford University Press for the Royal Institute of International Affairs, 1951 (first edition 1946), p.79.

(6) Dieter Biehl, *Die Ausgestaltung des Finanzausgleichssystems in der Bundesrepublik im einzelnen*, unpublished paper, 1983, p.62ff. See also for a general discussion of centralisation versus decentralisation in the German context, Dieter Biehl, "Die Entwicklung des Finanzausgleichs in ausgewählten Bundesstaaten, Bundesrepublik Deutschland", in Fritz Neumark, Norbert Andel, Heinz Haller (eds), *Handbuch der Finanzwissenschaft*, 3rd edition, vol. IV, Tübingen, J.C.B. Mohr, pp.69-122.

More fundamentally, the danger of over-centralisation has been sensed by contemporary Europeans and they do not like it, at any level of government. The contemporary reaction against over-centralisation, reflected in the popularity of the slogan "small is beautiful", is not an evanescent fashion but a profound response to a great dilemma of modern society; and a Union that does not respect this need for decentralisation will not serve its people well. They could become politically alienated and the foundations of civic order be undermined if the Union were to suppress the political vitality of the local or national communities within it, as it could if it were to assume responsibility for the bulk of economic and social policy.

The Draft Treaty's attempts to limit centralisation

The principal architect of the Draft Treaty, Altiero Spinelli, was aware of the danger of over-centralisation. The chief defence which he and his colleagues in the European Parliament's Committee on Institutional Affairs devised against it was the principle of subsidiarity, which according to Spinelli would make "Union action ... subsidiary to that of the Member States, and not vice versa".(7)

The Draft Treaty provides that "The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers" (art. 12).(8) Yet the question whether "effects extend beyond national frontiers" is a matter of degree; and American experience shows that it can be interpreted very widely indeed. The US Constitution empowers Congress "to regulate commerce ... among the several States". Not only have the words "regulate" and "commerce" been "so liberally construed by the Supreme Court that the federal government now has almost complete

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(7) A. Spinelli, "Note on some problems of terminology", in *Report of the Committee on Institutional Affairs, Part C*, op. cit., p.160.

(8) The Preamble expresses the intention slightly differently: "to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers to complete successfully the tasks they may carry out more satisfactorily than the States acting independently".

control of the industrial and commercial life of the country".[9] There has been further pressure to interpret "the phrase ... 'inter-state commerce' ... so generously that 'intra-state' disappears altogether".[10] As Justices of the Supreme Court said in 1935 "There is a view of causation that would obliterate the distinction between what is national and what is local in matters of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the centre."[11] The Supreme Court then drew a distinction between "direct and indirect effects". But by 1942 the Court was concerned not with whether effects were direct or indirect but whether they were substantial: "Even if an activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on inter-state commerce, and this irrespective of whether such effect is what at some earlier time might have been defined as 'direct' or 'indirect'."[12] Although these cases date from four or five decades ago, they have been cited because they relate to a period when economic centralisation became a big issue in the US, and hence throw some light on the possibility of this happening in Europe. They indicate that to confine Union legislation to tasks whose "effects extend beyond national frontiers" may not provide a very significant limit to Union competence without a fairly generous concept of how substantial the effects would have to be.

Whether a task can be "undertaken more effectively in common" depends, moreover, on the nature of the task. The Draft Treaty stipulates that the Union shall effect the approximation of the laws relating to taxation "in so far as necessary

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(9) A. L. Goodhart, "The Constitution of the United States", in Patrick Ransome (ed.), *Studies in Federal Planning*, London, Macmillan, 1943, p.256.

(10) Wheare, op. cit., p.143.

(11) Justices Cardozo and Stone, in the case Schechter Poultry Corporation v. United States (1935) 295 U.S. 495, p.554, cited in Wheare, loc. cit.

(12) Supreme Court in the case Wickard v. Filburn (1942) 317 U.S.111, p.125; U.S. v. Darby (1941) 312 U.S. 100, p.119; cited in Wheare, loc. cit.

for economic integration" (art. 49). If economic integration is defined, as it could be, to include fiscal uniformity, this does not leave diversity much of a chance. Wherever, indeed, the Union decides to adopt uniformity in a particular field as an objective, the principle of subsidiarity is no help, because such a task can hardly be undertaken except in common.

The Basic Law for the Federal Republic of Germany provides that the central government shall have legislative rights in the field of concurrent legislation "in so far as a necessity for regulation by federal law exists because ... the preservation of legal or economic unity demands it, in particular the preservation of uniformity of living conditions extending beyond the territory of an individual Land".(13) This provision has been interpreted, according to Biehl, as placing on the Bund an obligation to promote the unification of living standards in the federation, with highly centralising consequences for economic policy, squeezing the autonomy of both Länder and local authorities.(14) The European Union Draft Treaty, one of whose objectives is "the progressive elimination of the existing imbalances between its regions" (art. 9), may contain the potential for a similar outcome.(15)

The Preamble to the Draft Treaty does qualify its determination "to increase solidarity between the peoples of Europe" by acknowledging the need to respect "their historical identity, their dignity and their freedom". But this seems to offer scant protection against the ample potential that the Draft offers for objectives that would tend to uniformity. When to this is added the tendency of policy-makers in institutions that govern large areas to give weight to economies

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(13) English translation from Arthur W. Macmahon, in his *Federalism Mature and Emergent*, New York, Russell & Russell, 1962, (first edition Doubleday, 1955), p.16.

(14) Biehl, *Die Ausgestaltung des Finanzausgleichssystems*, op. cit., p.63ff, and *Die Entwicklung des Finanzausgleichs*, op. cit., pp.78, 85ff, 97ff.

(15) See also art. 45.2: "The structural and conjunctural policies of the Union shall ... promote ... the progressive elimination of the existing imbalances between its various areas and regions", and art. 58: "The regional policy of the Union shall aim at reducing regional disparities...".

of scale rather than to the value of diversity in government of small areas,[16] the suspicion that the principle of subsidiarity may not be a strong enough guarantee against over-centralisation can only be reinforced.

In addition to the principle of subsidiarity, the Draft Treaty contains two devices intended as checks to over-centralisation. One of these is that laws shall "as far as possible ... restrict themselves to determining the fundamental principles governing common action and entrust the responsible authorities in the Union or the Member States with setting out in detail the procedures for their implementation" (art. 34). It may be doubted, however, whether fundamental principles can be made effective without specifying their implications in a good deal of detail; and the Community's experience appears indeed to show that a directive, which is supposed to bind member states "as to the result to be achieved", but to "leave to the national authorities the choice of form and methods", is frequently more detailed than a regulation, which is to be "binding in its entirety and directly applicable in all Member States" (Treaty establishing the EEC, art. 189).

The second device lies in the system of voting on Union legislation in Parliament and Council. Bigger majorities are required to enact organic laws than other laws; and "a law which initiates or extends common action in a field where action has not been taken hitherto by the Union or by the Communities must be adopted in accordance with the procedure for organic laws" (art. 12). The meaning of "extends common action in a field where action has not been taken hitherto" is not absolutely clear (how can action be extended if it has not been taken hitherto?). The intention is surely to require the procedure for organic laws wherever a law would reduce the field of competence of Member States; and it might be better to express this provision in that way. The important issue is, however, the procedure for voting on organic laws, as provided in articles 17, 23 and 38.

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(16) See, for example, Ioan Bowen Rees, *Government by Community*, London, Charles Knight, 1971, especially ch. 2.

Organic laws may be passed by qualified majorities in the Parliament (a majority of members and two-thirds of votes cast) and in the Council (two-thirds of the weighted votes cast and a majority of the representations). If the qualified majority is obtained in the Parliament but not in the Council, however, or if the Council has amended the draft law by an absolute majority (a majority of the weighted votes cast, comprising at least half the representations), the draft is considered by a Council-Parliament Conciliation Committee. Failing agreement there, the "text forwarded by the Council" goes back to the Parliament, which can again approve the draft by a qualified majority. The final vote must then be taken within three months in the Council, which may reject the draft by a qualified majority: thus the law is enacted provided that one-third plus one of the weighted votes of the member governments are in favour.

The "text forwarded by the Council" may, of course, have been amended by an absolute majority in the Council; and if this is the text on which the Parliament votes, at least an absolute majority in the Council will have favoured the law, rather than just the one-third plus one required for the final vote. But Parliament may amend the "text forwarded by the Council" provided that the amendments are tabled by the Commission. The Parliament can therefore, if it has the Commission's support, overrule a weighted vote of anything up to two-thirds of the representations of the Member States. While a qualified majority in the Parliament is certainly harder to secure than a simple majority, there must still be concern that two-thirds of the votes cast by MEPs could favour steps towards excessive centralisation, perhaps because they were subject to a wave of ideological fervour, political passion, or annoyance with a particular member country or minority of countries, perhaps because they failed to appreciate the cumulative effect of a series of measures each of which appeared reasonable enough in itself. It is precisely in anticipation of such errors of judgement by majorities of politicians that federal constitutions contain legal as well as political safeguards against what the founders regard as excessive encroach-

ment on Member States' fields of jurisdiction; and the reason why the Committee on Institutional Affairs did not use the word federal in relation to the Draft Treaty cannot be that they envisaged a Union which would offer less safeguards for the Member States than would a federal system.

The enacting of laws against the opposition of up to two-thirds (or even up to half) of the weighted votes of the representations of the Member States can indeed hardly be what Spinelli had in mind when he wrote that "the concept of competences in the draft ... demands strong proof of consensus both within Parliament and in the Council any time a forward leap is envisaged".(17) Nor can it really be said that Union action is subsidiary to that of the Member States. The Draft Treaty seems to reflect, indeed, a continuing preoccupation with the problem of a Community that is too weak in relation to the States, whereas once a Union is established with wide competences and majority voting, the problem can become the converse of strong Union and weak States. But any such preoccupation is by no means the only reason why the Draft Treaty does not embody a satisfactory solution to this problem. More significantly, the complexity and interdependence of modern economy and society have made economic and social policy so pervasive and interdependent that a clear division of powers between Union and States has become increasingly difficult to define.(18) It should cause no surprise if second thoughts are needed on such an intractable problem.

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(17) Altiero Spinelli, *Towards the European Union*, Sixth Jean Monnet Lecture, Florence, European University Institute, 13 June 1983. Corbett accepts that, in the case where a law is passed against a weighted majority of up to two-thirds in the Council, "we no longer have real codecision", but believes that "it is surrounded by sufficient safeguards, and at the end of a long enough procedure, to be regarded as exceptional" (Richard Corbett, "Reform of the Council: The Bundesrat Model", *The Federalist*, July 1984, Pavia, p.60). But the safeguards do not seem that strong, nor the procedure that long; and even were the case exceptional, a crucial competence might nevertheless be removed from Member States.

(18) This point was already made in the mid-1950s by John Fischer, "Prerequisites of Balance", in Arthur W. Macmahon (ed.), *Federalism Mature and Emergent*, p.62, where Fischer also cited Max Beloff, "The Federal Solution in its Application to Europe, Asia and Africa", *Political Studies*, June 1953, regarding the centralising tendency in federations that has followed on the expansion of governments' economic and social responsibilities.

Stronger safeguards

If it is accepted that there is a case for stronger safeguards against over-centralisation, the European Parliament may wish to consider what changes in the Draft Treaty could help to meet that case, without undermining its central features of codecision, majority votes and competence with respect to the essential elements of economic union.

One such safeguard could be a stronger voting role for the Member States' representatives in the Council, without approaching the paralysing right of veto. "Strong proof of consensus" within the Council could be provided by the requirement of a qualified majority (two-thirds of weighted votes and a majority of the representations) if an organic law, or one that reduces the competence of Member States, is to be enacted. Even an absolute majority (a majority of the weighted votes and at least half the representations) would serve better than the one-third plus one of weighted votes proposed in the present Draft.

The American cases cited earlier (on p.6) may indicate that a more precise definition of the reach of the phrase "inter-state commerce" could have strengthened the propensity of the Supreme Court to interpret it in a way that gave weight to the autonomy of the States; and the German Commission on Constitutional Reform made suggestions for sharpening the wording of certain of the articles of the Basic Law that relate to the relation between Bund and Land competences, in ways that would secure greater autonomy for the Länder.(19) It may be worthwhile for jurists at least to consider the potential for making the principle of subsidiarity more effective by sharper definition in the Treaty and by "spelling out further the role of the Court in defending the principle of diversity".(20)

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(19) Biehl (*Die Ausgestaltung des Finanzausgleichssystems*, op.cit., p.76) cites from a critique on this point in Eberhard Grabitz, *Dezentralisierung des Politischen Handelns*, Forschungsbericht des Kommunalwissenschaftlichen Instituts der Konrad Adenauer Stiftung, Bonn, 1979.

(20) Roy Pryce, *Towards European Union*, (Report of a Federal Trust Study Group on the European Parliament's draft proposals for a new Treaty), New Europe Papers 8, London, 1983, p.12.

Something of this purpose has been served by the fifth and fourteenth amendments to the US Constitution, providing that no person be deprived "of life, liberty and property without due process of law", which have caused the Supreme Court at times to invalidate legislation to regulate economic life.(21) The interpretation of the equivalent elements of the Canadian Constitution seemed, according to Wheare, to amount to a power for the central government to legislate on "trade and commerce, except where it conflicts with property and civil rights in a province", with the latter phrase being given such a wide interpretation that "the scope of 'trade and commerce' has been greatly narrowed".(22) But there was in both cases "much uncertainty about the respective powers of general and state governments, because of the conflicting and ambiguous language adopted".(23) In view of the greater diversity among the European peoples, it is particularly important that the Union Treaty be as clear as possible in this respect.

The Draft Treaty offers everybody within the Union's jurisdiction "the fundamental rights and freedoms derived in particular from the common principles of the Constitutions of the Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms"(art. 4.1) and requires the Union to undertake "to maintain and develop, within the limits of its competences, the economic, social and cultural rights derived from the Constitutions of the Member States and from the European Social Charter". The EEC Treaty provides that it "shall in no way prejudice the rules in Member States governing the system of property ownership" (art. 222); and article 7 of the Draft Treaty makes the "objectives and scope" of the Treaties establishing the EC into "a part of the law of the Union" which can "only be amended in accordance with the procedure for revision" of the Treaty, i.e. by unanimous agreement (art. 84). If "the rules in Member States governing the system of property ownership" are not to be counted among the "objectives and scope" of the Rome Treaty, however, this provision

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(21) Wheare, op. cit., p.145.
(22) Ibid., p.137.
(23) Ibid., p.149.

could be amended by the procedure for organic laws (art. 38). Further consideration should perhaps be given to the possibility of strengthening any of these potential bulwarks against too much centralisation.

Amended voting procedures, sharper wording of general principles and guarantees of human rights may, however, not by themselves offer sufficient guard against over-centralisation. We will therefore consider, in analysing article by article the Draft Treaty's sections on economic and social policy, how far the Union's powers could usefully be limited by closer definition of particular aims or fields among its competences, of the instruments it may use in relation to them, or of the conditions under which they may apply. We will at the same time try to identify those aims, fields and instruments that must be allocated to the Union if it is to create an economic union which can satisfy the essential needs of its citizens.

The common market and common commercial policy

The aims and instruments for achieving a common internal market and an external trade policy were already given to the Community in the Treaty of Rome. Without them, there can be no economic union. The common market remains far from complete because the Community's institutions, blocked by the right of veto, have not been strong enough to ensure that the aims of the Treaty are realised. The Draft Treaty for European Union would rectify that institutional weakness; and there can be no faulting the Draft for maintaining external trade and trade among the Member States as fields of exclusive Union competence. The questions that should be raised about these articles (47-9 and 64) relate, rather, to a certain excess of detail and a potential for excessive harmonisation.

External trade policy. Excess of detail can hardly be attributed to the Draft's provision for external trade policy: "in the field of commercial policy, the Union shall have exclusive competence" (art. 64.2). The Union's competence is simply defined by the field.

Nor does the definition of the field seem likely to present undue difficulty. The Treaty of Rome uses the words "common policy in the matter of external trade" (art. 111.1) and that presumably includes invisible as well as visible trade. It is not so clear that the Draft Treaty provides for a common policy on all other aspects of external economic relations, which have grown increasingly important with the growth of international economic interdependence. Development aid is covered (art. 64.3); and the provision for monetary union (art. 52) centralises part of currency reserves and in other ways implicitly concerns external monetary relations. But it is not so clear that the Union would have power to make policy on inward or outward investment.

Trade among the States. The Draft's treatment of internal trade is not so straightforward. Article 47.1 includes the words "The Union ... shall have exclusive competence for trade between Member States", which would, with the addition after "competence" of the words "in the field of policy" (to avoid any implication that a state-trading system might be intended) be precisely analogous to the provision for external trade policy: simple definition of a field of exclusive competence. But the Draft also adds the objective "to complete, safeguard and develop the free movement of persons, services, goods and capital within its territory" and stipulates instruments in the form of "detailed and binding programmes and timetables", specifying the number of years within which free movement is to be achieved. Yet it is not obvious that the institutions of the Union should be told by the Treaty precisely what they must aim to do in their field of exclusive competence or how they are to do it. There can be no doubting that free movement of people, services, goods and money among the Member States must be one of the bases of the Union; and perhaps "complete, safeguard and develop" adds something to the objectives already defined in the EC Treaties[24] without

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(24) "The Community shall be based upon a customs union which shall cover all trade in goods" (Rome Treaty art. 9.1); "restrictions on freedom to supply services within the Community shall be progressively abolished" (art. 59).

adding too much. But the detailed specification of means for attaining the objectives may be based on an inappropriate analogy with the Rome Treaty, when detailed Treaty obligations had to be employed to secure action by the Member States since the Community institutions lacked the strength to ensure that even such a central objective would be fulfilled by the development of Community policy after the Treaty had been ratified. With the institutions designed by the Draft Treaty, however, the boot is on the other foot. The Union institutions have the strength to make their own policy in any field of Union competence, without being told how to do it by a Treaty ratified by the States.

When we see how far such a bare definition of competence as "to regulate commerce ... among the several States" has taken the US federal government into regulation of the economic affairs of the States, we may have cause to ask whether "complete, safeguard and develop" might not give too much weight to the case for harmonisation where this conflicts with cultural diversity. This again raises the question whether the Draft Treaty could better embody the value of diversity in its objectives and in some other of its provisions.

The Draft Treaty might, then, be improved by reducing the provision on internal trade to the plain definition of the field: "The Union shall have exclusive competence in the field of policy for trade between Member States". But this does not come high on the list of potential improvements; the Union could live with the text as it stands. Article 47 also gives the Union exclusive competence "to complete, safeguard and develop the free movement of persons ... and capital". Beyond the free movement of workers, which the Treaty of Rome lays down,(25) the free movement of persons is not a matter of economic policy so will not be considered here. The Draft Treaty requires the free movement of capital to be completed "within a period of ten years following the entry into force of this Treaty"; and this has to be seen in conjunction with the Draft's provisions for monetary union, of which the movement of capital is one aspect (see p.29 below).

(25) "The free movement for workers shall be secured within the Community by the end of the transitional period at the latest" (art. 48.1).

Competition policy. The Draft Treaty gives the Union exclusive competence "to complete and develop competition policy at the level of the Union" (art. 48). The Rome Treaty defined the aims of competition policy as being to prevent abuse of "a dominant position within the common market" (art. 86) and to prohibit agreements "which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market", five main types of such agreement being specified (art. 85). This definition has stood the test of a quarter of a century fairly well. The main objection has been that the Rome Treaty omits any safeguard against the creation of dominant positions as distinct from their abuse; and the Draft Treaty is surely right to generalise to the economy as a whole the system for authorising mergers that is provided with respect to the coal and steel sectors in the ECSC Treaty (art. 66). The wisdom of the words "complete and develop competition policy at the level of the Union" is not so clear, if this gives the Union a free hand to range beyond the definitions of competition policy in the Treaties establishing the EEC and the ECSC. Might not the term "competition policy" be stretched far beyond those limits? Does "policy at the level of the Union" mean that the Union's competence still reaches only to agreements "likely to affect trade between the Member States", or is it less meaningful? If the answers to those questions imply scope for expansion of Union competence far beyond the concepts of the existing Treaties, it might be wiser to stick closer to those Treaties' wording that has stood the test of time fairly well.

Article 48 of the Draft Treaty contains two further points, which may respond to criticisms of the articles on competition policy in the Treaty of Rome. One concerns "the need to prohibit any form of discrimination between public and private undertakings"; here it might be argued that provisions inherited by the Union from the Rome Treaty offer adequate safeguard against this.(26) The other point enjoins the Union to bear in mind "the need to restructure and strengthen the industry

(26) "... any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market" (Rome Treaty, art. 92).

of the Union in the light of the profound disturbances which may be caused by international competition".

It has for some time been argued that the Commission could, under the existing Treaties, authorise joint programmes of capacity reduction by hard-pressed sectors and, after insisting on the point that such programmes must show a benefit to the consumer, the Commission has begun to adapt its policy in this direction. Article 85 does indeed allow the Commission to permit any agreement "which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question". If words such as "fair share", "not indispensable" and "eliminating competition" are thought to load the dice too heavily against agreements that help to improve production or promote technical or economic progress, there may be a case for rectifying that more precisely in article 48 of the Draft Treaty, rather than introducing concepts such as "restructuring" and "profound disturbances which may be caused by international competition", which present difficulties of interpretation and rest uneasily in what amounts to the constitution of a union of states.

Approximation of laws and taxation. The Draft Treaty follows the Treaty of Rome in seeking to iron out those aspects of Member States' laws and taxes that distort economic transactions within the common market. The Rome Treaty provided for "the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market" (art. 100). The Draft Treaty, referring to "the laws, regulations and administrative provisions relating to undertakings, and in particular to companies", sets the somewhat different objective of approximating

them in so far as they "have a direct effect on a common action of the Union" (art. 49). The US may have left too much autonomy with the individual States in matters of company law. But local variations in "provisions laid down by law, regulation or administrative action" may have their justification in the social and cultural diversity among European countries; and it seems desirable to preserve such variation where it does not substantially and "directly affect the establishment or functioning" of the common market or the economic union. Might not the Draft Treaty's formulation which requires approximation where there is "a direct effect on a common action of the Union" make it too easy for the Union to initiate common action that implies excessive uniformity, and then to steam-roller any of the Member States' policies or practices that stand in the way? If so, it might be better to return to the Rome Treaty's "directly affect the establishment or functioning of the common market", and perhaps add "and substantially" after "directly".

Article 49 of the Draft Treaty goes on to require that "a law shall lay down a Statute for European undertakings", which fills a need about which the Rome Treaty was not sufficiently explicit, even if the Commission found a justification for proposing a European Company Statute under article 101, which requires distortions due to differences between Member States' laws to be eliminated. Article 49 then moves on to "the approximation of the laws relating to taxation", which a Union law is to effect "in so far as necessary for economic integration within the Union". Economic integration could, as suggested earlier, be defined in such a way as to require complete fiscal uniformity throughout the Union. That this is not a fanciful suggestion is shown by one of the most-quoted books on the subject, which asserts that "total economic integration presupposes the unification of monetary, fiscal, social and countercyclical policies".(27) Yet the structure and rates of tax are at the heart of modern politics, and of social policy in particular. The Union needs to get the money for its own expenditure (arts. 71, 75 and 76 of

(27) Bela Balassa, *The Theory of Economic Integration*, London, Allen & Unwin, 1962, p.2.

the Draft Treaty provide for this) and divergences between Member States' taxes should be reduced in so far as they substantially distort inter-State trade. But beyond that, the States should be left to collect their own taxes at their own rates in their own way. The alternative is likely to drain them of political vitality, by shifting to the Union the major decisions of social policy.

Two changes in article 49 might help to guard against this. One would be, drawing in part on the wording in article 101 of the Rome Treaty, to replace "in so far as is necessary for economic integration" by "in so far as Member States' taxes substantially distort the conditions of competition in the Union" (or perhaps "substantially distort economic transactions among the Member States"). In addition, it might be appropriate to exclude personal income tax from the Union's jurisdiction. For whereas a certain measure of harmonisation of company tax and indirect tax may be needed to make the economic union work efficiently, the case for interference in the States' income taxes is weaker; and this would preserve for them a chasse gardée where they can vary their total revenue and influence the distribution of incomes.

General economic policy

The Member States have reached a stage of inter-dependence where they need a common economic policy, to help maintain equilibrium between their economies, provide a framework for their economic development, safeguard their interests in and contribute to the management of the wider international economy. The drafters of the Rome Treaty did not venture to seek a transfer of powers to this end from the States' central banks and finance ministries. The Draft Treaty is more courageous.

Article 50 gives the Union "concurrent competence in respect of conjunctural policy, with a particular view to facilitating the coordination of economic policies within the

Union". The word "conjunctural" has an association with the management of shorter-term trends in the economy, which may be unfortunate at a time when policies designed to be effective over a longer period tend to be viewed as more important. Perhaps the more operative term is, in any case, the "economic policies" that are to be coordinated. But whether we speak of conjunctural or general economic policies, we have entered a field which is harder to define than trade policy, competition policy or the approximation of tax and company law; so it is harder to envisage the limits of Union action in coordinating the economic policies of the States.

One point is quite clear. "Laws shall lay down the conditions under which the Commission, in conjunction with the Member States, shall utilise the budgetary or financial mechanisms of the Union for conjunctural ends" (art. 50.4). The Union is to use its money ("our money", if we are the Union's citizens) with regard for the aims of its conjunctural (better perhaps "economic") policy. The limits to this action depend on the amount of money to be raised and spent by the Union; and the Draft Treaty sets no limit to this. Member States intending to establish the Union could well raise the question of a limit to the Union's tax-raising powers since, as the experience of the Federal Republic of Germany shows, the division of revenue between them is fundamental to the balance of power between Union and States. The Union would be too weak in relation to the States, and unable to make its proper contribution to efficiency and welfare, if it were shackled by limits of the order of magnitude that now prevails; but it might be reasonable to consider, in the light for example of the MacDougall report,(28) a limit of say 5 per cent of the Union's GDP, which could be raised only by Treaty amendment.(29)

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(28) *The Role of Public Finance in the European Communities*, 2 vols, Brussels, Commission of the EC, April 1977.

(29) There would be less risk of a Treaty-entrenched limit stunting the development of the Union sometime in the future if Treaty amendment were to require a large majority, rather than unanimity of the Member States as proposed in article 84.

The limits to Union power under paragraphs 2 and 3 of article 50 are not so easy to define. Paragraph 2 requires the Commission to "define the guidelines and objectives to which the action of the Member States shall be subject on the basis of the principles and within the limits laid down by laws"; and paragraph 3 stipulates that laws "shall lay down the conditions under which the Commission shall ensure that the measures taken by the Member States conform with the objectives it has defined".(30) Thus the Union is to establish the aims of Member States' economic policies and control the means, i.e. the policy instruments, by which the aims are to be achieved.

The outcome of a Member State's economic policy is a matter of common interest, because inflation or deflation is transmitted to other Member States through the economic transactions between them. It is therefore right that the Union should seek to influence the Member States' policies towards a mutually satisfactory outcome. But a requirement that the Union control "the measures taken by the Member States", which could well become control over all their economic policy instruments - however these might be defined - is another matter.

One reason for doubting its wisdom is that the relationship between measures and outcomes is a matter of judgement, not of objective fact; and such judgements have become hazardous in these turbulent times. They offer a shaky basis for a massive incursion into the polities of the States.

A second reason for doubt is uncertainty as to the instruments which the Union might feel justified in requiring the Member States to use under its supervision. Incomes policy is a contentious issue, hotly contested by liberal economists, by politicians who believe in them and by many traditionalist trade unionists. Yet it is quite conceivable that incomes policy,

(30) Paragraph 3 goes on to make "the monetary, budgetary or financial aid of the Union conditional on compliance with the measures taken under paragraph 2 above". It is normal that balance-of-payments support should be conditional on governments' compliance with policy guidelines; but it is another question whether a Union policy for supplying cheap butter to old age pensioners should be withdrawn from those who inhabit a certain Member State, just because of recalcitrance by a government they might well have voted against, over an issue which can be quite a subjective one - as negotiations between the IMF and Brazil, for example, show.

which not long ago enjoyed widespread support, could again win enough support to be enacted as Union law on the basis of two-thirds of the votes cast by the Members of the European Parliament (which need be no more than a bare majority of all MEPs), together with acceptance by the Commission and by the representatives of France, Greece and Italy in the Council (or Greece, Italy, Portugal and Spain after enlargement), to name only currently socialist-led governments which could account for more than one-third of the Council's weighted votes. The Members of the last European Parliament must have thought such a Union law feasible, or they would not have voted in favour of article 56, which provides that "the Union may take action in the field of social and health policy, in particular in matters relating to ... collective negotiations between employers and employees, in particular with a view to the conclusion of Union-wide collective agreement". Now it happens that the present writer shares the view that imperfections are inherent in modern labour markets to the extent that, if inflation is to be controlled, the only alternative to high unemployment is incomes policy - even if the incomes policy takes the non-statutory form of nation-wide or industry-wide (as in West Germany) collective agreements between trade unions and employers' associations. But to impose this view, which may after all be mistaken, on a country where the government is bitterly opposed to incomes policy or the trade unions are going to kick it overboard would be to court a failure of that policy and to strain solidarity within the Union up to or beyond the breaking point. The same could be said of an attempt to counter a recession or restrain a boom by investment planning (c.f. article 51, with its "objective of coordinating the use of capital market resources by the creation of a European capital market committee").

Alternatively, a right-wing qualified majority of MEPs, supported by a right-wing Commission and the governments of Britain, Denmark and Germany (or Britain, Denmark, Germany and the Netherlands after enlargement), could prohibit incomes policy or investment planning in the Member States that wanted to use

those instruments. Or they might decide that budgetary laxity was generating inflation in some Member States and that national budgets therefore had to be controlled. This is quite plausible, since budgetary control was wanted by the officials and central bankers on the Werner Committee, whose widely-acclaimed report proposed that "quantitative guidelines will be given on the principal elements of the public budgets, notably on global receipts and expenditure, the distribution of the latter between investment and consumption, and the direction and amount of the balance".(31) Nor are bankers, officials and politicians lacking today who are convinced that budgetary control is the key to a healthy economy. Yet central control of the States' budget balances, let alone of the size of their receipts, expenditure, consumption and investment, is a concept that is alien to federal systems; and even in the highly centralised United Kingdom, the present government has encountered great difficulty in imposing such constraints on the local authorities.

Union control over States' budgets would, then, be an infringement of their autonomy that the search for a unified economic policy could hardly justify. Not only is the economic outcome of such measures quite speculative, but consistency of the several States' economic trends, although desirable, is not an absolute necessity, with the interdependence among them, although very significant, remaining far short of the interdependence among the regions of most Member States.

With the exception of money, indeed, the idea of Union control of the States' instruments of general economic policy seems to be of dubious validity. The non-monetary instruments, such as incomes policy, budgets and quantitative planning, are highly sensitive in terms of both party-political orientation and the autonomy and vitality of the States' polities. To harness Member States' instruments of this kind to a concept as wide and general as that of the Union's economic or conjunctural policy

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(31) *Report to the Council and the Commission on the realisation by stages of economic and monetary union in the Community* (the Werner Report), Supplement to Bulletin 11-1970 of the European Communities, Luxembourg, 8 October 1970, p.19.

would launch the Union into uncharted and quite likely dangerous waters. The risk of dangerous waters must sometimes be taken. But here it does not seem justified, because control over monetary policy, for which the interdependence of the national monetary systems is anyway a convincing motive, would give the Union instruments as powerful as it probably needs at its present stage of economic interdependence. A simple solution would, then, be to define the Union's concurrent competence for economic policy in terms not of this potentially enormous field, but of more specific fields and instruments: "budgetary or financial mechanisms of the Union" (art. 50.4) and the field of monetary policy - or, if more precision were desired, specified instruments of monetary policy. This might imply either amending the Draft Treaty in order to subject article 50 paragraphs 1-3 to the method of cooperation rather than concurrent competence, or deleting those three paragraphs altogether. Some unnecessary undergrowth would thus be cut from the Draft, while giving the Union, in the field of monetary policy, the crucial strength that the Community now lacks.

Monetary union

Article 52 deals with monetary union. Before that, however, comes article 51, which gives the Union "concurrent competence as regards European[32] monetary and credit policies, with the particular objective of coordinating the use of capital market resources by the creation of a European capital market committee and the establishment of a European bank supervisory authority". The Union is given concurrent competence with respect to monetary union in article 52; and if there is enough difference between monetary and credit policies to justify specifying the credit policies too, this could perhaps be done in the latter article. The purpose of article 51 seems, however, to be specifically to introduce the European capital market committee to coordinate the use of capital market resources and the European bank supervisory authority.

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(32) How can there be concurrent competence as regards "European monetary and credit policies", when the States can hardly have competence for European policies? Should it not be concurrent competence for monetary and credit policies in so far as these substantially affect inter-State economic transactions?

With free movement of money and of financial services, a common regulatory framework for banks and capital markets is a logical measure. But the "particular objective of coordinating the use of capital market resources" seems to imply a planning of investment that is not practised in the majority of Member States and is hard to reconcile with the neoliberal philosophy that underlies article 33.4, which affirms that "the European Monetary Fund shall have the autonomy required to guarantee monetary stability". Neither the neoliberal doctrine of article 33.4 nor the dirigiste implications of article 51 as it stands seem likely to appeal to a majority of Member States; nor do they embody principles that are essential for the establishment of the Union, even if it might later come to adopt them. Article 33.4 was not in the Institutional Committee's earlier draft(33) and the present text could afford to do without it unless the Member States want to retain it. Article 51 could be confined to the establishment of the regulatory framework for the banks and capital markets.

Article 52 requires that all Member States are to participate in the European Monetary System (52.1) and gives the Union "concurrent competence for the progressive achievement of full monetary union" (52.2). Monetary policy will, as has already been suggested, remain a crucial field for Union policy after monetary union (however defined) has been achieved, as well as in the achieving of it. There should be no doubt about this, and it would be better to establish it in the article on the monetary system and monetary union, not just as an adjunct to credit policy as in article 51 of the present Draft. Article 52.2 could define the field of competence in such words as "the Union shall have concurrent competence in the field of monetary policy". The objective of full monetary union would be stated in a separate sentence.(34)

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(33) *Report of the Committee on Institutional Affairs, Part A : Motion for a Resolution*, European Parliament Document 1-575/83/A, 15 July 1983.

(34) Another drafting question: can the States really exercise competence for the "achievement of full monetary union"? If not, the definition of the field of concurrent competence should certainly be separated from the objective of monetary union.

The significance of this objective depends on how "full monetary union" is defined. In his preparatory document, the rapporteur on economic union wrote that "the final objective, which it will be possible to achieve following a series of automatic, irreversible stages, will be that of advanced unity which may go so far as the creation of a genuine common currency which is exclusive or parallel to the national currencies".(35) Whether the common currency is exclusive or parallel is a critical distinction, for an exclusive common currency puts an end to any monetary or currency policy conducted by the Member States. Changes in the exchange rate are no longer available to help correct disequilibria between Member States' economies, so that the whole burden of adjustment is likely to be thrown on to deflation or inflation; and if pronounced cultural or institutional differences underlie the disequilibria, the dose of deflation or inflation required to overcome them might be severe enough to endanger the Union's political stability. A parallel currency, on the other hand, gives the Union a common instrument of policy and medium for transactions, while leaving room for Member States to secure changes in their exchange rates and to conduct monetary policies alongside that of the Union.

Despite the risks involved in moving to an exclusive common currency, the benefits of reaching that stage would be great. The European currency would be an enormous convenience to business and to citizens. It would enhance the security of the Union's internal market against the danger of fragmentation. It would give the Union a powerful instrument to counter external monetary threats such as high American interest rates or a low Japanese exchange rate, and to participate in constructing a sound international monetary system. It would set the seal on the economic union and affirm, not just in words but in a most impressive deed, the commitment to political union among the Member States. It is therefore desirable that the definition of a full monetary union includes the creation of a common currency and the ending of exchange rate changes and of controls on movements of money among the Member States.

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(35) J. Moreau, "The Economic Union", in *Report of the Committee on Institutional Affairs, Part C,* op. cit., p.57, para. 129.

Article 52 of the Draft Treaty requires all Member States to participate in the European Monetary System (subject to article 35, which allows for delays to be authorised if Union laws would cause "specific difficulties" for particular States) and provides for an organic law[36] to "lay down rules governing... the procedures and the stages for attaining monetary union". The rules are to govern in particular "the Statute and the operation of the European Monetary Fund", "the conditions for the effective transfer to the EMF of part of the reserves of the Member States", "the conditions for the progressive conversion of the ECU into a reserve currency and a means of payment, and its wider use", and "the duties and obligations of the central banks in the determination of their objectives regarding money supply". The transfer of part of the States' reserves to the EMF and the wider use of the ECU, including as a reserve currency and a means of payment, would give the Union the means to develop its monetary system, based not only on the exchange rate mechanism and lending arrangements of the EMS but also on the promotion of the ECU as a parallel currency and on the EMF as a federal reserve bank. This system could, as it developed, increasingly secure the benefits associated with an exclusive European currency. The use of the parallel currency could, indeed, evolve to the point where changes of the States' exchange rates, even though formally permissible, were no longer practicable, and later to replace the national currencies altogether.

This could be the best route to full monetary union. But whatever the likely proportions of organic evolution and of formally enacted steps, one major barrier will probably have to be confronted: the prospect of progress to full monetary union without their explicit consent may well be more than some Member States will accept. The problem lies not just with the British or the French. The Germans, whose society has in the past been torn apart by inflation, remain acutely sensitive to the danger

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(36) Requiring a qualified majority in the Parliament, together either with an absolute majority in the Council, or with the support of the Commission and a minimum of one-third plus one of the weighted votes in the Council (see p.9 above; a two-thirds majority in the Council is suggested on p.11).

of catching it from their partners. The Bundesbank was hard to convince that even the fairly innocuous Stage One of the EMS was not going too far and firmly opposes the transition to Stage Two and the establishment of the European Monetary Fund. The ECU cannot at present even be used for deposits in Germany, as is done in other EC countries, on the grounds that it is linked to other Member States' currencies and hence "regarded by the Bundesbank as an indexed unit, which cannot be used for deposits in Germany under article 3 of the 1948 Currency Law".(37) The German government and parliament could commit the Federal Republic to monetary union, despite any opposition from the Bundesbank, if the grounds for doing so appeared politically secure. But the fear of inflation is deep-rooted enough among the people to render conflict with the Bundesbank on such an issue politically dangerous; and such fears would not be allayed by article 52.4, which allows the European Council (presumably by a unanimous vote) to suspend entry into force of the monetary laws for five years after the Treaty becomes effective. Wessels, in a commentary on the Draft Treaty, finds it singular that the Draft does not require ratification by national parliaments for the establishment of full monetary union (or of a West European defence system).(38)

If German support for the European Union Treaty were to be conditional on provision for Member States' assent to any approach to full monetary union beyond the point of no return, the European Parliament would probably wish to adapt the Draft in order to accommodate the German government. The example might be found useful of the formula for transition from the first to the second stage when establishing the EEC, which was "conditional upon a finding that the objectives specifically laid down in the Treaty for the first stage have in fact been attained in substance" (Rome Treaty, article 8.3); the objective this time would be sufficient compatibility among the Member States' economies to justify an expectation of continuing equilibrium among them. The Rome Treaty required unanimous agreement for its "finding". Qualified majorities in Council and Parliament would be preferable in

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(37) David F. Lomax, *The Time is Ripe: The European Monetary System, the ECU and British Policy*, (Report of a Federal Trust Study Group), London, November 1984, p.23.

(38) Wolfgang Wessels, "Der Vertragsentwurf des Europäischen Parlaments für eine Europäische Union", *Europa-Archiv*, 25 April 1984, p.242.

the Union; but it might be necessary to settle for the unanimity procedure. The transition in this case would be to full monetary union, whether with an exclusive Union currency or, if "national monetary symbols", as the Werner Report put it, were to be retained, with "the total and irreversible convertibility of currencies, the elimination of margins of fluctuation in exchange rates, the irrevocable fixing of parity rates and the complete liberation of movements of capital."(39) The condition for moving to full monetary union could be incorporated in the Draft Treaty with "the procedures and the stages for attaining monetary union" (art. 52.3), and would deal with the timetable for the free movement of capital (art. 47.3) as well as with the permanent locking of parities or the replacement of national currencies by a European currency.

Microeconomic policies

The need for European industry to have secure access to a wide European market does not grow less. The third industrial revolution causes specialisation and scale of output, and hence the need for the wide market, continually to increase; so measures to remove the remaining barriers within the market and to keep it open become increasingly important. The Rome Treaty has provided most of the instruments needed for this, with its articles on the free movement of goods (articles 9-37) and the rules governing competition (articles 85-94, which include the control of state aids that may distort competition).

If removing distortions to competition were all that is required of microeconomic policy, these instruments of negative integration provided by the Rome Treaty as it stands would be sufficient, in the hands of the institutions of the European Union which, unlike those of the Community, would be strong enough to ensure that the instruments are fully used. But the market imperfections inherent in the modern economy as well as the social pressures generated by the third industrial revolution have caused all the European governments to introduce a wide range of industrial

(39) *Werner Report*, p.10.

policies. If these policies were a temporary aberration, the instruments of negative integration could control and eventually remove them. But although there is disillusion about support for lame ducks and lax treatment of uncompetitive firms, one of the European governments shows signs of abandoning policies to promote technological development and to facilitate adjustment; and except on the implausible assumption that the structure of industry will come to approximate the perfect competition model, economic theory justifies the governments. The European Union will be born into a world where industrial policy is a necessary fact. Thus the Union's microeconomic policy cannot be confined to the extirpation of Member States' industrial policies.

One consequence of this is that the Union should recognise the validity of Member States' or firms' industrial policies where these contribute to economic progress rather than stand in its way. This is doubtless why the Draft Treaty enjoins the Union, in making its competition policy, to "bear in mind ... the need to restructure and strengthen the industry of the Union" (art. 48). The Community has likewise accepted the Member States' subsidies to a number of troubled industries, while trying to ensure that the subsidies are linked with measures of adjustment. Thus the instruments of negative integration can be used to promote positive adjustment: subsidies to troubled sectors or agreements among those sectors' firms can be made conditional on measures to promote a return to competitiveness.

The Community's financial resources have provided it with a carrot to go with its stick. Money from the Social Fund, the Regional Fund, the European Investment Bank, the New Community Instrument and ECSC funds has been used to support industrial adjustment. The ECSC Treaty, in addition to authorising the Community to raise loans and to levy a turnover tax of up to 1 per cent of the value of coal and steel production (or more if a two-thirds majority in the Council so decides), gives the Community powers to influence investment, and to control production and prices if a "manifest crisis" (art. 58) has been declared.

Thus the Community can complement its right to control Member States' subsidies by the use of its own, rather slender, financial resources; and in coal, steel and, of course, agriculture, by more direct regulation of the market. But outside these particular sectors, the Community has only a slight capacity to do more than attempt to control the industrial policies of Member States, whereas there must be a strong presumption that interdependence has reached the point where the States' policies alone are not enough, but common policies using substantial common instruments are also required.

The powers to tax and borrow that the Draft Treaty gives the Union (art. 71.2) would make a very big difference, if the Union uses its financial resources to support its micro-economic policy. The Draft Treaty also makes particular provision, in article 53 on "sectoral policies", for agriculture and fisheries, energy, transport, telecommunications, industry, and research and development.

An introduction to that article specifies its concern with "specific sectors of economic activity" and "sectoral policies".(40) While these terms are appropriate for agriculture and fisheries, energy, transport and telecommunications, the word "sectoral" is not so apt with respect to industry and to research and development, where at least some of the Union's policies should apply over a much wider area than is commonly known as a sector.

The aim of the Union's sectoral policies is defined in the first sentence of article 53 as "to meet the particular needs for the organisation, development or coordination of specific sectors of economic activity", which sounds as if the drafters had schemes of sectoral planning rather prominently in mind, even if the aim of "development" could encompass almost any legitimate aim of policy. As if aware that the first sentence may have a dirigiste flavour, the next sentence may be intended to reassure

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(40) Again, the Union's concurrent competence is to apply to policies "at the level of the Union". But can Member States have competence for policies at Union level? Would it not be better to give the Union concurrent competence for "sectoral policies in so far as these substantially affect inter-State trade"?

liberals in that the policies "shall, by the establishment of reliable framework conditions, in particular pursue the aim of facilitating the decisions which undertakings subject to competition must take concerning investment and innovation": the Union is to provide a framework for investment and innovation in a market economy.

To the non-lawyer, the wording of this introductory paragraph may seem unwieldy and give a slightly odd impression. But it is not necessary to raise objections provided that the jurists can assure us that it adds something significant to the Draft without giving too much scope for unintended or unpredictable consequences. If the jurists are not sufficiently sure of that, the Draft could be strengthened by confining this paragraph to "the Union shall have concurrent competence in the fields of sectoral policy specified in this article, in so far as such policies substantially affect inter-State trade".

Industry; research and development

Both paragraph d of article 53, on research and development, and paragraph e, on industry, are concerned mainly with the instruments of Union policy, and in this both emphasise coordination and guidance of the policies of Member States. For research and development, the Union "may draw up common strategies with a view to coordinating and guiding national activities and encouraging cooperation between the Member States and between research institutes", while for industry it "may draw up development strategies with a view to guiding and coordinating the policies of the Member States in those industrial branches which are of particular significance to the economic and political security of the Union".

The Draft Treaty cannot be faulted for concentrating on instruments rather than aims in these two fields. For the aims can hardly avoid being as broad as those of economic policy, which

are outlined in the preamble of the Draft and defined in article 9.[41] But the general injunction to the Union to coordinate and guide "national activities", in the case of research, and "the policies of the Member States", in the case of industrial branches with particular significance for economic and political security, does not help to determine the limits to centralisation in the Union. Apart from the principle of subsidiarity, there is no legal limit, it would seem, to the Union taking control of the whole of research activities in the Member States, with the power to shut down a programme of research on developing a microcomputer or even on a cure for influenza, for that matter.[42] Nor, as we have seen, is the principle of subsidiarity much help since the Draft Treaty defines the coordination of national research and development activities as an objective of Union policy - which can hardly be undertaken more effectively "by the Member States acting separately". More than in most other activities, freedom and variety are essential for research. The Union should surely confine itself to the promotion of research projects whose scale puts them beyond the scope of the several Member States and to cooperation with the States in encouraging research and development, rather than "coordinating and guiding national activities", which could open the way to telling not only the public authorities in the Member States, but even eventually the researchers, what they are and are not to do. Those functions which are suitable for the Union in this field could be performed by use of the Union's financial resources, without need for powers of compulsion over the research policies of Member States, let alone of independent institutes and

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(41) In particular "the economic development of (the Union's) peoples with a free internal market and stable currency, equilibrium in external trade and constant economic growth, without discrimination between nationals or undertakings of the Member States by strengthening the capacity of the States, the citizens and their undertakings to act together to adjust their organisation and activities to economic changes"; "the progressive elimination of the imbalance between its regions"; "the improvement of international commercial and monetary relations"; "the harmonious and equitable development of all the peoples of the world".

(42) If "national activities" were interpreted as applying to Member States' public policies, the field for intervention would be limited to that extent; but it would still be very wide, particularly in relation to those Member States where public support for research and development is large.

researchers. The Union's financial power will be such that it should be able to offer joint finance on terms that would induce Member States to cooperate, or failing that, the Union could sponsor its own projects independently, without any resort to compulsion. Thus it would be better to omit the provision for coordination of national activities and to concentrate on the remainder of the paragraph on research and development, concerning expenditure of the Union's own money on promoting research, whether on its own or jointly with others. Paragraph d would then read "in the field of research and development, the Union may provide financial support for joint research, may take responsibility for some of the risks involved and may undertake research in its own establishments". If omission of the sentence regarding coordination of national activities does not preclude Union control of the Member States' research policies and activities, a sentence should be added to preclude it specifically. If reference to common strategies and coordination is held to be desirable, this could be by the method of cooperation, which depends on unanimous agreement.

There must be a similar concern about the provision for "guiding and coordinating the policies of Member States" in the field of industry. The limitation of such control to "those industrial branches which are of particular significance to the economic and political security of the Union" is doubtless intended to confine the scope for directive policies on the part of the Union to certain sectors that are especially security-sensitive, even if the term "economic and political security" might permit of wide interpretation. But however wide the interpretation, the restriction to security-sensitive sectors may offer too narrow a scope for Union policy: much of industrial policy aims to promote innovation and investment and to facilitate adjustment over the whole of "industry" (including services as well). Such matters are already the subject of Community policies on competition, state aids, external trade and expenditure from its funds and financial instruments; and it seems desirable that

there should be scope for the Union to play a more positive role in promoting innovation, investment and adjustment than the Community has been able to do. It seems likely that the Community patrimony already offers the legal basis for any desired expansion of such expenditure from the resources that would be available to the Union. But if there is any doubt about this, paragraph e on industry could provide, as paragraph d on research and development does, for Union expenditure to promote innovation, investment and adjustment, whether alone or jointly with Member States.

The Esprit programme is but a small beginning to such expenditure, confined at present to research; Euratom's expenditure has also been dwarfed by that of Member States; and the large public investment in developing European aircraft has been kept separate from the Community. But Union programmes of development and investment in such high-technology branches could well be promoted on the basis of Union finance. (Article 54.1 also provides for "industrial cooperation structures", such as, presumably, the Airbus programme, to be converted "into a common action of the Union" if the European Council so decides.)

Union funds could also help to secure adjustment in sectors with problems such as shipbuilding or a number of branches of chemicals or engineering. An aim of article 53.e may be to ensure that rationalisation programmes for such branches are not obstructed by, say, one firm or one Member State. The industrial logic of this may be impeccable, if one takes, as the present author does, a rather Japanese view of industrial policy. But unless "branches which are of particular significance to the economic and political security of the Union" can be quite narrowly defined, the provision for Union coordination could go far to suppress the industrial policies of Member States. If such a degree of centralisation is not thought desirable, there could be merit in resting the Union's industrial policy on the existing Community instruments (competition policy, control of state aids,

common commercial policy), with the crucial expansion of the funds available for Union expenditure. Paragraph e could, then, refer to this Community patrimony (as does the paragraph on agriculture - see below) and provide for Union expenditure (along the lines of paragraph d on research and development); and it is for consideration whether the paragraph could stop short at that.(43) Additional instruments, that could be useful for Union policy in industry as well as other fields, would be the "specialised European agencies" which article 54 authorises the Union to establish.

Transport, telecommunications

The main concern of articles 74-84 of the Rome Treaty, on transport, is to remove any distortions that affect intra-State trade. The European Investment Bank offers means for investment in "projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States" as well as "projects for developing less developed regions" and some other projects "called for by the progressive establishment of the common market" (Rome Treaty, art. 130); and the Regional Fund and New Community Instrument could also be used to finance projects that would contribute to a Union transport network. But it remains true that "the distinctive feature of the common transport policy is the lack of positive guidance given by the (Rome) Treaty".(44) A transport network that makes movements of people and goods among the Member States easier is an important element in creating a political and economic union, and the Draft

(43) Paragraph e of article 53 also includes two sentences about procedures. "The Commission shall be responsible for taking the requisite implementing measures. It shall submit to the Parliament and the Council of the Union a periodic report on industrial policy problems." Such procedures are not specified in respect of other matters and it is not clear why the Union should not be left to fix its own procedures in this matter too, instead of having them enshrined in the Treaty. The Draft would be none the worse without these two sentences.

(44) Nigel S. Despicht, *Policies for Transport in the Common Market*, Sidcup, Lambarde Press, 1964, p.34.

Treaty is right to require the Union to "undertake common actions to ... develop the capacity of transport routes so as to create a transport network commensurate with European needs" (art.53.b). It may not be so certain that the Rome Treaty's provisions against discrimination and distortions in intra-State transport need to be supplemented or replaced by a further requirement for the Union to "undertake common actions to put an end to all form of discrimination, harmonise the basic terms of competition between the various modes of transport, eliminate obstacles to trans-frontier traffic" (Draft Treaty, art. 53.b). Nor, following our earlier argument about subsidiarity (pp.6ff, 18, 19), is the requirement for the Union to "pursue a policy designed to contribute to the economic integration of the Member States" necessarily appropriate in a Treaty designed to keep the Union to what really needs to be done in common, since "economic integration" can be so widely defined (see p.19). It might be better to replace this reference to economic integration by a formulation similar to that suggested on p.18 for tax harmonisation, e.g. "in the field of transport, the Union shall remove distortions that substantially affect economic transactions among the Member States".

The Rome Treaty has no reference to telecommunications, which have become increasingly important with the rise of information technology. The Draft Treaty remedies this omission with paragraph c of article 53, which requires that "in the field of telecommunications, the Union shall take common action to establish a telecommunications network ...". Since the analogy with the case for a Union transport network is quite close, it seems odd that this is not followed, like the reference in paragraph b to the transport network, by "commensurate with European needs". The text continues, instead, to require common standards and harmonised tariffs. The common standards are doubtless desirable but it might be advisable to confine the requirement to harmonise tariffs by "in so far as necessary to facilitate inter-State communications". The text then provides that the Union "shall exercise competence

in particular with regard to the high technology sectors, research and development activities and public procurement policy". This reference to research and development in relation to telecommunications seems to add nothing to paragraph d on research and development. It is questionable whether the "high technology sectors" related to telecommunications should be treated differently from other high-technology sectors which would come under paragraph e on industry; and the same could be said of public procurement. If the high technology sectors and public procurement need to be mentioned here, they should surely also be mentioned elsewhere; if they do not need to be mentioned elsewhere, it is doubtful whether they should be accorded a special mention here.

Agriculture, energy

For agriculture and fisheries, the Draft Treaty rests solely on the Rome Treaty: "in the fields of agriculture and fisheries, the Union shall pursue a policy designed to attain the objectives laid down in Article 39 of the Treaty establishing the European Economic Community" (Draft Treaty, article 53, paragraph a). Article 39 of the Rome Treaty lists five objectives: "to increase agricultural productivity"; "thus to ensure a fair standard of living for the agricultural community"; "to stabilise markets"; "to assure the availability of supplies"; "to ensure that supplies reach consumers at reasonable prices". Stabilisation of markets and security of supplies relate to the peculiar characteristics of agricultural markets and of food as the most basic economic necessity; and prices to the consumers also relate, up to a point, to the latter characteristic. But productivity and producers' living standards are not more relevant to agriculture than to various other sectors; and the question has been asked why one group of producers should be specially favoured in this way. The answer lies, of course, in the bargain that was struck when the EEC was established; and the retention of the Rome Treaty's formulation may be seen as a political condition of acceptance of the European Union Treaty.

Special treatment is also given to the field of energy in the Treaties establishing the European Community. For coal (as for steel), the objectives can be grouped under headings similar to those for agriculture, with the addition of the development of international trade (ECSC Treaty, article 3). For atomic energy, safety and security are also stressed (Euratom Treaty, article 2). But there is no mention in these Treaties of oil or gas, or of an overall energy policy.

As with agriculture, paragraph f on energy in article 53 of the Draft Treaty is confined to the statement of objectives: "in the field of energy, action by the Union shall be designed to ensure security of supplies, stability on the market of the Union and, to the extent that prices are regulated, a harmonised pricing policy compatible with fair competitive practices. It shall also be designed to encourage the development of alternative and renewable energy sources, to introduce common technical standards for efficiency, safety, the protection of the environment and of the population, and to encourage the exploitation of European sources of energy".

Security of supplies and stability on the market are of peculiar importance with respect to energy as to agriculture; and standards for safety and for the protection of the environment and of the population also have particular significance in the field of energy. The Draft Treaty is right to give the European Union these responsibilities which the Member States are decreasingly able to carry, or where, as in the case of safety and environmental standards, actions in one Member State can have significant effects beyond national frontiers. The objective of a harmonised pricing policy to the extent that prices are regulated is also hard to gainsay, although it seems likely that this is already covered by article 101 of the Rome Treaty which requires the removal of any "difference between the provisions laid down by law, regulation or administrative action in Member States (which) is distorting the conditions of competition in the common market". Encouraging the development of alternative and renewable sources

of energy as well as other European sources are worthy aims; encouraging conservation would also be a worthy aim - but this raises the question whether it is advisable to list objectives in so much detail, or whether these more detailed objectives are not implicit in the wider objectives of security and stability. There should be some reluctance to enshrine in a Treaty that has many of the characteristics of a constitution specific policies that may in the future cease to be such significant priorities. But apart from this, and the perhaps unnecessary addition of "common technical standards for efficiency" among the things that Union action is to introduce, paragraph f appears to include only objectives with respect to which a strong case can be made for common action by the Union, and not to include matters that would be better left as the exclusive province of the States. Whether, in order to preserve their proper province for the States, the Union competence should be explicitly confined to action in pursuit of the specified objectives is a matter for jurists rather than economists to judge.

Social policy

The Institutional Affairs Committee's rapporteur on "policy for society" was concerned to gain popular support for the European Union project. "We cannot", he wrote, "expect Community citizens to enthuse about a purely institutional project or support it without knowing what policies, and the substance thereof, will be implemented by institutions of the future Union". But he went on to "admit that a positive description of the policies aspired to cannot include many practical details if it is seen as part of a venture designed to result in the drafting of a text that could serve as a constitution".(45) We have already encountered, in our examination of the part of the Draft Treaty concerning economic policy, some articles that appeared to contain unsuitable details. But the part of the Draft on "policy for society" raises doubts of another order: regarding the suitability of allowing the Union to coerce the States at all where social policies are concerned.

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(45) G. Pfennig, "The European Union's powers in the area of policy for society", in *Report of the Committee on Institutional Affairs, Part C*, op. cit., p.65 para. 2, p.66 para. 5.

Article 55 of the Draft Treaty gives the Union "concurrent competence in the field of social, health, consumer protection, regional, environmental, education and research, cultural and information policies". Thus the Union appears to have potentially exclusive competence (see p.3 above) for social policy as a whole or, if the word social is to be more narrowly interpreted than in customary English usage, at least over a very large part of social policy.

It is a normal principle of federal constitutions that functions are not transferred from the States to the federal government unless the States are unable to perform them satisfactorily; and the drafters of the European Union Treaty clearly intended the principle of subsidiarity to have the same result (see p.5 above). Proposals for federal systems usually envisage leaving the great bulk of social policy with the States.(46) Yet the constitutional defence of States' autonomy in these matters under the Draft Treaty seems to rest heavily on the principle of subsidiarity, which may as we have seen be an inadequate safeguard.

One way to limit the scope for the Union's incursion into Member States' autonomy in these fields would be to confine the Union's "concurrent competence in the field of social, health, consumer protection, regional, environmental, education and research, cultural and information policies" (art. 55) explicitly to only such parts of those fields as are specified in the subsequent articles 56-62. Yet even this would leave some provisions with highly centralising potential. Thus "the regional policy of the Union shall comprise the development of a European framework for the regional planning policies possessed by the competent authorities in each Member State" (art. 58). If a framework is to be effective, it is necessary to ensure that the policies made within the framework do indeed conform to it: hence the possibility that the Union could veto a local authority's decision to build a road by-passing a town or, conversely, could force the building of a road in the teeth of local opposition. Article 58 opens the

(46) See for example Francesco Rossolillo, *Citta territorio istituzioni*, Napoli, Guida Editori, 1983, p.62ff.

door, then, to detailed interference by the Union in what can be very local affairs. "The Union-wide validity and equivalence of diplomas and school, study and training periods" (art. 60) may give the Union scope to impose excessive uniformity of curricula in schools and higher education. "The establishment of general comparable conditions for the maintenance and creation of jobs" (art. 56) might be interpreted extremely widely; and "trade union rights and collective negotiations between employers and employees, in particular with a view to the conclusion of Union-wide collective agreement" has already been mentioned as an area where there could be high risks in Union intervention without local consent.

A second possibility would be for the Union to be allowed to spend its money in the fields or on the aims specified in articles 56-62, or even in the very wide fields listed in article 55, but not to interfere in legislation or expenditure by Member States, except where the Rome Treaty already provides for this (eg with respect to equal pay and to the size of subsidies to investments in the various regions). Harmonisation of Member States' legislation could also be subject to the method of cooperation, based on unanimous agreement among the Member States.(47) If the European Parliament is not convinced by these arguments, and Union control over States' legislation is thought to be particularly important in some parts of the areas listed in articles 55-62, the list of subjects specified in these articles should at least be carefully scrutinised in order to determine where the case is particularly strong, so that subordination of State to Union legislation would be confined to as short a list of subjects as possible.

Conclusions

A number of ways in which the Draft Treaty might be amended have been considered, some of which may be regarded as important or even essential improvements, others as minor ameliorations that might help to make the draft stronger or more acceptable.

(47) Article 55 could then read "The Union shall conduct its relations by the method of cooperation in the field of social, health, consumer protection, regional, environmental, education and research, cultural and information policies".

Perhaps the most significant single issue is whether the principle of subsidiarity can be made a more effective safeguard against the danger of over-centralisation. One possibility is to define the principle more sharply, particularly in order to forestall any tendency to circumvent it by adopting inherently centralising objectives. Another would be to give more weight to the values of diversity and decentralisation in the general objectives of the Union. A third would be to ensure that the Union's guarantees of human rights are defined as effectively as possible to this end.

A different form of general safeguard would be the requirement of an absolute or a qualified majority of the votes of Member States' representations in the Council, instead of just one-third of the weighted votes plus one, if the Union is to enact laws that "extend" its common action. (On the other hand it would seem desirable that appointment of the Commission's President and amendment of the Treaty could be decided by something short of unanimous agreement.)

None of these general safeguards seems, however, strong enough to obviate the need to define limits to the Union's action in fields specified in the Draft Treaty, in order to prevent the exercise of the Union's concurrent competence from automatically giving the Union exclusive competence over an excessively wide area. These limits may be defined in terms of the aims, fields or instruments of Union policy, or conditions that must apply if Union action is to be justified.

One of the ways in which Union activity can be limited in certain fields is by confining it to cases which "directly affect the establishment or functioning of the common market" (as the Rome Treaty puts it, in article 100 on the approximation of laws) or which involve "distortions in economic transactions among the Member States", or some such formulation. Such limits have been suggested above with respect to competition policy, approximation of laws relating to undertakings, tax harmonisation,

transport and telecommunications; and it has been suggested that the cases be further limited to those with a substantial effect.

Other aims can in addition be allocated to the Union, such as stability of markets and security of supplies (agriculture, energy). As far as agriculture is concerned, this aim is not defined in order to limit Union activity to action taken to further it, but in order to guide Union action within the wide field of agricultural policy which is open to it. There is a case, however, for limiting any use of special Union powers allocated by the Draft Treaty in the field of energy to these and a few other specified ends such as safety and environmental protection, beyond which any action in this field would have to rest on the powers given to the Union elsewhere in the Draft Treaty, as well as in the Community Treaties. Other examples of specific aims laid down for the Union are the creation of a "telecommunications network" and of a "transport network commensurate with European needs"; and the Union's powers specific to these two fields could well be limited to that, together with the removal of distortions that substantially affect economic transactions among the States.

A narrower definition of fields for Union action than the Draft Treaty proposes has been suggested for competition policy (to concern the matters defined in the EEC and the ECSC Treaties), and for tax harmonisation (to exclude personal income tax). A narrower definition has likewise been suggested for the field that contains the heart of the Draft Treaty's economic proposals: conjunctural (as the Draft Treaty puts it) or general economic policy. Here it is proposed that, while the Union should use any of its own financial and budgetary instruments in pursuing its general economic policy, its interventions regarding the Member States' laws, policies and instruments in this field should be confined to monetary affairs, leaving the States' and local authorities' budgets in the sphere of Member States' autonomy.

This leads on to the issue of those provisions in the Draft Treaty that give the Union concurrent competence to coordinate the policies or actions of the Member States. Where, as with monetary policy, exclusive competence for the Union is a legitimate eventual aim, such a provision is justified. Where, as with research and development, such a degree of centralisation appears highly undesirable, it has been suggested that the Union's activity be based on expenditure from its own resources (which under the terms of the Draft Treaty can be very substantial), whether alone or jointly with Member States, but that no provision be made for the Union to exercise compulsion over the research policies or programmes of the States or over private research and development. Industrial policy comes somewhere between the two, but this paper, in accordance with the decentralist (or federalist) philosophy that underlies it, leans towards a formulation in the Draft Treaty similar to that suggested for research and development, bearing in mind that the Community patrimony already gives the Union important instruments of industrial policy in the form of the competition policy, the control over state aids, the common commercial policy, and the financial and budgetary resources which under the Draft Treaty can be increased so as to carry much greater weight.

Also in line with the paper's decentralist and federalist philosophy, it is suggested that the Union's power to control the States' laws, policies or expenditure on social policy should be very restricted, if indeed the Union is to have any such power beyond the few items that it inherits from the Community. The Union's power to spend its own money in these fields using the method of common action is viewed more tolerantly. Apart from this, however, the method of cooperation appears more suitable than that of common action over most if not all of this field, because the relationship between Union and States should not be based on compulsion.

The major instance with respect to which it has been suggested that Union competence could be limited by a condition is that of full monetary union, transition to which could be

conditional on Member States' agreement that adequate equilibrium had been established in their mutual economic relationships.

Apart from those matters that reflect the great issue of subordinate or coordinate relationships between the Union and the States, there are some articles that contain what appears to be unnecessary detail, whose removal would strengthen the Draft Treaty. Examples are to be found in the articles on telecommunications and the free movement of goods and services.

* * *

None of these detailed criticisms of the Draft Treaty's provisions for economic and social policy should be taken as calling in question the essential principles that are embodied in the Draft. The intention is quite the opposite. The Draft has attracted the support of the Belgian and Italian Parliaments and President Mitterrand has said kind words about it in his address to the European Parliament on 24 May 1984;(48) and it has been on the agenda of the Ad Hoc Committee on Institutions established following Mitterrand's initiative at the Fontainebleau summit. But that is a far cry from ratification of the Draft Treaty as it stands. A great deal of effort will have to be put into persuading parliaments, the public and of course governments if a European Union Treaty containing the Draft Treaty's essential features is to be ratified; and careful consideration of proposed amendments to the Draft should both help to improve the Treaty and contribute to the process of persuasion: a sort of engrenage between the European Parliament and political forces in the member countries. Such a process is not only necessary if enough governments and parliaments are to be convinced that the Treaty should be ratified. It would also help to establish what Wessels has rightly stressed is an essential basis of the European Union: its legitimacy in the eyes of the citizens.(49)

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(48) Op. cit.

(49) Op. cit., p.243.

One particular merit of giving a prominent place in such discussion to the main concern of this paper - safeguards for the proper autonomy of the Member States - could be to channel nationalist reactions in a constructive direction. Even if one does not go all the way with Friedrich's categorisation of the type of constitution to which we are accustomed in the West as "a system of effective, regularised restraints upon the exercise of governmental power",(50) this is certainly an important requirement for the European Union Treaty. The Union should be based on a coordinate relationship between Union and States, not on the subordination of one to the other; and the preservation of sufficient autonomy for the States is an essential part of this. But it is, equally, important that the Union not be subordinate to the States in matters where Union action is necessary for the general welfare. Thus the European Parliament should not fail to defend the hard core of its Draft: co-decision by Council and Parliament with no time limits and majority votes; basic economic powers in the fields of the internal market, monetary union and the Union's financial resources.

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(50) Carl J. Friedrich, "Federal Constitutional Theory and Emergent Proposals", in Arthur W. Macmahon (ed.), op. cit., p.516; Friedrich refers here to his *Constitutional Government and Democracy* (revised edition), Barton, Ginn, 1950.

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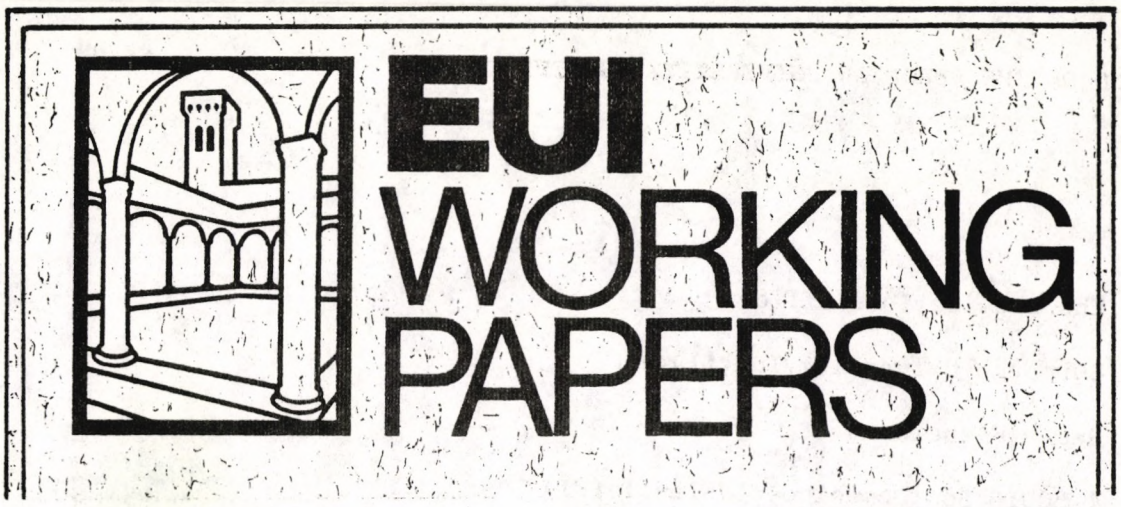

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