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WHO'S MINDING THE STORE?": DETERMINING THE LOCUS OF CONTROL OF TELECOMMUNICATIONS POLICY MAKING IN THE EUROPEAN COMMUNITY

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WHO'S MINDING THE STORE?: DETERMINING THE LOCUS OF CONTROL IN TELECOMMUNICATIONS POLICY MAKING IN THE EUROPEAN COMMUNITY

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ABSTRACT

WHO'S MINDING THE STORE?: DETERMINING THE LOCUS OF CONTROL IN TELECOMMUNICATIONS POLICY MAKING IN THE EUROPEAN COMMUNITY

By

Philip C. Fare

This study explores the locus of control in telecommunications policy making in the European Community (Community). The Community is evolving in terms of economic and international integration from a customs union toward becoming a common market and, eventually, an economic union. The political theories that pertain to international integration--federalism, confederalism, functionalism, neo-functionalism and international regimes--reveal that the Community is currently most like a confederation. The Member States determine policy at the collective level, but retain a large measure of control in implementing that policy at the national level.

That control becomes more apparent when the Community's legal order and policy making structure are examined. The Community has its own legal order and policy making processes which involve multiple actors, including the Community institutions, Member State governments and special interest groups. These actors interact in various ways in policy making, depending on the Community agenda and the

subject matter involved.

The Community has chosen telecommunications as a key industry to lead the Community to economic improvement, recognizing the direct importance of telecommunications in the economy and the derived demand for telecommunications in various industries. However, the telecommunications sector in the Community was operating in a fragmented, heterogeneous market.

A series of policy proposals has helped establish the framework for developing a Community-wide telecommunications market in equipment and services. An analysis of the policy making processes that led to those proposals and the Community legal instruments that were later enacted reveals that the national governments retain a large measure of control in determining and implementing Community telecommunications policy.

To my best teachers and
my connection to Europe,

my Mother, Gladys,
and her parents,
Peter and Sarah Banoff

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TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

CHAPTER I

INTRODUCTION

On March 25, 1957, ministers of six European nations met in Rome and signed a treaty (EEC Treaty)[1] that created the European Economic Community (EEC), which--together with the European Atomic Energy Community (Euratom)[2] and the previously established European Coal and Steel Community (ECSC)[3]--came to be known as the Common Market or the

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[1]Treaty Establishing the European Economic Community, Mar. 25, 1957, 1 Treaties Establishing the European Communities 207 (1987) [hereinafter EEC Treaty]. Belgium, France, Germany, Italy, Luxembourg and the Netherlands were the founding Member States. Three of the countries--Belgium, the Netherlands and Luxembourg--had previously formed a customs union on January 1, 1948, known as the Benelux Economic Union, which served as the basis for future discussions regarding establishing the European Economic Community.

[2]Intended as a means of promoting the peaceful use of atomic energy in Europe, the treaty creating Euratom was also signed by the Community of Six on March 25, 1957. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 1 Treaties Establishing the European Communities 611 (1987) [hereinafter Euratom Treaty].

[3]Previously, on April 18, 1951, the Community of Six had signed a treaty establishing the European Coal and Steel Community as a means of promoting economic integration through the common control of the coal and steel industries. Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 1 Treaties Establishing the European Communities 17 (1987) [hereinafter ECSC Treaty].

European Community (Community).[4] Motivated by a desire to pool their resources to preserve and strengthen peace and liberty in postwar Europe,[5] the signatories established the Common Market to promote "a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."[6]

The concept of unifying Europe on economic grounds, however, was not a new one. Following World War I a European federation based on interdependent economies was considered by some as a means to avoid further political anarchy and war.[7] Further devastated by World War II, Europeans had begun to question the international political order, in particular the basic unit of that order: the nation-state. European union therefore became not only a means to rebuild Europe's fragmented economy but a way to

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[4]Although the three Communities retain distinct legal personalities, they were officially merged in 1965, and the designation "European Community" has since been used in official documents, other than legislation, whenever possible and appropriate. Resolution of February 16, 1978 on a Single Designation for the Community (OJ 63, 13.3.1978, p. 36.)

[5]EEC Treaty, *supra* note 1, Preamble.

[6]EEC Treaty, *supra* note 1, art. 2.

[7]*See* Harold J. Laski, The Economic Foundations of Peace, in The Intelligent Man's Way to Prevent War 502 (Leonard Woolf ed., 1933) 502; Lionel Robbins, The Economic Causes of War 104-09 (1939). The customs frontier between Belgium and Luxembourg had been abolished on May 1, 1922.

control political antagonism. However, despite the shift of economic policy making to the Community level, questions regarding the role of the nation-state in Community affairs remained.

The distinctiveness of the Community as an international organization has attracted the attention of various scholars of world politics and political science. Chief among the theoretical schools are federalism, confederalism, functionalism, neo-functionalist and international regimes, all of which differ in their analysis of the role of the nation state in the integrative process.[8] As a result several problems arise in reconciling the theories and finding one that adequately describes the Community. Although the theories are each internally cohesive, they differ dramatically from one another, each focusing on different basic concepts. In addition, the theories often tend toward abstraction, focusing on what is presumed will, or ought to, happen within the Community. Finally, at the expense of concentrating on the central institutions that might develop during the integration process, the theories often ignore the status of the nation-state after integration.

Over the years the Community has not developed into the

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[8]For a discussion of the various theories of international integration, see Charles Pentland, International Theory and European Integration (1973); Stephan Haggard & Beth A. Simmons, Theories of International Regimes, 41 Int'l Organization 491 (1987).

"United States of Europe" envisioned by those theorists who initially studied the organization. Indeed, the Community has developed its own political system and legal order, and its institutions serve as the core of the organization. However, for a number of reasons, those institutions have not developed into the type of supranational entities that people predicted would emerge.

Understanding the Community as an international organization requires further understanding of the role of the nation-state in the Community. Throughout the development of the Community its Member States have been at the heart of the integration and policy making processes. At various times for various reasons some Member States have resisted integration on certain levels. The growing membership in the Community,[9] which has added to its cultural, economic and geographic diversity, has had an impact on the interrelationship among the Community institutions and the policy making processes. The strict structure of the Treaty of Rome has also been criticized as a hindrance to the development of the competencies of Community institutions beyond a certain point.[10] Thus, the

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[9]Since its inception the EC has gradually grown from six to its current twelve Member States. Denmark, Ireland and the United Kingdom became Member States on January 1, 1973. On January 1, 1981, Greece became a Member State. Portugal and Spain became Member States on January 1, 1986.

[10]*See* Luciano Bardi & Gianfranco Pasquino, The Institutionalization Process Under the Draft Treaty, in An Ever Closer Union 141 (Roland Bieber et al. eds., 1985).

way in which the Member States interact with each other and the Community institutions is important in developing and implementing policy for a unified Europe.

Establishing a single market through common policies is a task that begins as the exclusive preserve of the Community and its institutions. The main Community institutions--the Commission, Council of Ministers, European Parliament and European Court of Justice--each play a different role in the policy making processes. Over the years other institutions and actors--the European Council, the Committee of Permanent Representatives (Coreper) and various standards organizations--have also taken part. As the Community has grown in membership, the competencies of its institutions have changed, bringing about new relationships among themselves and between the organization as a whole and its Member States. In the end, however, it is the Member States that must implement the policies at the national level. Therefore, the locus of control in Community policy making may not be in the Community institutions, for the Member States play an important role through the final stages of the policy making processes.

The purpose behind economic integration among the Member States has changed over the years. The economic unity that was once seen as a means to maintain peace and stability is now seen as a means to challenge the economic might of Japan and the United States. This has been true

especially since the early 1980s, when the Community renewed its focus on developing a single internal market guaranteeing the free movement of persons, goods, services and capital. In 1985, a White Paper identified 300 barriers to establishing a single market and proposed ways to overcome them.[11] The next year the Member States signed the Single European Act,[12] which took effect on July 1, 1987, and revised the EEC Treaty, implementing the White Paper proposals and changing the decision making processes of the Community institutions. Of particular interest in the Single European Act was a provision that set December 31, 1992 as the deadline for establishing the internal market.[13]

The concentrated effort on economic unity stimulated by the enactment of the Single European Act came none too late. By the mid-1980s the widespread use of new advanced technologies, particularly in the areas of micro-electronics and information technology, had signaled what has been considered the beginning of another long wave of economic development.[14] The Community Member States, however, were

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[11]Completing the Internal Market: White Paper from the Commission to the European Council, COM(85)310 final.

[12]Single European Act, 1987 O.J. (L 169).

[13]*Id.* art. 13. Although this deadline will not be met in all areas of Community policy, it has served to focus the Community institutions, the Member States and their citizens on the task of integration.

[14]*See, e.g.*, Chris Freeman, Long Waves of Economic Development, in The Information Technology Revolution 602 (Tom Forester ed., 1985). The Russian economist and statistician

suffering from a technology gap and loss of competitiveness in these areas and in telecommunications in general. Behind the technological decline was the fragmented European market, resulting from chauvinistic industrial policies and protective regulatory regimes.

Around the same time the Commission acknowledged the two-fold importance of the telecommunications sector in the development of the single market.[15] First, it recognized the substantial direct role telecommunications plays in the economy through its large contribution to the Community GDP and the large amount of investment it requires.[16] Second, the Commission recognized the indirect impact of telecommunications investment, noting the ability of industries such as manufacturing, banking and tourism to increase productivity and decentralize through investing in telecommunications services and equipment.[17] Because of the

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Nikolai Kondrat'ev first measured and noted 50-year cycles of economic development. *See* Nikolai Kondrat'ev, The Long Wave Cycle (Guy Daniels trans. 1984). Later, Joseph Schumpeter associated the cycles with major technological changes--the introduction of railways, electricity and the development of petroleum chemistry--that spurred further innovations, changes in infrastructure and increased investment. *See* Joseph A. Schumpeter, Business Cycles: A Theoretical, Historical and Statistical Analysis of the Capitalist Process (1939).

[15]Communication from the Commission to the Council on Telecommunications, Progress Report on the Thinking and Work Done in the Field, and Initial Proposals for an Action Programme, COM(84)277 final [hereinafter 1984 Community Action Program].

[16]*Id.* at 3.

[17]*Id.* at 3.

widespread economic effect of the telecommunications sector as an industry in its own right and as a factor of production for other industries, concerted action by the Member States was determined necessary to face the challenge of the new industrial revolution. The Commission feared that maintaining fragmented national markets and a divided approach to telecommunications policy would only increase the technology gap.[18]

In June 1987, the Commission issued a Green Paper on telecommunications.[19] The purpose of the Green Paper was to start a Community-wide debate on the future regulatory regime for telecommunications in light of its recognized role in establishing the single internal market. The Green Paper sets out several proposed positions with an aim to improve telecommunications infrastructure, to offer a broader range of services on more favorable terms to users, to ensure coordinated development among the Member States, to create a competitive environment and to ensure a transparent network.

Creating a Community-wide telecommunications market necessitates transforming the current situation and changing the regulatory regimes of the Member States. The task

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[18]*Id.*

[19]Towards a Dynamic European Economy--Green Paper on the development of the common market for telecommunications services and equipment, COM(87)290 final [hereinafter Green Paper].

before the Community requires ensuring that a Community-wide scale and dimension is introduced by the transformation, that no new barriers are created and that existing barriers are removed. To achieve these goals several important directives[20] have already been adopted.

Most of the directives are aimed at increasing competition in various areas of the telecommunications sector. Three directives have gradually increased competition in the terminal equipment sector, leading to full mutual recognition of terminal equipment.[21] Competition in the market for value-added services was opened up immediately in a services directive,[22] which also opens up competition in basic data services on January 1, 1993. Telecommunications procurement markets, which had been highly protected by national industrial policies, were opened to bidders from other Member States in a directive

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[20]A directive is one of type of Community legislation. *See infra* Chapter III.

[21]Council Directive of 24 July 1986 on the Initial Stage of the Mutual Recognition of Type Approval for Telecommunication Terminal Equipment, 1986 O.J. (L 217) 21; Commission Directive of 16 May 1988 on Competition in the Markets in Telecommunications Terminal Equipment, 1988 O.J. (L 131) 73 [hereinafter Terminal Equipment Directive]; Council Directive of 29 April 1991 on the Approximation of Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity, 1991 O.J. (L 128) 1 [hereinafter Full Mutual Recognition Directive].

[22]Commission Directive of 28 June 1990 on Competition in the Markets for Telecommunications Services, 1990 O.J. (L 192) 10 [hereinafter Services Directive].

dealing with public procurement procedures.[23] An Open Network Provision Directive[24] concerns the open and efficient access to public telecommunications networks through harmonization of technical interfaces and service features, supply and usage conditions and tariff principles.

This dissertation will focus on both the Community and its developing policy in the telecommunication sector as a means to examine several important questions:

1. In light of prevailing theories of international integration, how is the European Community best characterized as an international organization, given the composition and competencies of its institutions?

2. To what extent are the national governments of the Member States involved in the policy making processes?

3. Given the recognized importance of the telecommunications sector in establishing a single internal market, where is the locus of control in the telecommunication policy making process?

Chapter II examines the various theories of international integration in an effort to determine their significance in understanding the Community as an

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[23]Council Directive of 17 September 1991 on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors, 1990 O.J. (L 297) 1.

[24]Council Directive of 28 June 1990 on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision, 1990 O.J. (L 192) 1 [hereinafter ONP Directive].

international organization. Chapters III and IV provide background on the Community legal order and examine the role of the Community institutions and other actors in the policy making processes. These chapters are necessary to provide a framework for understanding how the Community functions.

Chapters V and VI focus on telecommunications policy in the Community. Chapter V discusses the role of telecommunications in the Community in terms of its direct effect on the economy and the derived demand for telecommunications services in various businesses. Chapter VI discusses the approach the Community is taking toward policy making in the telecommunication sector and analyzes the various policy documents issued by the Community, particularly those that implement the objectives of the Green Paper. Chapter VII concludes the dissertation, summarizing the results of the analyses in previous chapters and revisiting the questions proposed in this chapter.

CHAPTER II

THEORETICAL FRAMEWORK

In the varied literature pertaining to international organizations, the Community has been called a strange hybrid.[25] Its process of integration has been complex, and no single theory has yet established itself in explaining the organization. Indeed, some scholars have criticized the theoretical literature as inadequate in explaining the Community and the relationships that exist between this organization and its member states.[26] Some problems in the literature result from theories developed in the early years of the Community that were not later confirmed by the activities of the organization. This chapter will review two major areas of theory that mark the Community as an international organization. First, the theory of economic integration will be discussed in order to determine the status of the Community in its own evolutionary process. Then the various political theories regarding international integration are reviewed to determine which best explains the structure of the Community.

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[25]Shirley Williams, Sovereignty and Accountability in the European Community, 61 Pol. Q. 299, 300 (1990).

[26]*See, e.g.*, Bardi & Pasquino, *supra* note 10, at 143; Webb, Carole, Theoretical Perspectives and Problems, in Policy-making in the European Community 1 (Wallace, Helen et al. eds., 2d ed. 1983).

I. The Theory of Economic Integration

The concept of integration involves notions of cooperation and coordination, and integration can occur across various aspects of social, political or economic life.[27] For example, a variety of social groups have been brought together through the Community, some bounded by geopolitical frontiers and others not. The Member States have also attempted to further political integration as well, as evidenced by the Treaty of Maastricht.[28] The primary impetus for integration, however, has been economic, as evidenced by the objectives stated in the ECSC Treaty, the EEC Treaty, the Single European Act and many of the activities of the organization since its inception.

Economic integration, which can occur at various levels, differs from mere coordination or cooperation in that integration involves eliminating certain forms of discrimination.[29] At the first level is the free trade

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[27] *See* Gareth Locksley, European Integration and the Information and Communications Technologies: The Double Transformation, in The Single European Market and the Information and Communication Technologies 4-9 (Gareth Locksley ed., 1990).

[28] *See* Council of the European Communities & Commission of the European Communities, Treaty on European Union (1992) [hereinafter Treaty of Maastricht]. The Treaty of Maastricht was signed on February 7, 1992 in Maastricht, the Netherlands.

[29] *See* Bela Balassa, The Theory of Economic Integration 1-3 (1962); Ali M. El-Agraa, General Introduction 1-2, in The Economics of the European Community (Ali M. El-Agraa ed., 3d ed. 1990).

area, an example of which is the European Free Trade Area (EFTA). Within a free trade area the member states lower trade barriers among themselves but remain independent from one another in determining their external trade and economic policies regarding non-members. In the next level, a customs union, external trade policies are harmonized among members.

Further advances in economic integration occur at the next levels. When a common market is created, there is free mobility of factors of production, i.e. capital, labor and raw material, between members. The same occurs at the fourth level of integration, the economic union. However, what is added at that level is some degree of harmonization of national economic policies. In a complete economic union, monetary and fiscal policies are unified and subject to a central controlling authority that makes decisions binding on the member states.[30]

At least one writer argues that these levels each exist separately and are not necessarily stages or parts of a process.[31] However, the prevailing view is that the levels are successive.[32] Economic integration gives rise to an increasing openness and economic interdependence among participating member states, creating its own internal

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[30]Balassa, *supra* note 29, at 2.

[31]See El-Agraa, *supra* note 29, at 2.

[32]*See* T. Hitiris, European Community Economics 1-2 (1988).

dynamic. Independent courses of action become less possible and policy conflicts more apparent as interdependence progresses. Further economic integration becomes a means of resolving such conflicts,[33] and progress is made toward the next level.

Each level of economic integration allows a variety of possible gains to those nation-states involved. At the level of a free trade area or customs union greater economies of scale can be exploited through the increased size of the market. The larger market can also lead to an improved international bargaining position and improved trade. Competition is also enhanced, forcing changes in economic efficiency. At the level of a common market or economic union additional possible gains include factor mobility, the coordination of monetary and fiscal policies and unified efforts at achieving economic growth.[34]

Because the Community is evolving, it does not fit easily into one of the levels of economic integration. At its foundation is a customs union.[35] However, the institutions within its legal order make decisions binding on the Member States, which is one of the characteristics of

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[33]A move backwards to a lesser level of integration is also possible. However, such a move would seem appropriate only where the need to harmonize policies is minimal and can be achieved through channels other than the economic association itself.

[34]El-Agraa, *supra* note 29, at 12-13.

[35]*See* EEC Treaty, *supra* note 1, art. 9.

an economic union, so an eventual rise to that level seems an apparent secondary objective. At this point in time the Community is a common market, the completion of which is one of the objectives under the Single European Act.[36] Various barriers to free factor mobility still exist, such as differing technical standards, which must be lowered to achieve the full status of a common market. Reaching the level of an economic union requires further integration and remains a future goal.[37]

II. Theories of International Integration

Since the inception of the Community several theories--federalism, confederalism, functionalism, neo-functionalism and international regimes--have been applied to explain the Community.[38] Questions regarding the nature of the Community as an international organization are, at their root, theoretical, and the branch of political theory known

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[36]*See supra* text accompanying notes 12-13.

[37]*See* Single European Act, *supra* note 12, art. 102a.

[38]Pentland has reviewed federalism, confederalism, functionalism and neo-functionalism as they apply to the European Community. *See* Pentland, *supra* note 8. Haggard and Simmons have reviewed the various works in the area of internation regimes theory, much of which has been applied to the Community. *See* Haggard & Simmons, *supra* note 8.

as integration[39] theory serves as the best means for arriving at an answer. However, for several reasons the literature in this field appears to lack pattern and direction, providing few clear signposts along the way. For the most part the problems arise from the nature of political theory itself, which is often based on a rigid set of assumptions. In addition, the focus of political theory is often normative and predictive.

Like most theories, a political theory is a web of interrelated concepts that purports to make sense of the world. Based upon certain definitions, principles and assumptions, a political theory describes, characterizes and explains aspects of political reality through a process of distinction and delimitation. When political theories are based on different premises or use different definitions or take a different perspective on the reality in question, they often contradict one another. This opens them to criticism, which is not uncommon in a field as complex and multifaceted as international politics.

The political world is most often explained and understood in theoretical terms rather than through empirical testing. Thus, political theory differs from scientific theory in that it is much harder to assess the

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[39]Political integration has been defined as "the evolution over time of collective decisionmaking among nations." *See* Leon L. Lindberg, Political Integration as a Multidimensional Phenomenon Requiring Multivariate Measurement, in Regional Integration 45, 46 (Leon L. Lindberg et al. eds., 1971).

rigor of a political theory. Because political theories tend to constitute the reality of the political world, there is no independent reality against which they can be judged. One political theory may be discounted on the basis of an assumption of another. Thus, the adequacy of the theory is determined by its ability to explain the political world.[40]

Another problem with political theory is that its focus is often too normative in that in addition to setting forth definitions and principles, it also often sets forth standards and forms of conduct that are desirable. However, any political reality involves certain facts. Theories attempting to describe the Community have often been so absorbed in the normative component that they have ignored the evidence of facts, both present and historical. Their focus has been on what ought to happen rather than on where the Community stands in the logic of international relations.

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[40]*See, e.g.*, Andrew Vincent, Theories of the State 40-42 (1987).

A. Federalism

Although federalist ideas may have an earlier origin,[41] as a modern theory of government, federalism was born to describe the formation of the United States. However, over the years federalist theory has extended its reach and now helps describe a variety of international situations. From the classic theory of federalism new types of federalism have developed that go beyond the model of a unitary system, taking into account the dynamics of international integration.

The classic theory of federalism was articulated by K. C. Wheare.[42] For Wheare, a federal government constitutes "an association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence."[43] Power in the association is divided between a general government that is independent of the governments of the associated states and the state governments, which, in certain matters, are independent of the general government. This division of

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[41]Some scholars find sources of early federal institutions in the Greek city-states. *See, e.g.*, Adda Bozeman, Politics and Culture in International History 102 (1960). Other scholars, however, disagree with such characterizations. *See, e.g.*, F. H. Hinsley, Power and the Pursuit of Peace 66-69 (1963).

[42]*See* K. C. Wheare, Federal Government (4th ed. 1964).

[43]*Id.* at 1.

powers is the federal principle, which Wheare defines as "the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent."[44]

Some formal division of powers between levels of government is found in most classic descriptions of federal governments. Macmahon, for example, describes the characteristics of federalism as (1) a distribution of powers between central and local governments, (2) substantial rather than trivial local powers, (3) contact between the central government and individual citizens, (4) some amount of freedom for member states to determine their internal organization and (5) legal equality of the member states.[45] Other writers have described federalism as a "constitutional distribution of powers between the central establishment and the members of the system"[46] or an "apportioning jurisdictions among organized collectivities."[47]

In general, federalists see integration as a political

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[44]*Id.* at 10.

[45]Arthur W. Macmahon, The Problems of Federalism: A Survey, in Federalism: Mature and Emergent 4-5 (Arthur W. Macmahon ed. 1955).

[46]William Hartwell Bennett, American Theories of Federalism 72 (1964), paraphrasing The Federalist, No. 9, 61 (Alexander Hamilton).

[47]Marcel Merle, Federalism and France's Problems with its Former Colonies, 1945-63, in Public Policy 403 (John D. Montgomery and Arthur Smithies eds., 1965).

phenomenon involving national political elites. Integration results in a particular kind of supranational entity that deals with the problems of power and control by maintaining order among its member states. Indeed, power is a theme that runs through most federalist writing.[48] The basic objective of federalism is the limitation of centralized power as a safeguard against domination by a single group. Therefore, in a federation a tension exists between unification and pluralism as an attempt is made to balance the advantages of size and uniformity with those of smallness and diversity.[49]

Classic federalism, at a minimum, requires a rigid, formal division of powers between two levels of government. The system is essentially a static one. Political institutions solve problems, often in a mechanistic fashion and subject to various "checks and balances" to assure a separation of powers. Sometimes there are additional requirements, such as constitutionally prescribed powers and a bicameral legislature. In general, the central government has jurisdiction over defense, finance and foreign relations because these areas demand unitary control to treat problems effectively.[50] The states retain control over internal affairs.

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[48]*See* Pentland, *supra* note 8, at 154-55.

[49]Pentland, *supra* note 8, at 149, 154.

[50]Wheare, *supra* note 42, at 237-39.

However, when federalism is applied as a model for international integration, there are fewer requirements.[51] Little more is required than two levels of government, each of which is guaranteed autonomy in at least one area of action. For some theorists even such minimal criteria seem inflexible.

Trends in international relations since World War II have produced a shift in federalist thinking from a static perspective to one that is more dynamic. Carl J. Friedrich is the principle proponent of a model of federalism in which the concept is construed as a process. Friedrich defines a federation as "a union of groups, united by one or more common objectives, rooted in common values, interests, or beliefs, but retaining their distinctive group character for other purposes."[52] Friedrich's version of federalism is "the process of federalizing a political community" and may result from either integration or differentiation.[53] He distinguishes federalism from other forms of social organization by its focus on balancing a central organization with its component parts in a process of

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[51]At one time the concept of international federalism was challenged as a misnomer or impossibility. The establishment of the Community, however, has given the term political meaning and significance. *See* Carl J. Friedrich, Trends of Federalism in Theory and Practice 82-88 (1968).

[52]*Id.* at 177.

[53]Carl. J. Friedrich, Federal Constitutional Theory and Emergent Proposals, in Macmahon, *supra* note 44, at 514.

reciprocal adaptation.[54] This approach to federalism focuses more on the process rather than the institutions.[55]

During the 1980s a new approach to federalism developed known as cooperative federalism. This branch of federalist theory is characterized by a shift from the classic distribution of exclusive powers between two levels of government to a model based on concurrent powers.[56] This implies a pooling or mixing of competencies between levels of government, changing a dualistically conceived system into a cooperative one. As noted by Levi, an increasing number of policy objectives require the coordinated efforts of both levels of government and a joint commitment to carry them out.[57] Such joint tasks are characteristic of technical policy areas, according to Bulmer and Paterson.[58] Derived in part from the West German experience with federalism,[59] cooperative federalism turns policy making

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[54]Friedrich, *supra* note 51, at 177.

[55]According to Friedrich, a federal system can also be found in non-governmental organizations such as unions, interest groups and churches. *Id.*.

[56]Lucio Levi, Recent Developments in Federalist Theory, in Altiero Spinelli and Federalism in Europe and in the World 29, 31 (Lucio Levi ed. 1990).

[57]*Id.*

[58]*See* Simon Bulmer & William Paterson, The Federal Republic of Germany and the European Community 187 (1987).

[59]*See* Simon Bulmer & Wolfgang Wessels, The European Council: Decision-making in European Politics (1987); Renate Kunze, Kooperativer Föderalismus in der Bundesrepublik (1968).

into an exercise in which decisions important to both the central and state governments are made jointly.[60]

Regardless whether the approach to federalism is static or process-oriented, several prerequisites are necessary before a federal system of government can be adopted.[61] Most important is the requirement that the member states desire to unite under a single independent government,[62] without which there cannot be a federal government. At the same time the member states must desire to retain or establish independent local or regional governments for some matters. Otherwise, there would be no division of powers between levels of government. Thus, the member states must desire to unite for some purposes and to remain independent for others.

The mere desire to form a federal system, however, is not enough; the member states must also be capable of adopting it. First, there must be sufficient economic resources to operate the central government. Similar economic and political systems between member states are other favorable conditions for adopting a federal government. The degree of similarity necessary is related

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[60]For example, in West Germany the federation and the Länder jointly determine policy in commonly planned and financed areas concerned with national importance that require large investments by the Länder and municipalities.

[61]*See, e.g.*, Amitai Etzioni, Political Unification 14-64 (1965); K. C. Wheare, *supra* note 42, at 35-52.

[62]Wheare, *supra* note 42, at 35.

to the objectives behind adopting a federal system. Although similarities in language, culture, religion and race might seem essential for federal integration, history has shown they are usually unnecessary.[63] Too much divergence between member states regarding these conditions, however, might decrease the prospects for a federal system.

In a federal system the state is a political given, something to be accommodated rather than abolished. During integration the state plays an important role because integration can only be brought about by the states themselves. After integration is complete, the state has its own sphere of jurisdiction, although limits are established within the system to control the states' powers. Nonetheless, in distinction to some other theories of international integration, in federalism the state is a vital entity that continues as part of the integrated system.

B. Confederalism

The nature of a confederation, or a confederacy, as a political system is a subject few theorists have studied in depth, although confederations are sometimes dealt with briefly in works dealing with federalism. John C. Calhoun,

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[63]Etzioni, *supra* note 61, at 22-23; Wheare, *supra* note 42, at 38-39.

the nineteenth century political theorist, described a confederation as

> allied to an assembly of diplomats, convened to deliberate and determine how a league or treaty between their several sovereigns, for certain defined purposes, shall be carried into execution; leaving to the parties themselves to furnish their quota of means, and to co-operate in carrying out what may have been determined on.[64]

Beloff similarly defined a confederation as a system in which institutions are set up through which "individual governments, acting on behalf of their own countries, accept certain procedures for arriving at joint decisions which they are prepared to carry out afterwards through their own instrumentalities."[65] A treaty is the usual document that establishes a confederation and outlines its procedures for making and implementing decisions. Thus, at its heart a confederation is an alliance for joint decision making that does not infringe on the self-determination of its member states.

A confederation is distinguishable from a federation, although the former might be a step in the process toward the latter. In a federation the central power is a genuine government usually established by a constitution. Being a government, it has the power to pass and execute laws. Usually the central government in a federation exercises the

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[64]John C. Calhoun, Works 162-63 (R. K. Cralle ed. 1968).

[65]Max Beloff, International Integration and the Modern State, 2 J. of Common Mkt. Studies 52, 58 (1963).

power to tax and engages in foreign policy and defense. A confederation does not have any of these powers, and what powers it does have are derived from the governments of its member states and a treaty or agreement ratified by those governments. Furthermore, a federation is an unmediated union created by the people of its member states in which a central government and the governments of the member states are coordinate in their own jurisdictions. A confederation, on the other hand, is a union of member states created through the organs of their respective governments and remains subordinate to those governments.[66]

Thus, the state retains its identity and power in a confederation. However, in the areas that are the subject matter of the confederation, the state exercises that power as a member of a collective. The confederation is "a profound locking together of states themselves as regards the exercise of fundamental powers"[67] and represents something "beyond the normal restricted circle of interstate relations."[68]

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[66]*Id.* at 165; see also William Wallace, Europe as a Confederation: The Community and the Nation-State, 21 J. of Common Mkt. Studies 57, 61 (1982); Wheare, *supra* note 42, at 32.

[67]Murray Forsyth, Unions of States 15 (1981).

[68]*Id.* at 4.

C. Functionalism

The functionalist school constitutes a group of theorists who focus on international organizations and the international world order. Best represented by David Mitrany, the functionalists believe that social structures exist to satisfy the needs of society.[69] Because the technological and economic needs of societies have become increasingly international, cooperation on a more international regional or global scale is necessary to solve various problems. Thus, the technological and economic character of societies is an imperative of political change resulting in the founding of international organizations.

According to the functionalists, however, international cooperation develops around specific needs. As Mitrany noted, "The essential principle is that activities would be selected specifically and organized separately--each according to its nature, to the conditions under which it has to operate, and to the needs of the moment."[70] Thus, there is a one-to-one correspondence between societal needs and structures. An international organization does not develop unless there is a specific need for it or a function it must perform. The nature of that function determines

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[69]*See* David Mitrany, A Working Peace System (1966); Pentland *supra* note 8; Leonard S. Woolf, International Government (1913).

[70]Mitrany, *supra* note 69, at 70.

jurisdiction of the organization and the range of its activities.

The result envisioned by the functionalists rarely develops beyond a system of intergovernmental cooperation. That system, however, is elastic, as organizations develop or disband depending on specific needs for them.[71] Mitrany sees the basis of the system as a complex, interwoven network of organizations. Some method would develop, perhaps through international planning agencies, to coordinate the efforts of these functional organizations in meeting various societal needs.[72]

There is little government involvement, however, in this process of policy making through international cooperation. For the functionalists "policy making is not seen in terms of a political process through which conflicts of interest and values are mediated. Instead, it is much more a problem-solving exercise, through which common interests are stressed and status is accorded to 'technical experts'...."[73] Thus, functionalists believe the role of national governments or political authority is limited in international organizations. Seeing the nation-state as a

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[71]*See* James P. Sewell, Functionalism and World Politics 68 (1966).

[72]*See* Mitrany, *supra* note 69, at 72-75.

[73]Carole Webb, Introduction: Variations on a Theoretical Theme, in Policy-Making in the European Community 9 (Wallace, Helen et al. eds., 1st ed. 1977).

cause of war and international unrest, the functionalists propose to substitute its role with international organizations and their technical experts.[74]

D. Neofunctionalism

The neofunctionalist approach to political integration, which developed out of the functionalist school, has been closely associated with the growth and development of the Community as an international organization. The neofunctionalists agree with their predecessors that integration is a process of change but believe that the impetus for change comes not from the functional needs of societies but from political forces such as interest groups, political parties and governments pursuing their own interests.

The foundations of neofunctionalist theory are found in the writings of Ernst Haas, long an observer of European integration. Haas defines integration as "the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the

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[74]*See* Mitrany, *supra* note 69.

pre-existing national states."[75] This shifting of loyalties occurs through a process of conflict resolution; when conflicts develop they are shifted from the level of individual states to the collective level of the central institutions for resolution, thus upgrading such issues to a level of common interest.[76]

The role of central institutions is crucial in the neofunctionalist process of integration. Integration is advanced as coalitions form among political forces and their tasks become more related to collective interests and decision making. This process occurs as a result of "spillover," which is a neofunctionalist term that refers to

> the process whereby members of an integration scheme--agreed on some collective goals for a variety of motives but unequally satisfied with their attainment of these goals--attempt to resolve their dissatisfaction either by resorting to collaboration in another, related sector (expanding the <u>scope</u> of the mutual commitment) or by intensifying their commitment to the original sector (increasing the <u>level</u> of mutual commitment) or both.[77]

As integration advances "the initial task and grant of powers to the central institutions creates a situation or series of situations that can be dealt with only by further

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[75]Ernst B. Haas, The Uniting of Europe: Political, Economic and Social Forces, 1950-57 16 (1958).

[76]*See* Leon Lindberg, Integration as a Source of Stress on the European Community System, 20 Int'l Organization 233 (1966).

[77]Peter Schmitters, Three Neofunctionalist Hypotheses, 24 Int'l Organization 161, 162 (1964).

expanding the task and the grant of power."[78] Through this process the central institutions acquire the character of supranationality.

The closest the neo-functionalists come to describing the end-product of integration is to say that it results in supranationality, a term that has been misinterpreted over the years.[79] For Haas, who introduced the concept, supranationality does not refer to the relationship between Community institutions and the governments of member states. Instead, supranationality is a style of decision making. Haas defines it as "a cumulative pattern of accommodation in which the participants refrain from unconditionally vetoing proposals and instead seek to attain agreement by means of compromises upgrading interests."[80]

The neofunctionalists believe that certain conditions contribute to the successful development of a system of collective supranational decision making via spillover. An established pattern of international interaction among political and bureaucratic elites is essential for further integration. In addition, a complex, interdependent socio-economic system is necessary because such a system requires

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[78]Leon Lindberg, The Political Dynamics of European Integration 288 (1963).

[79]*See* Robert O. Keohane & Stanley Hoffman, Conclusions: Community Politics and Institutional Change, 276, 280, in The Dynamics of European Integration (William Wallace ed., 1990).

[80]Ernst B. Haas, Technocracy, Pluralism and the New Europe, in A New Europe? 64 (Stephen R. Graubard ed., 1964).

a high rate of transactions leading to cooperation on a variety of tasks. Finally, some degree of procedural consensus and some commitment by the member states to long-term goals is necessary for a supranational authority to emerge.[81] Whether integration is successful depends on the extent to which the developing central institutions represent the interests of the member states.

The role of the nation-state in such a system changes over time. Neofunctionalists view the nation-state as a complex of interests and issue-areas which are identified with the political elites rather than as a monolithic structure. The nation-state performs a whole range of functions, and through spillover any of them might be transferred to the collective decision making process of the central institutions. Thus, the spillover process implies an erosion of the nation-state as its functions are gradually taken over by the central institutions.

E. International Regimes

International regimes is a macro-analytical approach that has been applied to the study of international relations, mostly in critical reaction to functionalism and

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[81]*See* Pentland, *supra* note 8, at 120-122.

neo-functionalism.[82] International regimes theory seeks to identify central concepts and processes that aggregate discrete behaviors and explain the operation of an entire system. Regime theorists believe that not all international cooperation occurs in formal organizations, which they see as rigid, formal frameworks. For these theorists, a regime is an example of cooperation that exists in a broader context.

The concept of what constitutes a regime comes in a variety of forms. Keohane and Nye define it as a "network of rules, norms and procedures that regularise behavior and control its effects."[83] Puchala and Hopkins argue that a regime exists wherever there is a pattern of behavior influenced by norms.[84] However, the existence of a pattern does not necessarily imply the existence of a regime.

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[82]Another macro-analytical approach that has been applied to the Community is systems analysis, in particular the branch developed by Easton to explain political systems. *See* David Easton, A Systems Analysis of Political Life (1965). Lindberg has applied Easton's theories involving internal political relationships and linkages to help explain the decision making process in the Community. *See* Leon L. Lindberg, The European Community as a Political System: Notes Toward the Construction of a Model, 5 J. of Common Mkt. Studies 344 (1967); Lindberg, *supra* note 39. However, because that work focuses on the dynamics of the decision making process rather than on the structure of the system it reveals little about the characteristics of the Community as an international or intergovernmental organization.

[83]Robert Keohane & Joseph Nye, Power and Interdependence: World Politics in Transition 19 (1977).

[84]Donald Puchala & Raymond Hopkins, International Regimes: Lessons from Inductive Analysis, in International Regimes 61-91 (Stephen Krasner ed., 1983).

Krasner, therefore, has defined a regime as "implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations."[85] However, despite the acceptance of this general definition, there is disagreement regarding defining its components. Several theorists have commented that the differences between principles, norms and rules are difficult to distinguish.[86]

Most of the literature involving regimes provides only vague descriptions, if any, regarding how regimes are structured. Regimes are rather fluid, changing over time and sometimes weakening or decaying. At best there seems to be some minimal centralized system of dispute settlement but little organizational structure. Thus, the strength of a regime is measured by the degree to which its members comply with its injunctions.[87] Because the existence of a regime is determined on the basis of patterns of behavior rather than by institutional structures, nation-states that are members of a regime have greater autonomy than they do in more structural systems such as international organizations. Regimes theorists believe that although international

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[85]Stephen Krasner, Structural Causes and Regime Consequences: Regimes as Intervening Variables, in Krasner, *supra* note 84, at 21.

[86]*See, e.g.*, Haggard & Simmons, *supra* note 8, at 493-94 (1987); Robert Keohane, After Hegemony: Cooperation and Discord in the World Political Economy 58 (1984).

[87]*See* Haggard & Simmons, *supra* note 8, at 496-97.

institutions can help foster cooperation, nation-states remain the central, unitary actors in world affairs.[88]

F. Conclusion

The problems with political theory in general[89] are evident in the literature of international integration, making it difficult to choose a theory that best describes the Community for several reasons. First, although the theories are internally cohesive, they differ dramatically from one another, each focusing on different basic concepts. Lindberg vividly summed up this problem with the literature:

> As a contributor to the European integration literature I have more and more come to feel as if I were excavating a small, isolated portion of a large, dimly-perceived mass, the contours of which I could not make out. I know that there are others digging there too, for I can sometimes hear them, but we seldom meet or see each other, and we have seldom organized to combine our efforts. What we see as we confront the ever-growing literature on Western European integration is a multitude of events comprising the total economic, political, social, and intellectual life of six countries and the product of their interactions, and a profusion of theories from a variety of disciplines seeking to order these events and make assertions about presumed patterns of persistence and transformation. But the theories hardly ever confront or complement each other or even appear

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[88]Emil Joseph Kirchner, Decision-Making in the European Community: The Council Presidency and European Integration 26 (1992).

[89]See *supra* pp. 16-18.

in any clear relationship to each other.[90]

This state of affairs, however, is not surprising because many of the theories were developed, or first applied in an international context, while the Community was in its early years. During that period there was an abundance of formative theoretical work attempting to explain the organization, some of which was not fully developed or was contradictory. As the Community developed and changed, some of the theories lost popularity that others gained or regained as scholars moved on to find new explanations for the organization. The result is a body of literature that appears somewhat disjointed and difficult to reconcile.

Second, a problem with the literature is that most of the theories tend toward abstraction, focusing on what is presumed will, or ought to, happen within the Community. Evidence the Community provides about itself through its legal order and institutions is ignored. Although explanation is not the sole purpose of political theory, the tendency in the literature to emphasize normative aspects often obscures what is actually happening within the Community. Thus, some of the theories have been deemed inadequate when compared to real world events.[91]

Another problem is that some of the theories focus on

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[90]Lindberg, The European Community as a Political System, *supra* note 82, at 345.

[91]*See* authorities cited *supra* note 26.

only one aspect of the integration process: the creation or development of central institutions. This is understandable since the existence of such entities is evidence of integration. However, there is another equally important part of integration that some of the theories ignore: the status of the nation-state after integration. Even where this is addressed, usually little is said.

Finally, as the object of theoretical investigation the Community itself is distinctive among contemporary international organizations, its institutions unique. It has executive capacity and a legal dynamic of its own. Community institutions negotiate trade policies among twelve nation-states and on behalf of the group with the rest of the world. Furthermore, and perhaps most important, the Community is a developing organization, continuously advancing to new stages of integration as barriers between its Member States are lifted. However, although the Community is highly structured, it remains an anomaly, "stronger than a mere international organization, weaker than a state...."[92]

Despite the problems within the literature, there is some order to the theoretical work in the field. Although as Hoffman has noted, "a flea-market is not a discipline,"[93]

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[92]Keohane & Hoffman, *supra* note 79, at 279.

[93]Stanley Hoffman, Contemporary Theory in International Relations 7 (1960).

when the theories are organized around (1) the nature of the central entity, (2) the power structure and (3) the status of the nation-state, the apparent chaos among them lessens (Figure 1). Their differences become easier to understand, and their static and dynamic features become more apparent.

Federalism is the most static approach, with a government as its central entity and a rigid division of power between the central and nation-state governments in which the nation-state government retains exclusive power in certain matters. In cooperative federalism the organization is somewhat less rigid, with the central and nation-state governments cooperating with one another and sharing power in certain areas. The power shifts, however, in confederalism, where the central entity is no longer a government but a collective alliance or union of states subordinate to the governments of the nation-states. The nation-state retains a good deal of power in a confederation because it determines the means of executing and implementing the policies determined by the collective.

Those theories that have been traditionally associated with the Community--functionalism, neofunctionalism and international regimes--are less structure-bound and more dynamic than the other theories. In these approaches the central entity is a network or system, sometimes involving technical experts representing the nation-state as in functionalism or a vague, supranational institution that

	Central Entity	Power Structure	Nation-state status
FEDERALISM	Supranational central government	Rigid division between central and nation-state govts	State retains exclusive power w/in its own sphere
COOPERATIVE FEDERALISM	Supranational central government	Cooperation between central and nation-state govts	State shares power w/in certain spheres
CONFEDERALISM	Union of states or collective alliance	Union of states or alliance subordinate to nation-state govts	State retains power to execute policies
FUNCTIONALISM	Administrative network responsive to community needs	System of cooperation between nation-state govts	State power is limited by network of technical experts
NEO-FUNCTIONALISM	Supranational decision making system	Supranational institutions with expanding powers	State power is gradually usurped by supranational institutions

FIGURE 1

Theories of International Integration

gradually usurps responsibilities of the nation-state. The power structure in these approaches varies as well, often determined by the subject matter and purpose of the collective decision making at hand. The status of the nation-state is rarely considered in these approaches, which developed to some extent to explain certain limitations of the nation-state in world affairs.

Given this comparison the theory that best explains the Community at this time is confederalism. The various theories of federalism are inappropriate because the Community is not a federation--though it may become one--because its central institutions lack certain federative powers. Although the institutions have legislative powers, they lack the ability to tax and engage in defense and currently lack the authority to develop foreign policy for the Community. Functionalism and neofunctionalism are also inadequate because they underestimate the power of the nation-state. The governments of the Member States remain heavily involved in Community policy making and retain a large measure of control. Finally, international regimes theory ignores institutions and focuses on patterns of activity and processes within systems. Thus, although international regimes theory might inform the decision making process of the organization, it fails to appreciate the institutional structures inherent in the Community.

In this stage in its development the Community is

currently most like a confederation. Its work is largely an intergovernmental exercise in establishing a common framework of policy. Within the organization there is a tolerance for national diversity in various standards and practices. Thus, rather than abdicate control to the Community, Member States exercise it more effectively as a collective engaged in joint tasks. This becomes apparent in the legal order of the Community and the organizational structure and competencies of its institutions.

CHAPTER III

THE LEGAL ORDER OF THE EUROPEAN COMMUNITY

As an international organization the Community is unique. It is based on the rule of law, and the acts of its Member States and institutions are subject to judicial review to determine whether they conform to the Treaties that established the organization.[94] Community law is a type of international law because its basis consists of treaties concluded between sovereign states. However, it differs from traditional international law in its sources and content.[95] Community law has its own distinctive legal order, an "organized and structured system of legal rules, with its own sources, and its own institutions and procedures for making, interpreting and enforcing those rules,"[96] that contributes much to the nature and identity of the Community as an international organization.[97] This

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[94]*See* Case 294/83, Les Verts v. Parliament, E.C.R. 1357 (1970).

[95]*See* P. J. G. Kapteyn & P. VerLoren van Themaat, Introduction to the Law of the European Communities 36-38 (Laurence W. Gormely ed., 2d ed., 1989).

[96]G. Isaac, Droit Communautaire General 111 (1983).

[97]At least one writer has argued that the legal system of the EC is intrinsically tied to the political philosophy and evolution of the Community. *See* Joseph Weiler, Community, (continued...)

chapter describes the main features of that legal order.

A. Content of Community Law

Although Community law is a type of international law, in terms of content Community law differs significantly from most traditional international law. Community law forms a body of internal law common to the Member States rather than a law between the Member States. The substantive core of Community law concerns rules for establishing a single internal market to replace the separate national markets: "The Treaty, by establishing a common market and progressively approximating the economic policies of the Member States, seeks to unite national markets into a single market having the characteristics of a domestic market."[98] Thus, in the new market the difference between legal relations that have an international character and those that are internal in nature becomes blurred.

Compounding the confusion are the numerous fundamental legal rights, concepts and rules of construction that Community law employs which are not commonly part of

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[97](...continued)
Member States and European Integration: Is the Law Relevant?, 21 Journal of Common Mkt. Studies 39 (1982).

[98]*See, e.g.*, Case 270/80, Polydor Ltd. et al. v. Harlequin Record Shops Ltd et al., E.C.R. 329, 348 (1982).

international law.[99] Community law does not consist of mutual rights and duties between the Member States as it would if it were traditional international law. Instead, "Community law regulates a conglomerate of mutual rights and duties between the Community and its subjects, both Member States and private persons, and between these subjects amongst themselves."[100] Furthermore, in addition to employing certain concepts and methods of interpretation used in national and international law, Community law also employs its own principles, including solidarity and unity, to further the goal of integration.[101]

B. Sources of Community Law

1. Treaties

Although the treaties establishing an international organization are the usual source of much international law, in the Community they comprise only one source, albeit an important one. The driving force behind the integration of the Community has been the Treaties that established the organization, in particular the EEC Treaty. That Treaty

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[99]*See, e.g.*, EEC Treaty, *supra* note 1, art. 220; Jean-Victor Louis, The Community Legal Order 95-96 (1990); Schermers & Waelbrock, Judicial Protection in the European Communities 25-83 (4th ed., 1987).

[100]Kapteyn & van Themaat, *supra* note 95, at 37.

[101]*See* Louis, *supra* note 99, at 50-56.

determines that the organization should be based on a customs union[102] and lays out objectives and principles of the organization[103] but leaves it to the Community institutions to formulate these objectives and principles into concrete measures. The EEC Treaty also defines the powers and procedures of the institutions,[104] including provisions regarding the judicial system and application of Community law.[105] The duration of the organization[106] as well as the territorial scope of Community law[107] are also addressed in the Treaty.

For the most part the EEC Treaty--supplemented by the ECSC Treaty,[108] the Euratom Treaty,[109] modifications of the Treaties,[110] and the accession treaties[111]--provide the

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[102]EEC Treaty, *supra* note 1, art. 9.; *see supra* pp. 13-16.

[103]*See id.* art. 9-122.

[104]*See id.* art. 137-198.

[105]*See id.* art. 164-188.

[106]The EEC Treaty "is concluded for an unlimited period." *Id.* art. 240. This indicates the irrevocability of the Member States' commitment to the organization. *See* Louis, *supra* note 99, at 74.

[107]The Treaty applies to the twelve Member States as well as to some of their territories. EEC Treaty, *supra* note 1, art. 227.

[108]*See supra* note 3.

[109]*See supra* note 2.

[110]*See, e.g.*, Single European Act, *supra* note 12.

[111]*See supra* note 9.

framework for the organization. At least one writer has referred to these Treaties as the constitution of the Community[112] although the Treaties merely provide a constitutional framework (traité-cadre or traité de procédure) for the Community, comparable to national enabling legislation.[113] The constitution of the Community, as a source of Community law, generally refers to what is known as the primary law of the Community. In addition to the Treaties, the primary law includes certain binding acts and rules of the Community institutions.

2. Acts of Community Institutions

Another source of Community law, known as the secondary law of the Community, consists of acts adopted by the Community institutions in order to implement the Treaties.[114] These acts include regulations, directives, decisions, recommendations and opinions. The EEC Treaty

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[112]*See* Weiler, *supra* note 97, at 41-42; *Cf.* Rudolf Bernhardt, The Sources of Community Law: The "Constitution" of the Community, in Thirty Years of Community Law 69 (1983).

[113]Paul Reuter, Organisations Européennes 188 (2d ed., 1970).

[114]Acts of Community institutions should be distinguished from the acts of various representatives, such as the Coreper. The rules in the Treaties regarding the procedure the institutions must follow in making decisions and their legal effect, implementation and judicial review do not apply to acts of representatives. *See* Kapteyn & van Themaat, *supra* note 95, at 204-08.

specifies the nature and legal effect of these acts and contains rules regarding the publication, entry into force and enforcement of them.[115] The general provisions, however, contain only a legal definition of the various acts which the Council and Commission can adopt in order to carry out their task "in accordance with the provisions of this Treaty."[116] Under the concept of attributed powers the questions as to whether and in what form the Council and Commission can adopt such acts depends on the specific powers conferred upon them elsewhere in the EEC Treaty.[117] Thus, each act must be attributed directly or indirectly to one or more specific provisions of the Treaty.

The distinction between each of the permissible acts is important for several reasons. Different acts have different legal effect. In addition, the rules regarding publication and entry into force vary according to the type of act involved. Finally, the distinction involves different legal protection. When it is difficult to distinguish one act from another, substance rather than form

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[115]EEC Treaty, *supra* note 1, art. 189-192.

[116]*Id.* at art. 189, para. 1. The list of acts in this article is not exhaustive. There is a residual category of acts under the category *sui generis* that do not fall within one of the listed categories and usually involve the internal management of the Community.

[117]*See* Kapteyn & van Themaat, *supra* note 95, at 112-13. Several articles of the EEC Treaty provide a basis for acts by the Community institutions. *See, e.g.*, art. 8a, 63, 90, 100a, 130q and 235.

determines the legal status and effect of an act.[118] Therefore, the various acts are distinguished by their object and content.

a. Regulations

Regulations are the first act mentioned in the general provisions. A regulation has three characteristic elements: (1) its general application, (2) its binding character in its entirety and (3) its direct applicability to the Member States.[119] These characteristics combine to make a regulation "the most complete and effective instrument among the battery of powers" available to the Community institutions.[120]

A regulation is said to have general application because "it is applicable...to objectively determined situations and involves legal consequences for categories of persons viewed in a general and abstract manner."[121] Thus, a regulation is impersonal and non-individualized in character. This characteristic helps distinguish a regulation from a decision in terms of legal protection.

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[118]*See* Kapteyn & van Themaat, *supra* note 95, at 190-91.

[119]EEC Treaty, *supra* note 1, art. 189, para. 2.

[120]*See* Louis, *supra* note 102, at 82-83.

[121]Case 6/68, Zuckerfabrik Watenstadt GmbH v. Council, E.C.R. 409, 415 (1968).

A regulation is also binding in its entirety. Because it is binding, a Member State that has opposed a regulation during the policy making process cannot fail to apply the regulation when it is entered into force.[122] Furthermore, because a regulation is binding in its entirety, a Member State cannot grant exemptions from policies introduced by regulations or otherwise modify them or change their scope unless such a change is provided for in a subsequent regulation.[123]

Finally, a regulation is directly applicable in all Member States. This means that a regulation has immediate direct effect[124] when entered into force and becomes part of the national law of all Member States. No national legislation is necessary to transform the regulation into national law. Furthermore, the Member States are prohibited from transforming a regulation into national legislation because to allow otherwise would create uncertainty about the legal nature and effect of the provisions.[125]

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[122]*See* Case 39/72, Commission v. Italy, E.C.R. 101, 115 (1973) (Member States cannot apply a regulation in an incomplete or selective manner) [hereinafter Commission v. Italy].

[123]*See, e.g.*, Case 18/72, Granaria, E.C.R. 1163 (1972) (Member State cannot grant an exemption from an import levy introduced by a regulation).

[124]*See infra* notes 146-50 and accompanying text.

[125]If the Member States were allowed to follow their own implementing procedures regarding regulations, such measures "would have the result of creating an obstacle to the direct

(continued...)

b. Directives

A directive is another source of Community law. According to the general provisions of the EEC Treaty, "a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and method."[126] A directive is an indirect form of law that provides a framework for Member States to follow. Member States, however, are obligated to achieve the specific result of a directive. Although the EEC Treaty leaves a certain amount of discretion to the Member States in implementing a directive, "the freedom left to the member states by Article 189 as to the choice of forms and methods of implementation of directives does not affect their obligation to choose the most appropriate forms and methods to ensure the effectiveness of the directives."[127] The Commission is responsible for monitoring the Member States to verify that a directive has been properly implemented.[128]

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[125](...continued)
effect of Community regulations and of jeopardizing their simultaneous and uniform application in the whole of the Community." *See* Commission v. Italy, *supra* note 122, at 114.

[126]EEC Treaty, *supra* note 1, art. 189, para. 9.

[127]Case 48/75, Royer, E.C.R. 497, 519 (1976).

[128]EEC Treaty, *supra* note 1, art. 155.

c. Decisions

Another binding act of the Council and Commission is a decision. According to the EEC Treaty, "a decision shall be binding in its entirety upon those to whom it is addressed."[129] Decisions can be addressed to Member States, firms or individuals,[130] and are the means by which the Community adopts individual administrative acts or applies Community law in specific cases. In cases in which it is difficult to distinguish a decision from a regulation, as a general rule a decision must mention an addressee.

d. Recommendations and Opinions

The final acts mentioned in the general provisions of the EEC Treaty, recommendations and opinions, are non-binding.[131] These acts are allowed in a variety of areas under the Treaty. In general the Commission is granted the broad authority to "formulate recommendations or deliver opinions on matters dealt with in [the EEC] Treaty...if the Commission considers it necessary."[132] Recommendations can also be issued to prevent possible distortions of

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[129]*Id.* art. 189, para. 4.

[130]*Id.* art. 191, para. 2.

[131]*Id.* art. 189, para. 4.

[132]*Id.* art. 155, para. 3.

competition,[133] and opinions can be delivered to promote close cooperation between Member States in social fields.[134] Although these acts are non-binding, they do have legal consequences. If a Member State does not comply does with a recommendation addressed to it regarding distortion, the Commission cannot propose that the Council issue a directive to oblige other Member States to eliminate the distortion.[135] If a Member State fails to comply with a reasoned opinion regarding a breach of obligations under the EEC Treaty, the Commission can refer the matter to the Court of Justice.[136]

e. General Requirements for Acts of Community Institutions

Various general requirements must also be satisfied before any acts by the Community institutions become effective. Regulations, directives and decisions "shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained

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[133]*Id.* art. 102.

[134]*Id.* art. 118.

[135]*Id.* art. 101-102.

[136]*Id.* art. 169.

pursuant to the Treaty."[137] This requirement makes it possible to determine whether the decision making process required by the Treaties has been properly followed. A violation of this rule is grounds for annulling a contested act.[138]

Certain rules limit the freedom of the Council and Commission to fix the date upon which acts enter into force. Regulations are the only act that must be published to become effective. When finalized, a regulation is published in the Official Journal of the European Communities in the nine official languages of the Community. The regulation takes effect on the date specified in its text or, if no date is specified, twenty days after publication.[139] Directives and decisions need not be published and take effect when served upon their addressees.[140]

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[137]*Id.* art. 190. Certain provisions of the EEC Treaty require the Council or Commission to consult the Parliament and the Economic and Social Committee before taking action. *See, e.g., id.* art. 100.

[138]*Id.* art. 173.

[139]*Id.* art. 191, para. 1.

[140]*Id.* art. 191, para. 2. Although directives and decisions are often published in the Official Journal of the European Communities, their publication is for information purposes only. *See* Louis, *supra* note 99, at 86.

f. Institutional and Substantive Rules

Both the primary and secondary law of the Community can also be categorized into two groups of rules, institutional and substantive. Institutional rules relate to the institutional structure of the Community and its policy making and administrative functions. Specifically, these rules include provisions regarding the application and revision of the Treaties, the legal personality of the Community and its institutions and the composition and power of the institutions. Substantive rules include rules regulating national policy making by the Member States and their own administrative bodies in various sectors. In addition, substantive law includes rules involving the conduct of legal persons governed by Community law, such as the extensive rules in the area of competition law.

C. Community Institutions and Community Law

The Community institutions also differ from those of traditional international law. In many international organizations the instruments often do no more than provide a forum for agreement among member states. The procedural or organizational provisions in such organizations are often limited, and international adjudication plays only a small role, if any. The Community, however, is characterized by

extensive organizational and procedural provisions and a refined legal system. The institutions have legal personality, legal capacity and real powers,[141] and engage in autonomous legislative and administrative activities. Furthermore, the Community policy making processes involve more than just representatives of the Member States; persons independent of the Member States and private persons collaborate in the process.[142]

D. The Effect of Community Law on National Law

In addition to the content and sources of Community law, two related legal doctrines help shape the Community legal order: direct effect[143] and supremacy.[144] These doctrines, which have been called the "twin pillars of the Community legal system,"[145] both involve the effect of Community law on national law and are fundamental to the legal order of the Community.

The doctrine of direct effect deals with the ability of legal persons to rely on a particular provision of Community

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[141]Case 6/64, Costa v. ENEL, E.C.R. 585, 593 (1964) [hereinafter Costa v. ENEL].

[142]*See* Kapteyn & van Themaat, *supra* note 95, at 37-38.

[143]For a thorough discussion of the doctrine of direct effect see Louis, *supra* note 102, at 107-35.

[144]*See id.* at 135-57.

[145]*Id.* at 107.

law before national courts. In referring to its jurisdiction and the question of direct effect, the Court of Justice has stated that

> the task assigned to the Court of Justice under Article 177, the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals, confirms that the states have acknowledged that the Community law has an authority which can be invoked by their nationals before those courts and tribunals.[146]

Direct effect, thus, differs from direct applicability, which refers to whether national bodies must take action to give national effect to a provision of Community law. There are also two ways in which direct effect can be applied, vertically and horizontally. When applied vertically, the doctrine involves the right of legal persons to invoke a provision of Community law against governments that have allegedly failed to carry out obligations imposed by Community law. When applied horizontally, both parties involved are legal persons.[147]

The doctrine of direct effect can be invoked in situations involving Treaty provisions, regulations, decisions and directives. Not all Treaty provisions, however, give legal persons directly effective rights; purely procedural obligations of Member States that involve

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[146]Case 26/62, NV Algemene Transport--en Expeditie Onderneming Van Gend en Loos v. Nederlandse administratie der belastingen, E.C.R. 1, 12 (1963) [hereinafter Van Gend & Loos].

[147]*See* Louis, *supra* note 99, at 113.

the exercise of discretion by Community institutions or Member States are not directly effective.[148] Regulations are directly effective because of their nature, and function as a directly applicable source of Community law.[149] Although directives and decisions have no direct applicability by virtue of the EEC Treaty, the Court of Justice has held that they have vertical direct effect.[150]

The supremacy of Community law refers to the fact that Community law is "an integral part of, and take[s] precedence in, the legal order applicable in the territory of each of the Member States."[151] Although there is no specific supremacy provision in the Treaties, the Court of Justice has further confirmed this principle by reference to the EEC Treaty provision designating regulations as binding and directly applicable in all Member States: "[T]his provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could

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[148]*See* Costa v. ENEL, *supra* note 141, at 595-96 (1964).

[149]*See* EEC Treaty, *supra* note 1, art. 189, para. 2; Case 43/71, Politi, E.C.R. 1039, 1048 (1971).

[150]*See, e.g.*, Case 9/70, Grad, E.C.R. 825, 837 (1970) (involving the direct effect of a directive); Case 33/70, SACE, E.C.R. 1213, 1223 (1970) (involving the direct effect of a decision).

[151]Case 106/77, Simenthal, E.C.R. 629, 643 (1978) [hereinafter Simenthal].

prevail over Community law."[152] Thus, supremacy is linked to both direct applicability and direct effect.

The doctrine of supremacy is applied by the courts. Unconditional and absolute, the doctrine applies to any national law, even a constitutional principle.[153] To allow otherwise would disrupt the Community and the process of integration. Without common rules and procedure there cannot be a Community, and there cannot be common rules if Community law is subject to national laws and rules that vary from one Member State to another.

The doctrines of direct effect and supremacy shed light on the effect of Community law on national law and the relationship between the Community and national legal systems. Unlike in other legal systems with similar concepts, the Community and national legal systems are not in a dualistic relationship, but a cooperative one. This relationship has been best summed up by the Court of Justice: "Every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law

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[152]*See* Costa v. ENEL, *supra* note 141.

[153]Where the application of the doctrine of supremacy is not so clear is in cases involving conflicts between Community law and later national legislation. The highest courts in the six original Member States have all recognized the supremacy of Community law in such cases. The issue has not been directly addressed in the other Member States. *See* Louis, *supra* note 99, at 149-57.

which may conflict with it, whether prior or subsequent to the Community rule."[154]

E. The Administration of Community Law

The EEC Treaty requires that Member States take appropriate measures to fulfill their obligations arising under the Treaty and from actions taken by Community institutions.[155] Although the Member States have some discretion in carrying out this task, their autonomy is not absolute. Member States are obligated to administer Community law properly,[156] ensuring uniformity, supremacy and the direct effect of Community law.

Implementing Community law on a national basis--except in cases of directly applicable acts, which need no national implementation--often involves amending existing legislation or enacting new legislation. Various branches of national governments have been involved in performing this task, depending on the governmental organization of the Member States and the nature of the legislation required. In any case, however, the Commission is responsible for monitoring how Member States comply with their obligation to implement Community law.

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[154]*See* Simenthal, *supra* note 151.

[155]EEC Treaty, *supra* note 1, art. 5.

[156]*Id.* para. 2.

F. Conclusion

The Community legal order distinguishes the Community from other international organizations. Through laws developed in the Community system, a common, uniform set of rules is promoted throughout the Community. The way those rules are developed is an integral part of the Community legal order and involves a variety of actors and policy making processes.

CHAPTER IV

INSTITUTIONS AND ACTORS AND THE EUROPEAN COMMUNITY POLICY MAKING PROCESSES

In the Community the task of establishing the single market is a complex one that involves multiple actors. Chief among them are the Community institutions, which embody the character of the Community as an international organization and represent it as a visible entity to its members and the outside world. The primary institutions--the Council of Ministers, Commission of the European Communities, European Parliament and the Court of Justice--provide the Member States forums for determining, expressing and implementing policy.[157] However, those institutions do not act alone. Various secondary institutions and actors associated with European regional, national and public interests are also involved in the policy making processes. This chapter reviews the Community institutions and other actors involved in policy making and the processes in which they engage to determine policies for the single market.

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[157]Roland Bieber, The Institutions and Decision-making Procedure in the Draft Treaty Establishing the European Union, in An Ever Closer Union 31 (Roland Bieber et al. eds., 1985).

A. The Historical Development

The roots of the Community institutional framework are found in the ECSC, the first of the European Communities. The ECSC Treaty created four central institutions--the High Authority, Common Assembly, Council of Ministers and Court of Justice--each with its own composition, functions and character.[158] These institutions not only distinguished the ECSC from other international organizations that existed at the time, but provided a framework that the other Communities, the EEC and Euratom, would later adopt. When the EEC and Euratom were established in 1957, they too created a similar framework of four central institutions, although the EEC and Euratom Treaties substituted a Commission for the High Authority of the ECSC.[159]

Over the years several modifications have occurred in the institutional organization of the Community. In 1965, a treaty was signed that established a single Council of Ministers for all three Communities and merged the High Authority of the ECSC and the EEC and Euratom Commissions into one Commission.[160] The Communities themselves,

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[158]*See* ECSC Treaty, *supra* note 3, art. 7-45.

[159]*See* EEC Treaty, *supra* note 1, art. 4; Euratom Treaty, *supra* note 2, art. 3.

[160]Treaty Establishing a Single Council and a Single Commission of the European Communities, Apr. 8, 1965, Office for Official Publications of the European Communities, 1 Treaties Establishing the European Communities 823 (1987 [hereinafter Merger Treaty].

however, still remained distinct entities. In addition, a Committee of Permanent Representatives (Coreper) was established as a subsidiary body of the Council.[161] Years later the Single European Act altered certain aspects of the decision-making system to help accelerate Community integration.[162] Despite these changes, however, the same basic institutional arrangement created in the 1950s still exists in the Community today and remains at the center of policy making.

B. The Community Institutions

1. Council of Ministers

The Council of Ministers (Council) is the main decision making institution. According to the Merger Treaty, the Council "shall consist of representatives of the Member States. Each Government shall delegate to it one of its members."[163] Although this prescription makes it seem as though there is only one Council, the exact representatives vary according to the policy task at hand. Thus, there are actually several Councils. The General Council deals with general issues regarding policy coordination, with external

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[161]Although the Coreper has existed since 1958, it was first legally recognized in the Merger Treaty. See *id.* art. 4.

[162]See *infra*.

[163]Merger Treaty, *supra* note 160, art. 2, para. 1.

relations and with politically sensitive issues. Sectoral matters, such as energy, agriculture and the environment, are handled by the Technical Councils. Choosing Council representatives is in the discretion of the Member States, and usually the foreign minister of their ministry of state sits on the General Council. Other ministry representatives often sit on the Technical Councils. At most Council meetings--there are approximately ninety each year--representatives are accompanied by small national delegations and support teams.[164]

The Council is assisted by the Coreper, whose members are ambassadors who head the Permanent Representations of each Member State to the Community. Established under the Merger Treaty, the Coreper prepares the work of the Council and carries out any tasks assigned by the Council.[165] The Coreper, however, is a subsidiary body of the Council and does not have independent decision making powers. As ambassadors to the Community, the members of the Coreper form important links between Member State governments and the Community institutions and provide an important means

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[164]See Kapteyn & van Themaat, *supra* note 95, at 103-08.

[165]Merger Treaty, *supra* note 160, art. 4. The Coreper is divided into the Coreper I, which is comprised of deputies from each permanent representation and handles technical matters, and the Coreper II, which is comprised of the Permanent Representatives themselves. Juliet Lodge, EC Policymaking: Institutional Considerations, in The European Community and the Challenge of the Future 26, 45-46 (Juliet Lodge, ed. 1989).

for testing Member State reactions to Community policy proposals.

Meetings of the Council are generally convened by the Council President,[166] an important position that rotates every six months, changing in January and July. The rotation is based on strict alphabetical order according to how the Member States spell the name of their country in their own language. Because responsibilities vary between the first and second half of the year, pairs of countries will reverse their order after the current rotation is completed at the end of 1992. Thus, Denmark will hold the Presidency for the first half of 1993 and Belgium for the second half.[167]

Holding the Council Presidency provides both advantages and disadvantages.[168] Although the position has several tasks and enjoys certain privileges, there are no executive powers associated with it, such as vetoes or sanction possibilities. The Council President is responsible for arranging and chairing all Council meetings, which gives the President control over not only the agenda and but how often the General and Technical Councils meet. In addition, the President takes the lead in building a consensus for policy

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[166]See Merger Treaty, *supra* note 160, art. 7.

[167]*Id.* art. 7; See also, Neill Nugent, The Government and Politics of the European Community 125 (2d ed., 1991).

[168]For a detailed analysis of the Council Presidency, see Kirchner, *supra* note 88.

initiatives and development and represents the Council before other Community institutions. These responsibilities allow the President some influence in the nature of debate and the timing of the adoption of legislation. That influence, however, is somewhat tempered by the coordination and cooperation between the preceding, the incumbent and the succeeding Presidencies.[169]

In addition to the influence a Council President can exert, a certain amount of prestige and esteem attaches as a result of the position, particularly when a Presidency has been successful. Bad reviews, however, can follow a bad Presidency. A distinct disadvantage of the position is the heavy workload which poses an administrative burden for any Member State, especially the smaller ones, who often find the task difficult to handle.

In the EEC the primary duty of the Council is to ensure the coordination of the general economic policies of the Member States.[170] Although the Council President organizes an agenda, the Council generally acts only on proposals made by the Commission. The Council can, however, initiate

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[169]See Nugent, *supra* note 167, at 104-05.

[170]EEC Treaty, art. 145. In the ECSC the primary duty of the Council is "to harmonize the action of the High Authority and that of the Governments, which are responsible for the general economic policies of their countries. See ECSC Treaty, *supra* note 3, art. 26, para. 1. In Euratom the primary duty of the Council is "to coordinate the actions of the Member States of the Community." See Euratom Treaty, *supra* note 2, art. 115, para. 2.

policy by "request[ing] the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any proposals."[171] The Council has also been granted attributed powers under the Treaties to make decisions that are legally binding upon the Member States and subjects of the Community.[172] After deciding the essential elements and rules of an area to be regulated, the Council may "confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down."[173] However, the regulatory power of the Council may not be delegated in its entirety to the Commission since that would require the Commission to implement the rules of the Treaty itself, rather than merely the rules laid down by the Council.

The Council performs various organizational functions in the Community besides its legislative function. For example, the Council ultimately determines the rules governing the committees provided for by the EEC Treaty.[174] The Council also has the power to determine aspects of the organization of the Court of Justice, including the number

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[171]EEC Treaty, *supra* note 1, art. 152.

[172]*See* EEC Treaty, *supra* note 1, art. 145.

[173]EEC Treaty, *supra* note 1, art. 145.

[174]*Id.* art. 153. The Council determines those rules after receiving an opinion from the Commission. *Id.*.

of judges sitting on the Court.[175] In addition, the Council also can alter the size of the Commission[176] and determine the salaries the Commission members and judges.[177]

The Council is the one Community institution in which the national governments of the Member States are represented as such. This intergovernmental arrangement[178] brings a strong nationalistic character to the debates and work of the Council, making it the forum where Member States can exert their individual power as nation-states in the policy making processes. However, because the ability to compromise is necessary for successful policy making, the Council also provides a forum for developing mutual understanding between Member States.

2. Commission of the European Communities

The Commission of the European Communities (Commission) bears its own political responsibility in the Community and

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[175]*Id.* art. 165.

[176]Merger Treaty, *supra* note 160, art. 10(2).

[177]*Id.* art. 6.

[178]Although the Council is intergovernmental in nature, the work of the Council is unlike the work of other intergovernmental organizations in that it does not result in international agreements among the Member States. Instead, the acts of the Council have legal effect under the Treaty and are subject to review by the Court of Justice. *See supra* pp. 46-53.

differs in several ways from the Council. The Commission itself consists of "seventeen members, who shall be chosen on grounds of the general competence and whose independence is beyond doubt."[179] The larger countries in the Community--France, Germany, Italy, Spain and the UK--appoint two members to the Commission, often attempting to reflect the political interests at home.[180] The remaining smaller Member States each have one seat on the Commission. The members of the Commission are appointed by the common accord of the Member States to four-year terms.[181] A President is also appointed in the same manner.[182] Supporting the Commissioners is a staff of approximately 16,000 officials and temporary agents.[183]

The hierarchical structure of the Commission is complex, and lines of authority are sometimes blurred. The various policy portfolios are distributed among the Commissioners, who carry the main leadership responsibility

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[179]Merger Treaty, *supra* note 160, art. 10(1) *as amended by* Act of Accession ESP/PORT, art. 15.

[180]For example, the United Kingdom has thus far appointed both a Conservative and a Labour Party representative to the Commission. See Kapteyn & van Themaat, *supra* note 95, at 108, n. 28.

[181]Merger Treaty, *supra* note 160, art. 11. Although Commissioners are appointed, they are nominated by the Member State governments.

[182]*Id.* art. 14.

[183]Richard Hay, The European Commission and the Administration of the Community 31 (1989).

in that particular area.[184] The policy development work itself is divided into separate areas that are handled by twenty-three different Directorates General (DG) which vary in size and internal organization[185] (Figure 2). The head of each DG reports directly to the Commissioner in charge of its policy portfolio.

One of the primary functions of the Commission is to initiate the policy making processes in the Community.[186] Under the EEC Treaty the Commission is required to "formulate recommendations and deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary."[187] Other treaty provisions make it clear that in most cases the Council can act only after receiving a proposal from the Commission.[188] The Commission is aided in this process by the various Directorates General and a network of advisory

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[184]For a discussion of the portfolio system, see Peter Ludlow, The European Commission, in The New European Community: Decisionmaking and Institutional Change 85, 88-93 (Robert O. Keohane et al. eds., 1991).

[185]Each DG is generally referred to by its number, rather than its area of expertise, such as DGXIII, which is in charge of telecommunications, information technologies and innovation.

[186]The Commission, however, does not have a monopoly on initiating policy in the Community. See *infra* text accompanying notes 250-252.

[187]EEC Treaty, *supra* note 1, art. 155.

[188]*See, e.g., id.* art. 28 (free movement of goods); art. 63 (free movement of services).

Directorates General

DGI	External Relations
DGII	Economic & Financial Affairs
DGIII	Internal Market & Industrial Affairs
DGIV	Competition
DGV	Employment, Industrial Relationships & Social Affairs
DGVI	Agriculture
DGVII	Transport
DGVIII	Development
DGIX	Personnel & Administration
DGX	Information, Communication & Culture
DGXI	Environment, Nuclear Safety & Civil Protection
DGXII	Science, Research & Development
DGXIII	Telecommunications, Information Industries & Innovation
DGXIV	Fisheries
DGXV	Financial Institutions & Company Law
DGXVI	Regional Policies
DGXVII	Energy
DGXVIII	Credit & Investments
DGXIX	Budgets
DGXX	Financial Control
DGXXI	Customs Union & Indirect Taxation
DGXXII	Coordination of Structural Policies
DGXXIII	Enterprise Policy, Distributive Trades, Tourism & Social Economy

Special Units and Services

Secretariat General of the Commission
Legal Service
Spokesman's Service
Translation Service
Joint Interpretation & Conference Service
Statistical Office
Consumer Policy Service
Joint Research Center
Task Force "Human Resources, Education, Training & Youth"
Euratom Supply Agency
Security Office
Office for the Official Publications of the European Communities

Figure 2

Directorates General and Special Units of the Commission

and consultative committees.

The Commission also performs several executive functions that closely involve it in the implementation, supervision and management of Community policies. Under the Treaties the Council may confer powers upon the Commission to implement rules laid down by the Council.[189] These delegated rule-making powers include not only the application of rules, but also their elaboration. The Council, however, does not delegate this regulatory power completely to the Commission because the rules laid down by the Council are usually drafted with great detail.[190] The Commission may also delegate some of its rule-making duties to individual members and senior officials who act in the name of the Commission and take into account its principle of collective responsibility to the Community.[191]

The supervisory function of the Commission includes overseeing that Member States fulfill their obligations under the Treaties and Community legislation.[192] The front-line implementation of Community policy is generally

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[189]*Id.* art. 155.

[190]For a discussion of the delegation of powers between the Council and the Commission, see Kapteyn and van Themaat, *supra* note 95, at 119-23.

[191]See Rules of Procedure of the Commission, art. 27, 1975 O.J. (L 199) 43.

[192]EEC Treaty, *supra* note 1, art. 155.

delegated to the appropriate national agencies in the Member States. Then, as part of its obligation to prepare an annual report regarding Community activities,[193] the Commission attempts to assure that Community duties are properly performed at the national level. This task presents several difficulties to the Commission. At times a Member State may be unwilling or unable to implement Community policy, and the limited resources of the Commission can make infringements difficult to detect.[194] When the Commission becomes aware of possible infringements, it informs the Member States involved, conducts investigations and delivers an opinion. Should the infringement continue, the Commission can bring the matter before the Court of Justice.[195]

Finally, as part of its executive function the Commission helps manage aspects of Community finances. The duties of the Commission in this regard on the revenue side include making sure that the correct rates are applied

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[193]The Commission must present its annual report to the European Parliament. *See* Merger Treaty, *supra* note 160, art. 18.

[194]The Commission obtains the necessary information to perform this supervisory function primarily from the Member States, which are often required to report back to the Commission regarding the methods of implementing the results desired in directives. In addition, Member States are obliged under the Treaties to facilitate the achievement of the Community's tasks. *See* EEC Treaty, *supra* note 1, art. 5, para. 1. This obligation includes complying with requests for information from the Commission.

[195]*Id.* art. 5, para. 2.

within categories of revenue and that proper payments are made to the Community by the Member States.[196] On the expenditure side the Commission oversees the general operation of the Community to assure that it remains within the approved annual budget.[197]

The character of the Commission as a Community institution differs greatly from that of the Council. Unlike the Council, whose members represent the interests of the individual Member States, the Commission represents Community interests as a whole. The members of the Commission are required to maintain their independence and "neither seek nor take instructions from any Government or from any other body."[198] Thus, the Commission complements the nationalistic character of the Council and remains in a close, interdependent relationship with it.

3. European Parliament

The European Parliament (Parliament), originally called the Assembly,[199] consists of "representatives of the peoples

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[196]*See id.* art. 201.

[197]*See id.* art. 205; Nugent, *supra* note 167, at 79-82.

[198]Merger Treaty, *supra* note 160, art. 10(2).

[199]In 1962, the Assembly adopted the "European Parliament" as its title. See 1962 J.O. (1045) 62.

of the States brought together in the Community...."[200] Persons who are members of the Parliament represent the peoples of the Community collectively. The use of the phrase "peoples of the States" rather than "peoples of the Member States" in the Treaty reinforces the collective nature of that representation. Thus, the members of Parliament do more than represent the people of an individual Member State; they represent all the peoples of the Community.

Currently there are 518 members of Parliament.[201] The number of members from each Member State varies on the basis of population.[202] Although members of Parliament can also hold seats in a national parliament, holding other positions in Member State governments or being a member or active official in any other Community institution is prohibited.[203] Members of Parliament are currently elected for five-year terms.

Although members of Parliament were at one time

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[200]EEC Treaty, *supra* note 1, art. 137.

[201]*Id.* art. 138(2).

[202]Currently, the number of seats is distributed as follows: Germany, France, Italy and the UK each have 81; Spain has 60; the Netherlands has 25; Belgium, Greece and Portugal each have 24; Denmark has 16; Ireland has 15 and Luxembourg has 6. *Id.* art. 138(2).

[203]*See* Act Concerning the Election of Representatives of the Assembly by Direct Universal Suffrage, art. 6(1), 1976 O.J. (L 278) 1 and 5 [hereinafter Act on Direct Elections].

appointed, direct elections have been held since 1979.[204] However, no uniform electoral system is prescribed by the Act on direct elections. Until a uniform procedure can be agreed upon by the Member States, elections are governed by national provisions.[205] At present each Member State, as well as Northern Ireland, has its own election procedure.[206] Despite the problems that arise given the different procedure,[207] the advantage of having direct elections is that they allow voters to air views on Community policy. However, for many voters the Parliament remains a distant Community entity.[208]

The Parliament is organized around partisan politics, and political groups form around ideological identification and political family traditions.[209] Since the 1989 elections there have been ten political groups in

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[204]The method of appointing members was intended under the Treaties as temporary. *See, e.g.*, EEC Treaty, *supra* note 1, art. 138(3).

[205]*See* Act on Direct elections, *supra* note 203, art. 7(2).

[206]*See* Nugent, *supra* note 167, at 142-45.

[207]To date there have been three elections--in 1979, 1984 and 1989. Each election has been contested on the basis of different national election procedures. *See id.* at 142.

[208]Light voter turnout is often mentioned in regard to Parliament elections. In 1979, only 62.5% of those persons eligible to vote did so. In 1984, the turnout was 59%, and in 1989 57.2%. *See* Francis Jacobs & Richard Corbett, The European Parliament 25 (1990).

[209]The requirements for forming a political group vary depending on the number of Member States involved. *See* Parliament's Rules of Procedure.

Parliament.[210] Each group receives funds for administrative and research purposes, including non-attached members, who are regarded as a group for this purpose. In addition, the political groups are guaranteed representation on Parliamentary committees and speaking rights in plenary sessions.

Much of the work of the Parliament is carried out by its standing committees, of which there are currently eighteen (Figure 3).[211] *Ad hoc* committees are established to investigate special topics as required. The political groups negotiate committee memberships so as to ensure fair representation of the Member States and of political views. Most members of Parliament are on at least one standing committee.

The Parliament performs both advisory and supervisory functions that are conferred upon it by the Treaties.[212] Consultation of the Parliament is often required before the Council can act. However, the Council often seeks the opinion of the Parliament when not required to do so, and the Parliament sometimes addresses opinions on its own initiative to the Council. Although the Treaties require

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[210]For a detailed discussion of the political groups, their membership and their ideology, *see* Jacobs & Corbett, *supra* note 208, at 54-83; Nugent, *supra* note 167, at 146-53.

[211]For a detailed discussion of the Parliamentary committees, *see* Jacobs & Corbett, *supra* note 208, at 91-124.

[212]*See* EEC Treaty, *supra* note 1, art. 137.

Committee Title	# of members
1. Political Affairs	56
2. Agricultural Fisheries & Rural Development	47
3. Budgets	32
4. Economic & Monetary Affairs & Industrial Policy	52
5. Energy, Research & Technology	34
6. External Economic Relations	29
7. Legal Affairs & Citizens's Rights	34
8. Social Affairs, Employment & the Working Environment	41
9. Regional Policy & Regional Planning	38
10. Transport & Tourism	30
11. Environment, Public Health & Consumer Protection	51
12. Youth, Culture, Education, Media & Sport	31
13. Development & Co-operation	43
14. Budgetary Control	28
15. Institutional Affairs	38
16. Rules of Procedure, the Verification of Credentials & Immunities	27
17. Women's Rights	33
18. Petitions	25

Figure 3

Standing Committees of the European Parliament

only the Council to consult the Parliament on policy proposals, the Commission also consults the Parliament on occasion.

The primary supervisory power of the Parliament over the activities of the Community is its power to dismiss the Commission *en bloc* by adopting a motion of censure.[213] In addition, however, the Parliament maintains a dialogue with the Commission, reviewing Community affairs through a variety of procedures. The Commission is required to respond to questions put to it by the Parliament or its individual members.[214] The Parliament also holds public deliberations regarding the annual report on Community activities submitted to it by the Commission.[215] Finally, the Parliament has considerable power regarding the budget of the Community through its requisite approval of the overall budget and overseeing all non-compulsory expenditure, certain Community development projects and its own administrative budget.[216]

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[213]EEC Treaty, *supra* note 1, art. 144. Although a motion to censure has occasionally been tabled, none has ever been approved. *See* Kapteyn & van Themaat, *supra* note 95, at 138.

[214]EEC Treaty, *supra* note 1, art. 140, para. 3. The ECSC Treaty require the High Authority to respond to questions from the Parliament. *See* ECSC Treaty, *supra* note 3, art. 23, para. 3.

[215]*See* EEC Treaty, *supra* note 1, art 143.

[216]*See id.* art. 203.

In distinction to other Community institutions the Parliament is characterized as the representative body of the peoples of the Community. It maintains this role by organizing itself around Community-level political groups rather than national alliances. Although its role in Community policy making is somewhat limited, its powers are nonetheless important. Its supervisory powers over the Commission provide a crucial check in protecting collective Community interests, and its control over the Community budget gives it influence over the general direction of policy making efforts in the Community.

4. European Court of Justice and Court of First Instance

The European Court of Justice (Court of Justice) consists of thirteen judges,[217] who are assisted by six advocates-general.[218] Both positions last for a renewable term of six years.[219] Every three years there is a partial replacement of the members of the Court of Justice, and seven or six judges and three advocates-general are replaced

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[217]*Id.* art. 164, *as amended by* Act of Accession ESP/PORT, art. 17.

[218]*Id.* art. 166, para. 1, *as amended by* Act of Accession ESP/PORT, art. 18.

[219]*Id.* art. 167, para. 1, *as amended by* Act of Accession ESP/PORT, art. 19.

alternately.[220] Although the judges and advocates-general are supposed to be appointed by common accord of the governments of the Member States,[221] this does not happen in practice. Each Member State nominates one judge, leaving the thirteenth judge to be appointed by common accord.[222] The appointment of the advocates-general tends to be more collective than that of the judges, although the larger Member States are usually able to ensure that they each have one of the positions.[223] Behind the scenes a staff of approximately 650 handles the administrative work and provides language services.[224]

It is the duty of the Court of Justice to "ensure that in the interpretation and application of the Treaty the law is observed."[225] The Court of Justice performs this duty through its judgments in direct actions usually involving the failure of Member States, the Council or the Commission

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[220]*Id.* art. 167, para. 2, *as amended by* Act of Accession ESP/PORT, art. 19.

[221]*Id.* para. 1, *as amended by* Act of Accession ESP/PORT, art. 19.

[222]Office for the Publications of the European Communities, The Court of Justice of the European Community 3 (1986).

[223]*See* Nugent, *supra* note 167, at 188.

[224]*Id.*

[225]*Id.* art. 164, *as amended by* Act of Accession ESP/PORT, art. 17.

to fulfill their Community obligations[226] or the legality of acts of the Council or Commission.[227] The Court of Justice also has jurisdiction to issue preliminary rulings concerning points of Community law to enable courts in the Member States to give judgements in cases they are hearing.[228]

Because of the increasing case load before the Court of Justice, the Council was given the power to establish a Court of First Instance.[229] The Court of First Instance was established in November 1989 and has twelve judges but no advocates-general. It hears only disputes between the Community and its staff, actions brought against the Commission under the ECSC Treaty and certain cases involving the Community competition rules. The Court of Justice hears all other cases. Decisions of the Court of First Instance can be appealed to the Court of Justice.

The Court of Justice and Court of First Instance play an important role in establishing the legal order of the Community. The courts are the source of uniform interpretation of Community law throughout the Member States. Without these independent institutions to give

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[226]*See id.* art. 169-70, 175.

[227]*See id.* art. 173.

[228]*See id.* art. 177.

[229]*See id.* art. 168a, *as amended by* Single European Act, *supra* note 14, art. 4.

rulings regarding legal obligations under the Treaties and Community legislation, Community decision making would be less effective and establishing common policies throughout the twelve Member States would be more difficult.

5. European Council

The European Council is a body consisting of "the Heads of State or Government of the Member States and the President of the Commission...assisted by the Ministers for Foreign Affairs and by a Member of the Commission."[230] The European Council meets twice each year[231] on a relatively informal basis. While it does not participate in the formal policy making processes of the Community, its exchange of ideas gives general direction to Community policy development[232] and assures progress and overall consistency in Community activities. The general economic situation in the Community and progress toward the completion of the internal market are usually on the agenda at European Council meetings. Other areas of activity include economic and monetary integration, external trade issues, external

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[230]Single European Act, *supra* note 12, art. 2.

[231]*Id.*

[232]For example, the European Council has played a significant role in introducing direct elections in the Parliament and in Community expansion. *See* Kapteyn & van Themaat, *supra* note 95, at 107.

international political issues and Community political integration.[233] However, because there are no Treaty provisions setting out the responsibilities of the European Council, it has relative freedom in the activities it chooses to undertake.

The main effect of creating the European Council has been to increase the influence of the Member States in the Community policy making processes. The European Council has become a forum for initiating policy and mediation, thus undermining some of the power of the Commission in these areas. In addition, because the European Council often addresses major issues, sometimes its discussions precede work later duplicated by the Council. However, the decisions of the European Council remain political in nature and thus have few, if any, implications for the Court, unlike the legislation of the Council.

6. Economic and Social Committee

The Economic and Social Committee (ESC) was established under the EEC and Euratom Treaties as a consultative body comprised of representatives of various social and economic interests.[234] Currently, the ESC has 189 members[235] who are

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[233]*See* Nugent, *supra* note 167, at 201-06.

[234]EEC Treaty *supra* note 1, art. 193.

nominated by Member State governments and formally appointed by the Council.[236] Each member serves a four-year renewable term.[237]

The membership of the ESC is divided into three main groups, each reflected in the national groups and approximately equal in size.[238] Group I--Employers includes members from industry, public enterprises, commercial ventures and financial institutions. The members of Group II--Workers are mostly drawn from national trade unions. Group III--Various Interests is associated with agriculture, small and medium-sized business, the professions, public agencies, local authorities and various public interest groups. Although the ESC members are appointed in a personal capacity rather than as representatives of an organization, their close association with certain interests inevitably results in a tendency to act as spokespersons for a particular cause.[239]

The ESC performs an advisory function within the

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[235]The distribution of members among the Member States is as follows: Germany, France, Italy and the United Kingdom each have 24; Spain has 21; Belgium, Greece, the Netherlands and Portugal each have 12; Denmark and Ireland each have 9 and Luxembourg has 6. *Id.* art. 194.

[236]*Id.* art. 193.

[237]*Id.* art. 194.

[238]For a detailed discussion of the ESC groups and their membership, *see* Emil Kirchner & Konrad Schwaiger, The Role of Interest Groups in the European Community 60-84 (1981).

[239]*See* Nugent, *supra* note 167, at 211.

Community, issuing ESC Opinions and information reports on a variety of matters. Under the EEC and Euratom Treaties, ESC Opinions usually result from mandatory or optional consultation by the Council or Commission. However, the ESC also occasionally issues Opinions on its own initiative. The Opinions are drafted by one of nine sections of the ESC, which operate in this regard similarly to the committees of Parliament.

The influence the ESC has on Community policy making is limited because the Council and Commission are not required to act on ESC Opinions. Mandatory consultation is restricted and ESC Opinions are often issued after key decision makers on the Council or Commission have already made up their minds. However, the ESC does provide a useful forum for the exchange of views from various social and economic interests.

C. Other Actors in the Policy Making Processes

1. Standards Organizations

Several European standards organizations have come to play significant roles in the telecommunication policy making process in the Community. The European Conference of Postal and Telecommunications Administrations (CEPT) was founded in 1959 and is comprised of representatives from the postal and telecommunications administrations in twenty-six

European countries, including the twelve Community Member States. The work of the CEPT primarily involves questions regarding service provision, technical standards and tariffs. In 1984, a framework for cooperation between the CEPT and the Community was established to help develop European-wide standards in telecommunications.[240] The Technical Recommendations Application Committee was created with the power to adopt mandatory European standards, or normes des Europeenes des télécommunications (NETs) in certain cases.

In 1988, the CEPT created a new European Telecommunications Standards Institute (ETSI) to serve as a research facility, but ETSI was soon severed from the CEPT. The members of ETSI come from twenty-one of the CEPT countries and are predominantly manufacturers, although national telecommunication administrations, public network operators, users and service providers are also represented.[241]

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[240]*See* Council Recommendation of 12 November 1984 Concerning the Implementation of Harmonization in the Field of Telecommunications, 1984 O.J. (L 298) 49; Green Paper, *supra* note 19, at 108.

[241]For a discussion of the CEPT and the creation and organization of the ETSI, see Frede Ask, Standards and the Role of ETSI, in European Communications 189 (David Shorrock ed., 1989).

Standards organizations such as the CEPT and the ETSI[242] are important actors in the telecommunications policy making processes in the Community. Such organizations have a large share of the responsibility for the development of telecommunications standards in Europe. Because their membership is comprised primarily of the national telecommunications administrations of the Member States and industry representatives, a great deal of the authority in the area of standards setting is not in the hands of the Community and its institutions.

2. Private Sector Participants

Various non-governmental interests also play a part in the Community policy making processes. Among these are private and public companies, national and European interest groups and regional and local decision making bodies.[243] Because such interests are unable to directly approach the Council, they gain access to the policy making processes through the national governments of the Member States, the Commission, the Parliament and the ESC, each for different

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[242]The work of the CEPT and ETSI is supplemented by that of other organizations such as the European Committee on Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the International Telecommunications Union (ITU).

[243]*See* Nugent, *supra* note 167, at 226-31.

reasons.[244]

National governments are a prime target for attempting to influence Community policy. Specialized interest groups are often called upon by the Member State governments as a source of information for developing policy positions. Not only can private interests attempt to influence national positions on Community policy, they can also influence the way such policies are implemented on the national level. Thus, private interests consider it important to make their views on Community policy known at the national level.[245]

Targeting the Commission is also important to private interests. The Commission makes itself accessible because it needs specialized information from private interests to perform its role as the main initiator of Community policy. Support from private interests for proposals from the Commission strengthens its position with the Council. Therefore, the Commission keeps an official register of several interest groups and the various DGs keep them informed of policy developments. Sometimes members of the groups become part of the various Member State delegations sent to work at the DGs.[246]

The Parliament and the ESC also provide such groups access to the policy making processes. Ministers of

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[244]*See* Kirchner & Schwaiger, *supra* note 239, at 37-59.

[245]*See* Nugent *supra* note 167, at 232-33.

[246]*See id.* at 233-34.

Parliament and members of special advisory committees can be directly lobbied. In addition, approaching members of the ESC, whose main purpose is to serve as a forum for special interest representation, might be used as a means of influence. However, given the advisory position of the Parliament and the ESC in the policy making processes, they are not primary targets for lobbying.

E. Policy Making Processes

Policy making in the Community is complex, and involves different processes in which the actors interact in various ways. The main actors--the Community institutions, Member State governments and special interest groups--each differ in character and at times take on different roles, either active or passive, depending on the subject matter involved and the resources available. The subject matter can also determine the policy making process that is used because certain policy areas are more complex than others, occupy a more important position on the Community agenda or involve different balances of responsibility between the Community and the Member States.

Since the ratification of the Single European Act in 1987, there have been two different policy making processes in the Community: the consultation procedure and the

cooperation procedure[247] (Figure 4). The consultation procedure involves a single reading by the Council of a Commission proposal. The cooperation procedure includes two readings by the Council and, under certain circumstances qualified majority voting. A variety of legislative matters are decided by the cooperation procedure, including various matters of social policy[248] and most measures "which have as their object the establishment and functioning of the internal market."[249]

1. The Consultation Procedure

The consultation procedure begins when one of the actors initiates the development of a policy proposal. Usually, this is done by the Commission.[250] However, other actors can require or influence the Commission to act. The Council can request the Commission to submit proposals regarding matters relevant to attaining Community

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[247]Although the consultation procedure was already in place, the Single European Act introduced the cooperation procedure to improve the efficiency of decision making in the Council and, presumably, to strengthen the role of the Parliament in policy making. *See* Single European Act, *supra* note 12, art. 7.

[248]*See, e.g.*, EEC Treaty, *supra* note 1, art. 7 (prohibitions of discrimination on the grounds of nationality).

[249]*Id.* art. 100a.

[250]*See supra* text accompanying notes 186-87.

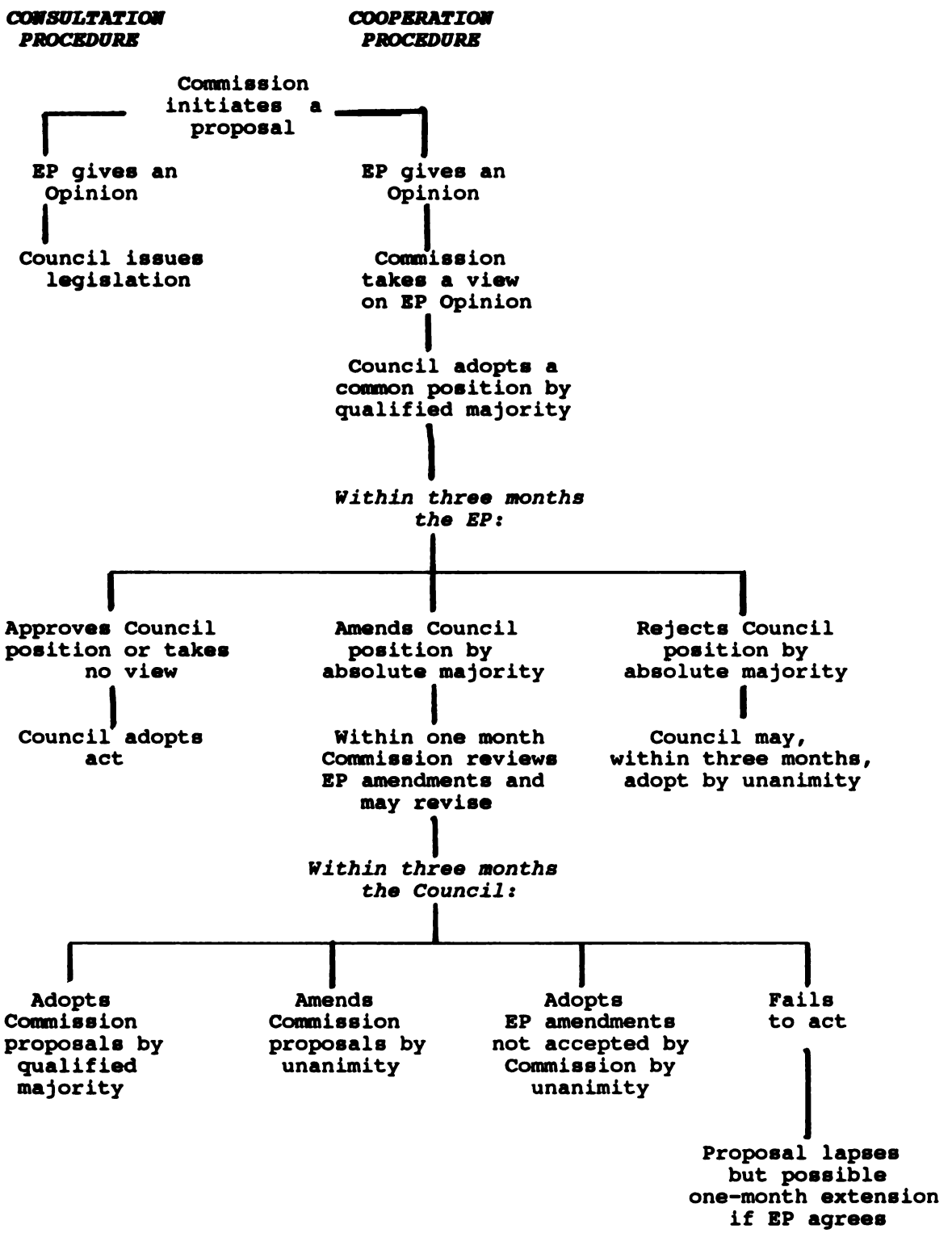

Figure 4

Main Stages of the Policy Making Processes

objectives.[251] In addition, the various private sector participants might lobby the Commission to initiate proposals or exert influence internally through representation in one of the DGs.[252] The Parliament might also influence the Commission through a Parliamentary initiative report.

The decision to issue a Commission proposal is usually made by the head of the relevant DG. Officials in the DG prepare an initial draft which is eventually sent to the staff of the Commissioner responsible for that particular policy portfolio. The staff might amend the proposal before submitting it to the Commissioner, who, upon approving the proposal, submits it to the entire Commission. Depending on how controversial the proposal is, the Commissioners might adopt it or hold a debate after which they accept it, reject it, amend it or refer it back to the DG for further consideration. During this pre-proposal stage the Commission might solicit various views from other Community officials, interest groups or researchers, depending on the nature of the proposal and the working habits of its drafters.

A simple majority of votes is required to approve the

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[251]EEC Treaty, *supra* note 1, art. 152. The impetus for a request from the Council for a proposal from the Commission might come from the indirect influence of various private sector participants on a member of the Council or its staff.

[252]*See supra* text accompanying note 247.

proposal. The proposal is then published, and the formal consultative procedure among other Community institutions begins. The Council receives a copy of the proposal and refers it to the Parliament and, if necessary, the ESC, for their Opinions. The various Parliamentary committees or ESC working groups then study the proposal.

In the Parliament the proposal might be studied by as many as three committees, although one of them is designated as responsible for preparing a report for the plenary session. The final report usually includes amendments to the Commission proposal, if any; a draft legislative resolution; and explanatory statement; and annexes, if any, which might include reports from other committees. Once again the complexity and controversiality of the subject matter determines how quickly a committee report is adopted and recommended to the plenary session of the Parliament.

Sometimes it is necessary to consult the ESC regarding a Commission proposal. ESC Opinions are drafted by one of the nine sections of the Committee, which eventually submits the Opinion at a plenary meeting. Once an ESC Opinion is approved by a majority, minority viewpoints have an opportunity to be annexed to the ESC Opinion before it is submitted to the Council. ESC Opinions, however, usually have little influence over Community legislation because the Council or Commission might move ahead in the policy making process before the Opinion is issued. Although when an ESC

Opinion is issued, some note is taken of it.

The Council usually does not wait until the Parliament and the ESC delivers its Opinions before beginning to examine the proposal.[253] Initially, a working party examines the proposal, discussing key points and determining the positions of the Member States. The working party eventually prepares a report noting points of agreement and disagreement and any reservations of the Member States. That report is then referred to the Coreper, which pays particular attention to resolving the areas of disagreement and reservation. When such issues cannot be resolved, depending on their difficulty and the disparity among the various positions, the Coreper refers the report back to the working party for further work or on to the Council for negotiation.

Only the Council itself can formally adopt a proposal. A vote is not taken, however, as long as there is substantial disagreement among Council members. Even when a vote does occur, the number of votes required for adoption varies depending on the type of proposal involved. Unanimity is usually required to adopt policy in a new area or to modify or further develop an established policy

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[253]Even in cases in which consultation of the Parliament is required under the EEC Treaty, an Opinion of Parliament does not bind the Council in any way. *See* EEC Treaty, *supra* note 1, art. 235.

framework.[254] A unanimous vote is also required for the Council to amend a Commission proposal against the wishes of the Commission. A simple majority is required for procedural matters.

Proposals for measures to establish the internal market[255] require qualified majority voting.[256] A qualified majority is also required at the first stage of the cooperation procedure,[257] and, under special circumstances, the second stage.[258] Under qualified majority voting, the vote of each Member State is weighted, depending on its size. France, Germany, Italy and the UK have 10 votes each; Spain has 8; Belgium, Greece, the Netherlands and Portugal have 5; Denmark and Ireland have 3 and Luxembourg has 2.[259] Fifty-four votes--which is 70 per cent of the total 76--

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[254]Because abstentions do not count as negative votes for Council decisions requiring unanimity, they do not impede adopting such decisions. *See id.* art. 148(3).

[255]According to the EEC Treaty, "[t]he internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured...." EEC Treaty, *supra* note 1, art. 8a. Article 8a was added to the EEC Treaty by the Single European Act, *supra* note 12, art. 13.

[256]EEC Treaty, *supra* note 1, art. 100a. Article 100a was added to the EEC Treaty by the Single European Act, *supra* note 12, art. 18.

[257]*See id.* art. 149(2)(a).

[258]*Id.* art. 149 (2)(e).

[259]*Id.* art. 148(2).

constitute a qualified majority.[260] Under this system, the five largest Member States alone cannot outvote the other seven, nor can two of the largest Member States block the adoption of a proposal.

2. The Cooperation Procedure

The cooperation procedure is much more complicated than the consultation procedure. The procedure begins with a proposal making its way out of the Commission, being submitted to the Council and then being passed on to the Parliament or the ESC for an Opinion. When the Council receives the Opinion, the Council adopts a common position on the proposal,[261] rather than making a final decision as it would under the consultation procedure. Usually qualified majority voting is used to adopt a common position,[262] unless the Council chooses to amend the proposal against the wishes of the Commission, in which case unanimity is required.[263]

The Parliament then conducts its second reading. The common position, including the reasons which lead the

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[260]*Id.*

[261]*Id.* art. 149(2)(a), *as amended by* the Single European Act, *supra* note 12.

[262]*Id.* art. 149(2)(a).

[263]*Id.* art. 149(1).

Council to adopt it, is then sent to the Parliament.[264] The Parliament then has three months to take one of four courses of action. The Parliament can decide to approve the common position, in which case the Council adopts the proposal.[265] The Parliament can reject the common position by an absolute majority and send the matter back to the Council, which can adopt its common position by unanimity within three months.[266] The Parliament can amend the common position by an absolute majority and send the proposal back to the Council and the Commission.[267] The Commission then has one month to review the Parliamentary amendments and decide whether to incorporate them into the proposal before referring it back to the Council.[268] If the Commission incorporates the Parliamentary amendments, the Council can approve them by a qualified majority.[269] If the Commission does not incorporate the amendments, the Council can only approve them by a unanimous vote.[270] By voting unanimously the Council can also approve any Parliamentary amendments

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[264] *Id.* art. 149(2)(b).

[265] *Id.* art. 149(2)(b).

[266] *Id.*.

[267] *Id.* art. 149(2)(c).

[268] *Id.* 149(2)(d).

[269] *Id.* art. 149(e).

[270] *Id.*

not adopted by the Commission.[271] Should the Parliament fail to act during the three-month period, the Council can adopt the common position.[272]
Also, if the Council fails to act within three months after receiving the re-examined proposal from the Commission, the proposal lapses.[273]

3. Community Legislation After Adoption

Once the Council votes to adopt a proposal, the next steps depend on the type of legislation that is issued. Regulations and decisions are binding without any further action.[274] Directives, however, must be incorporated into national law by the individual Member States, which are usually required by the directives to inform the Commission of the measures taken.[275] The way in which Member States incorporate directives into national law varies but usually involves adopting or amending administrative measures or legislation. Whether Community legislation is being properly applied at the national level is usually monitored by national authorities and agencies who communicate with

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[271] *Id.* art. 149(d).

[272] *Id.* art. 149(2)(b).

[273] *Id.* art. 149(f).

[274] *See supra* Chapter III.

[275] *See id.*.

the Commission and the DGs.[276]

Two types of legislation in particular require followup provisions or measures: framework legislation and certain legislation intended to harmonize national laws under Article 100b of the EEC Treaty. Framework legislation lays down general principles and rules in a policy area but requires additional, more detailed legislation to cover specific areas within the policy framework. Article 100b legislation lays down essential requirements in an area of policy important to establishing the single market, particularly one in which standards are necessary, such as telecommunications. Under such legislation Member States are allowed to retain their national standards but agree to mutually recognize the national standards of other Member States. The national standards are eventually replaced with Community standards determined by European standards organizations such as the ETSI.[277]

Under special circumstances Member States are allowed to adopt national safeguard measures rather than implement

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[276] *Id.*

[277] *See* EEC Treaty, *supra* note 1, art. 100b. Article 100b was added by the Single European Act, *supra* note 12, art. 19. What constitutes the new approach is the agreement for mutual recognition of the standards of other Member States. Prior to enacting the Single European Act the Council would not adopt standards legislation until national specifications could be harmonized by Community institutions through the consultation procedure. Given the various problems associated with harmonizing national standards, the old approach was usually a lengthy process characterized by frequent delays and stalemates.

Community harmonization legislation adopted by qualified majority voting.[278] The special circumstances must fall under the non-economic conditions outlined in Article 36 of the EEC Treaty[279] "or relat[e] to protection of the environment or working environment...."[280] Member States wanting to apply national safeguards must notify the Commission, which then confirms the safeguards after having verified that they are not a means of discrimination or trade restriction.[281]

E. Conclusion

The policy making processes in the Community differ from those in other international organizations in several respects. Most obvious is that the character, composition and functions of the primary institutions of the Community are more governmental. In addition, many of the issues dealt with in the Community are matters of direct concern to the citizens and business entities of the Member States,

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[278]*See* EEC Treaty, *supra* art. 100a(4).

[279]Such conditions include "grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the p[rotection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property." EEC Treaty, *supra* note 1, art. 36.

[280]*Id.* art. 100a(4).

[281]*Id.* para. 2.

unlike the international political issues dealt with by traditional international organizations such as the United Nations.[282]

As such Community policy making is not so different from what occurs at the national level. For the Member States policy making is a process of resolving issues and problems in certain ways, either in national or Community forums. At both levels policy making is a political process of accommodation and compromise. Tensions and differences between competing interests must be smoothed over--usually through discussions, debates and deal making--in order to achieve overall policy goals.

Difference do exist, however, between Community and national policy making processes and have been a source for criticism regarding the Community. Critics point out that the Community institutions are less directly accountable than their national counterparts to those who are affected by their decisions. In the traditional system of representative government, legislative authority is vested in an assembly of representatives chosen in a free election.[283] The Community, however, is not wholly a

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[282]*See* John Fitzmaurice, European Community Decision-Making: The National Dimension, in Institutions and Policies of the European Community 1 (Juliet Lodge, ed. 1983).

[283]See John Pinder, The European Community, the Rule of Law and Representative Government: The Significance of Intergovernmental Conferences, 26 Gov't & Opposition 199, 204 (1991).

representative governmental system.

Critics who point out the lack of accountability in the Community system often phrase their argument in terms of the democratic deficit.[284] The "democratic deficit" has been defined as the combination of the transfer of policy making powers to Community institutions and the exercise of those powers by institutions other than the Parliament, the only institution whose members are directly elected.[285] According to this argument the Commission--a group of non-elected civil servants--proposes policy to the Council--a group of non-elected national ministers--which enacts binding, enforceable Community legislation that must be followed in the Member States despite any action by their national parliaments. Such critics equate the democratic deficit with a lack of accountability in Community policy making.

The critics fail to clearly define "accountability," but seem to imply that a lack of accountability results from there being no connection between the Community policy making system and the people or national governments of the

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[284]*See* J. H. H. Weiler, The Transformation of Europe, 100 Yale L.J. 2403, 2466-74 (1991); Williams, *supra* note 24, at 306-07.

[285]*See* Vernon Bogdanor and Geoffrey Woodcock, The European Community and Sovereignty, 44 Parliamentary Affairs 481, 482-83 (1991).

Community Member States.[286] Such connections, however, clearly exist through the representation of national governments in Community institutions,[287] the appointment of representatives to the Community and its institutions by directly elected national officials, the staffing of Community committees by the people themselves[288] and the direct election of the Parliament. Various public and private interest groups and industry groups, many of which reflect the interests of various collectivities of the people, also have a say in Community policy making through representation in the ESC and standards organizations such as the ETSI and their lobbying efforts.[289] Thus, to imply that the Community lacks accountability because it is disconnected from its members is incorrect.

The alleged lack of accountability is also related to a

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[286]Bogdanor and Woodcock note that public opinion polls and low voter turnout at Parliament elections might be signs of public alienation and hostility towards the Community. *Id.* at 481.

[287]The members of the Council, the Coreper and the European Council all represent the national governments of the Member States. *See supra* pp. 63-65, 68, 84-85; Williams, *supra* note 24, at 302.

[288]Through a system known as comitology hundreds of national civil servants sit on the various advisory committees, and DGs under the control of the Commission and on regulatory and management committees. *See* Williams, *supra* note 24, at 302.

[289]*See supra* pp. 88-91.

perceived lack of formal legitimacy[290] of the Community and its institutions. Formal legitimacy in institutions and systems, at least in the West, rests on a democratic foundation.[291] The Community has established such a foundation through its Treaties which were ratified by the parliaments of the Member States. Therefore, it does not lack formal legitimacy.

Questions regarding the accountability or legitimacy of the Community are really about the locus of control in the policy making processes. As evidenced in composition and character of Community institutions and other actors, the national governments of the Member States retain a large measure of control in the policy making processes. Their input is expected and received at every level, both behind the scenes and at the front.[292] Furthermore, national governments retain much control in implementing Community policy at the Member State level, particularly in the methods they choose to implement directives.

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[290]Formal legitimacy implies that "all the requirements of the law are observed in the creation of the institution or system." Weiler, *supra* note 284, at 2468. Formal legitimacy should be distinguished from social legitimacy, which implies social acceptance of the system. *Id*..

[291]*See* T. Franck, The Power and Legitimacy of Nations (1991).

[292]For a discussion of the role of national policy makers in the Community policy making processes, see Helen Wallace, National Bulls in the Community China Shop: The Role of National Governments in Community Policy-Making, in Policy-Making in the European Community 33 (Wallace, Helen et al. eds., 1st ed., 1977).

CHAPTER V

TELECOMMUNICATIONS AND THE EUROPEAN COMMUNITY ECONOMY

Following the oil crisis of 1973 Europe's traditional industries--steel, textiles, shipbuilding and coal--were in a state of decline, and the European heads of state recognized the need for new sources of economic growth. In the Dublin Report, which was submitted in 1979, the Commission stated that a "considerable effort will have to be made for the Community, its citizens, its cumbersome social structures and its fragile political balances to react in a positive way by adapting to the new economic and political realities of the world today."[293] A key industry chosen to lead the Community to economic improvement was telecommunications, but for a variety of reasons that industry was also troubled during the 1970s. Substantial policy changes were therefore necessary before telecommunications could help revitalize the Community economy and further the goal of establishing a single internal market that could compete on a global basis. This chapter reviews the problems the industry faced during the 1970s, the dual role telecommunications plays in the

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[293]European Society Faced with the Challenge of New Information Technologies, COM(79)650 final at 1 [hereinafter Dublin Report].

Community economy and the policy goals the Community has developed for telecommunications.

A. European Telecommunications in the 1970s

By the end of the 1970s many industry watchers expressed concern at the declining position of the Community in telecommunications and related industries. The Nora and Minc report to the French government[294] had increased awareness regarding the importance of telecommunications in the age of computerization, but until that time the European contribution to the field had been primarily intellectual. The United States and Japan were reaping all the commercial benefits. The inability of the Member States to compete in the field was the result of a variety of reasons having to do with regulatory regimes, business practices and the political climate.[295]

The main reason the Member States lagged behind the United States and Japan was the lack of cooperation at the European level. European telecommunications firms were operating in a fragmented, heterogeneous market, unable to produce equipment for mass consumption because technologies,

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[294]Simon Nora & Alain Minc, The Computerization of Society (1980).

[295]See Alain Dumont, Technology, Competitiveness and Cooperation in Europe, in The Technical Challenges and Opportunities of a United Europe 68, 69-70 (1990).

standards and procurement procedures differed from country to country. Therefore, firms did business almost exclusively in their home markets, which prevented them from taking advantage of economies of scale.

The 1970s were also a time of technophobia in the Community. The environmentally-conscious Greens movement, which strongly opposed advances in nuclear power and biotechnology, put pressure on governments to resist technological buildup, a state of affairs that extended to telecommunications and related industries. There was also some resistance to technology within telecommunications firms. Managers in finance and marketing positions were promoted more quickly than those in R & D or manufacturing, making the former positions more attractive. Many other Europeans were also reluctant and cautious about technology, fearing loss of employment and invasions of privacy.[296]

Further aggravating the situation, European firms remained isolated from sources of innovation and investment during the 1970s. Few of them established connections with research universities to gain fresh ideas. There was also little contact with venture capitalists, who could provide the investment capital necessary to develop and support new projects. Chauvinistic industrial and procurement policies also contributed to the problem. Most Member States promoted a national champion in each industry, thus

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[296] *Id.* at 69.

isolating a single firm from effective competition.[297]

Despite this protectionist approach to telecommunications in the 1970s, the industry did experience some growth. However, given various problems in the regulatory regimes, business practices and the political climate, the Community was unable to take full advantage of the potential for telecommunications, perhaps because the dual role of telecommunications in the economy was not appreciated.

B. The Dual Role of Telecommunications in the Economy

Since the 1970s the use of digital electronics and the integration of computers with telecommunications has increased the potential applications of telecommunications for both residential and business use. These improvements have increased the utility and marketability of existing services and have created interest in new ways to handle information and enhance business productivity. The result is an increase in demand for telecommunications equipment and services. Thus, telecommunications has come to play a dual role in the economy. On the one hand it makes a direct contribution to the economy; on the other it has an indirect impact as an input into the production process of many industries. Understanding the relationship between

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[297] *Id.* at 69-70.

telecommunications and the Community economy is necessary to appreciate both its importance for establishing the single market and the telecommunications policy framework the Community has created to achieve that goal.

A. The Direct Role

The telecommunications industry in the Community has experienced a revolution since the 1970s. The growth of the industry through network infrastructure and new service offerings has made its importance to the Community economy comparable to that of other large industrial sectors such as the aerospace and electric industries. This direct effect on the economies of the Member States is reflected in the increased penetration of telephone mainlines, increases in telecommunications revenues and investments and the overall contribution of the sector to GDP.

In the period from 1978 to 1989, the number of telephone mainlines in Member States grew at an accelerated pace (Table 1). During that period the telephone became a mass consumption item rather than something restricted to business and emergency use. The total number of mainlines throughout the Community increased by 81% during the 11-year period.

The increase in telephone penetration was coupled with

Table 1

Telephone Mainlines in the Community--1978-1989[1]
(000s)

Country	1978	1983	1989
Belgium	2,178.00	2,843.06	3,747.91
Denmark	2,055.00	2,403.00	2,848.00
France	12,010.00	20,942.00	26,942.45
Germany FR	17,305.00	23,549.86	28,400.00
Greece	2,025.00	2,714.40	3,786.43
Ireland	412.00	613.46	903.00
Italy	11,456.00	15,601.03	21,265.52
Luxembourg	122.00	142.94	176.36
Netherlands	4,279.90	5,462.00	6,691.00
Portugal	904.28	1,248.91	2,035.10
Spain	6,185.00	8,456.71	11,797.16
United Kingdom	15,173.00	19,550.00	25,363.00
Total	**74,104.28**	**103,527.37**	**133,955.93**
Increase 1978-1989:	81%		

Source: OECD
1. Although Greece did not join the EC until 1981 and Spain and Portugal did not join until 1986, data for those Member States is included for the entire period for the sake of continuity.

an extension in the telephone network and an increase in new technologies and service offerings. Total investment in telecommunications throughout the Community increased by 39% from 1978 to 1989 (Table 2). New service offerings nearly doubled between 1975 and 1984 and are expected to at least double again by the year 2000.[298] By 1989, total telecommunications revenues in the Community amounted to over US$88 billion (Table 3). This represented approximately 2% of the GDP in the Community.

These overall increases in the telecommunications penetration, investment and revenues, however, can be misleading. On the one hand they represent efforts to catch up with the United States and Japan by bringing the Community into the information age. On the other hand, these efforts developed largely through a national, rather than Community-wide, focus. Most services and equipment were provided on a national basis under strict monopoly regimes. Therefore, technology changed slowly and was depreciated over long periods, usually 20 years or more.

In a nationally fragmented environment protected from the operation of market forces, the costs of advancing telecommunications were higher than otherwise could have been achieved. In the short term the costs of "non-Europe" were higher prices for telephone introduction and the

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[298] *See* Herbert Ungerer & Nicholas P. Costello, Telecommunications in Europe 21-22 (1988).

Table 2

Telecommunications Investment, 1978-1989
(1987 US$m adjusted for inflation and exchange rates)[1]

Country	1978	1983	1989
Belgium	552.77	580.70	593.48
Denmark	413.46	341.64	440.29
France	6,537.30	5,035.40	4,688.75
Germany FR	4,782.34	6,684.31	8,460.40
Greece	205.98	373.07	251.01
Ireland	165.35	313.91	200.55
Italy	4,202.08	4,237.86	6,708.80
Luxembourg	33.63	14.78	37.65
Netherlands	799.28	597.17	1,005.73
Portugal	125.05	224.12	546.74
Spain	1,832.59	1,626.75	3,839.17
United Kingdom	2,346.76	2,821.64	3,813.65
Total	**21,996.59**	**22,851.35**	**30,586.22**
Increase 1978-1989:	39%		

Source: OECD
1. Although Greece did not join the EC until 1981 and Spain and Portugal did not join until 1986, data for those Member States is included for the entire period for the sake of continuity.

Table 3

Telecommunications Revenues 1989

COUNTRY	Telecom 1989 Revenues (US$m)	Revenue per Mainline 1989 (US$m)	Telecom as percent of GDP
Belgium	2,140.00	570.99	1.41
Denmark	1,946.24	683.37	1.85
France	16,316.14	605.59	1.72
Germany FR	19,906.76	700.94	1.66
Greece	992.35	262.08	1.84
Ireland	967.94	1,071.92	2.96
Italy	13,901.77	653.72	1.61
Luxembourg	120.40	682.69	1.82
Netherlands	3,969.83	593.31	1.76
Portugal[1]	940.52	462.15	2.08
Spain	6,122.85	519.01	1.63
United Kingdom	20,819.97	820.88	2.50
Total	**88,144.77**	**635.55**	**1.70**

Source: OECD
1.1988 Data.

delayed introduction of new services that often could be offered only on a national basis because of non-harmonized standards.[299] In the longer term, however, the costs of "non-Europe" were higher. The fragmented market structure of the Community made it difficult to achieve cost-efficiency and take advantage of the economies of scale a larger market could offer. Without a Community-wide initiative these problems could only become worse with the increased integration of computers with telecommunications, a situation characterized by rapid innovation, expanded service offerings, dynamic markets and aggressive international competition.

B. The Indirect Role

The shift to a more service-oriented economy and the advent of computer integration has led to wider applications of telecommunications in various industries. Of course, not all firms can add value through the use of telecommunications because some industries, such as banking, insurance, manufacturing and travel, are simply more telecommunications-intensive than others. However, as

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[299]For a detailed discussion of the costs of non-Europe in the telecommunications sector, see Jurgen Muller, The Benefits of Completing the Internal Market for Telecommunication Equipmentcand Services in the Community (1988).

economies become more service oriented, the derived demand[300] for telecommunications in business should continue to increase. Thus, the use of telecommunications has an indirect but positive effect on the economy, adding value to firms by facilitating certain operations or processes, thus leading to improvements in information management and increased productivity and competitiveness.[301]

A primary use for telecommunications is for information management. Information is important in business because managers control businesses through the use and flow of information. Telecommunications technologies provide means to collect, store, retrieve and manipulate the information necessary for a firm to be competitive. The continuing globalization of production processes and markets has made the efficient management of information more vital. In addition, new concepts in manufacturing, such as flexibility and variability, make managing information more difficult and necessary. Terms of trading between firms can also improve through the timely flow of commercial information.

Telecommunications technologies also help firms reduce costs by improving logistics. Better communication helps

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[300]A derived demand is a demand for sources that are inputs for production processes. *See* Cristiano Antonelli, Information Technology and Derived Demand for Telecommunications Services in Manufacturing, 4 Information Economics and Policy 45 (1989/90).

[301]See *id.*; Rob van Tulder & Gerd Junne, European Multinationals in Core Technologies 1-26 (1988); and Frederick Williams, The New Telecommunications 3-57 (1991).

firms react more quickly to market developments, directing workers to where they are most needed. It also helps facilitate just-in-time delivery, thereby saving costs related to raw materials and reducing inventories. In addition, when information is easily accessible, questions can be answered and problems can be resolved more quickly, thus allowing management to intervene directly to reduce costly slowdowns, interruptions or unwanted developments.

Because one of the basic functions of telecommunications is to overcome distance, its use allows firms to save costs through decentralized operations. Satellite offices and plants and research and development centers can all be linked through networks. This allows firms to transmit information from one location to another rather than transporting goods or people, thus saving time and costs associated with shipping, commuting and energy. Any disadvantages related to decentralized operations can also be overcome with telecommunications, which allows firms to exert control from a distance.

Problems related to time can also be overcome. Capacity within units of time can be extended through high-speed transmission. Networks allow the processing of information in real time, which allows several users simultaneous access to various data and network functions.[302] Store-and-retrieve systems such as electronic

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[302]*See* Nora & Minc, *supra* note 294, at 13, 174.

mail allow for operations in delayed time. Finally, the use of automated systems through telecommunications integration in manufacturing processes allows work to occur around the clock.

These varied uses of telecommunications at the firm level improve information management and logistics and help overcome problems associated with distance and time. The resulting decreases in costs and increases in productivity improve the overall operations of firms by increasing the ratio of costs to returns, leading to greater profits and competitiveness. This leads to a positive albeit indirect effect on the economy through the use of telecommunications at the firm level.

C. Conclusion

Throughout the 1980s telecommunications and information technology had become increasingly important to the economic development of the Community. However, in order to take full advantage of the economic benefits offered by telecommunications and reduce the costs of non-Europe, changes in policy in the Member States were necessary. Divisive nationalistic approaches would only continue to fragment the market and isolate firms, thus weakening efforts by the Community to not only close the gap between it and the United States and Japan, but to achieve

Community-wide economic integration as well. Therefore, concerted action in telecommunications was necessary for the Community to meet both the external economic and technological challenge and the greater, though self-imposed, challenge of establishing a single market.

The impetus to develop a Community-wide telecommunications policy was based on the rapid technological progress in information technologies, particularly by companies such as IBM.[303] Although early policy making efforts primarily involved data processing, the essential issues addressed were the same: creating a homogeneous market through harmonizing standards and public procurement policies.[304] After studying the recommendations made in the Dublin Report, the Commission issued a follow-up report[305] one year later calling on the Council to develop a comprehensive strategy to meet the challenge of the new technologies. Drawing together the various policies developed in the 1970s, the Commission proposed lines of action with three principle aims: 1) initiating measures to

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[303]*See* Community Policy for Data-Processing, COM(75)467 final at 3; Eur. Parl. Doc. (No. 153) 26 (1974).

[304]For a discussion of the history of Community policy making in data processing, *see* Thomas J. Ramsey, Europe Respond's to the Challenge of the New Information Technologies: A Teleinformatics Strategy for the 1980s, 14 Cornell Int'l L.J. 237 (1981).

[305]*See* New Information Technologies: First Commission Report, COM(80) 513 final [hereinafter First Commission Report].

facilitate the introduction of new technologies, 2) establishing a uniform Community market by encouraging common standards and 3) strengthening European industrial capacity in the field.[306] However, despite the consensus on the future importance of telecommunications, policy development moved slowly until 1983 when the Commission created the Task Force on Information Technology and Telecommunications.

The framework of the approach to telecommunications policy was finally laid in the 1984 Community Action Program on telecommunications,[307] which the Commission drafted with the assistance of the Senior Officials Group on Telecommunications (SOG-T), a group of representatives from the Member States that advised the Commission on all aspects of telecommunications policy. In the action program the Commission identified four major handicaps inhibiting the development of telecommunications in the Community:

- compartmentalized markets which stunt supply and demand;
- the uncertainty of carriers and companies over what development strategies to put in hand;
- weaknesses in the fundamental technologies of telecommunications;
- backwardness of less favoured areas in respect of networks, equipment, and advanced

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[306] *Id.* at 3.

[307] *See* 1984 Community Action Program, *supra* note 15.

telecommunications services.[308]

The Commission requested that the Council approve the implementation of a Community program to overcome these handicaps.[309]

The Council acted quickly. Later that same year, on the basis of the recommendations of the Commission, the Council approved a program for

> (a) the creation of a Community market for telecommunications equipment and terminals...;
>
> (b) improving the development of advanced telecommunications services and networks...;
>
> (c) improved access for less favored regions of the Community...to the development of advanced services and networks; [and]
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> (d) coordination of negotiating positions within the international organizations dealing with telecommunications....[310]

Thus, the way was paved for the goals for telecommunications to be translated into active policy.

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[308] *Id.* at 14.

[309] The Commission requested that the Council "approve the implementation of a Community programme, aimed at creating a consolidated European telecommunications territory, which would giver both carriers and industry the benefits and added dimension of working on the Community-wide scale, and would put at users' disposal the services essential to promote competitiveness...." *Id.* at 20.

[310] Minutes of the 979th meeting of the Council, 17 Dec. 1984.

CHAPTER VI

DEVELOPING TELECOMMUNICATION POLICY IN THE EUROPEAN COMMUNITY

By approving the 1984 Community Action Program the Council set in motion a telecommunications policy program that soon accelerated.103[311] Substantial progress was made between 1984 and 1987, during which time the Council took several actions. Then in June 1987, the Commission issued a Green Paper on telecommunications,[312] which included ten proposed positions aimed at improving the infrastructure, services and competition in the sector. The Green Paper launched a Community-wide debate on the future regulatory regime for telecommunications and resulted in several new directives issued by Community institutions. This chapter reviews the major telecommunications legislation issued by the Community since the approval of the 1984 Community Action Program.

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[311]The policy work in the telecommunication sector was part of a more concentrated effort toward establishing the single market officially expressed in 1985, when Lord Cockfield, the Commissioner responsible for the internal market, presented the White Paper to the European Council, which was later implemented in part by the Single European Act. *See supra* notes 11-13 and accompanying text. One of the areas addressed in the White Paper is telecommunications, and the point is made that establishing a single internal market requires telecommunications networks with common standards at the Community level.

[312]*See supra* note 19.

A. Council Actions November 1984-June 1987

Between November 1984 and June 1987, Community telecommunications policy development progressed rapidly. The Council issued nine recommendations, decisions regulations and directives in the areas it had approved from the 1984 Community Action Program (Figure 5). The legislation mainly concerns telecommunications standards, although the Council also addressed research and development programs and procurement contracts.

1. Telecommunications Standards

Much of the Community action taken during the mid-1980s in the area of technical standards involved developing the framework of cooperation between the Community and various standards organizations, in particular the CEPT.[313] In November 1984, the Council issued a general recommendation addressed to the Member States asking that future new services be introduced on the basis of common, harmonized standards determined through the CEPT and other standards

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[313]Although the CEPT had been working in the area of standards since 1959, the standards it adopted were not mandatory. As a result the Member States often adopted different standards, usually taking into consideration those of favored national industries and equipment suppliers.

Council Recommendation of 12 November 1984 concerning the Implementation of Harmonization in the Field of Telecommunications, 1984 O.J. (L 298) 49.

Council Recommendation of 12 November 1984 concerning the First Phase of Opening Up Access to Public Telecommunications Contracts, 1984 O.J. (L 298) 51.

Council Decision of 25 July 1985 on a Definition Phase for a Community Action in the Field of Telecommunications Technologies--R&D Programme in Advanced Communication Technologies for Europe (RACE), 1985 O.J. (L 210) 24.

Council Directive of 24 July 1986 on the Initial Stage of the Mutual Recognition of Type Approval for Telecommunications Terminal Equipment, 1986 O.J. (L 217) 21.

Council Regulation of 27 October 1986 Instituting a Community Programme for the Development of Certain Less-favored Regions of the Community by Improving Access to Advanced Telecommunications Services (STAR) Programme, 1986 O.J. (L 305) 1.

Council Decision of 22 December 1986 on Standardization in the Field of Information Technology and Telecommunications, 1986 O.J. (L 36) 31.

Council Recommendation of 22 December 1986 on the Coordinated Introduction of the Integrated Services Digital Network (ISDN) in the European Community, 1986 O.J. (L 382) 36.

Council Recommendation of 25 June 1987 on the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community, 1987 O.J. (L 196) 81.

Council Directive of 25 June 1987 on the Frequency Bands to be Reserved for the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community, 1987 O.J. (L 196) 85.

Figure 5

Council Actions Taken November 1984-June 1987

organizations.[314] The recommendation also requests that from 1986 onwards the telecommunications administrations (PTTs) take into account the recognized Community standards when ordering digital transmission and switching systems.[315] The purpose of the recommendation is to help establish common guidelines for the technological innovation necessary for creating a dynamic Community market for telecommunications equipment and harmonized telematic services.[316]

A program for work on common standards specifications (corresponding to normes Européenes de télécommunication (NETs)) by the CEPT and their mutual recognition is set forth in the Council directive issued in July 1986 regarding the initial stage for mutual recognition of type approval for telecommunications terminal equipment.[317] In particular, that directive requires the Member States to "implement the mutual recognition of the results of tests of

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[314]Council Recommendation of 12 November 1984 concerning the Implementation of Harmonization in the Field of Telecommunications, 1984 O.J. (L 298) 49, para. 1-2 [hereinafter Harmonization Recommendation]. *See supra* pp. 87-88.

[315]*See* Harmonization Recommendation, *supra* note 314, para. 3.

[316]*Id.* Recitals.

[317]Council Directive of 24 July 1986 on the Initial Stage of the Mutual Recognition of Type Approval for Telecommunications Terminal Equipment, *supra* note 21.

conformity with common conformity specifications for mass-produced telecommunications terminal equipment."[318] The mutual recognition procedure requires the CEPT to draw up NETs and designate the testing laboratories, or other competent authorities, approved to issue conformity certificates verifying that terminal equipment conforms to the NETs. Such certificates must then be recognized throughout the Community, thereby foregoing the need to test equipment for type approval in each Member State in which it is marketed.[319] Thus, the directive essentially explains in more detail part of the authority of the CEPT to determine Community technical standards.

In a decision issued in December 1986, the Council recognized the need for common standards in the field of information technology--in particular computer systems components and software.[320] The decision also covers functional specifications for services offered over the public networks for the exchange of information and data between information technology systems.[321] The decision is intended to promote common standards developed by the

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[318]*Id.* art. 1.

[319]*Id.* art. 1 and art. 2, para. 16.

[320]Council Decision of 22 December 1986 on Standardization in the Field of Information Technology and Telecommunications, 1986 O.J. (L 36) 31.

[321]*Id.* art. 3 and 5.

standards organizations and as such, complements the directive on mutual recognition for type approval of terminal equipment.[322]

The Council also has issued recommendations in more specific areas, such as integrated services digital networks (ISDN)[323] and cellular mobile communications.[324] Each recommendation outlines a plan for the coordinated introduction of the technology into the Community and recommends that the Member States work within the CEPT to harmonize standards. In tandem with the recommendation regarding cellular mobile communications the Council issued a directive requiring the Member States to reserve certain frequency bands for cellular digital mobile communications.[325]

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[322]The decision specifically states that it does not cover the common technical specifications for terminal equipment that are covered in the directive regarding the mutual recognition of type approval for terminal equipment. *Id.* art. 3.

[323]*See* Council Recommendation of 22 December 1986 on the Coordinated Introduction of the Integrated Services Digital Network (ISDN) in the European Community, 1986 O.J. (L 382) 36 [hereinafter ISDN Recommendation).

[324]*See* Council Recommendation of 25 June 1987 on the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community, 1987 O.J. (L 196) 81 [hereinafter Cellular Mobile Recommendation].

[325]*See* Council Directive of 25 June 1987 on the Frequency Bands to be Reserved for the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community, 1987 O.J. (L 196) 85.

2. Research and Development Programs

In addition to concentrating on standards harmonization, in the mid-1980s the Council also initiated several research and development programs dealing with telecommunications. In a decision issued in July 1985, the Council initiated the definition phase of the R & D Program in Advanced Communications Technologies for Europe (RACE).[326] The definition phase of RACE was to consist of exploration projects in integrated broadband communications.[327] In addition, the Council issued a regulation initiating a Community program for developing improved access to advanced telecommunications services in the less-favored regions of the Community (STAR Program),[328] in Greece, Ireland, Northern Ireland and Portugal. The objective of the STAR Program was to integrate those areas into the advanced telecommunications networks in the

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[326]*See* Council Decision of 25 July 1985 on a Definition Phase for a Community Action in the Field of Telecommunications Technologies--R&D Programme in Advanced Communication Technologies for Europe (RACE), 1985 O.J. (L 210) 24; Ungerer & Costello, *supra* note 298, at 153-57.

[327]*Id.* art. 2.

[328]*See* Council Regulation of 27 October 1986 Instituting a Community Programme for the Development of Certain Less-favored Regions of the Community by Improving Access to Advanced Telecommunications Services (STAR) Programme, 1986 O.J. (L 305) 1; Ungerer & Costello, *supra* note 298, at 158-60. The STAR Program is funded through the European Regional Development Fund.

Community through investment projects.[329]

Both the RACE and the STAR programs are related to the framework program for research and technological development established under the Single European Act.[330] Also part of the framework program are the second phase of the European Strategic Program for Research and Development in Information Technology (ESPRIT) and various programs regarding the applications of information technology, such as the pilot phase of the program in Advanced Informatics in Medicine in Europe (AIM).[331] Together these programs represent the legitimization of R & D within the Community system.

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[329]*Id.* art. 1 and 2.

[330]The Council approved the budget for the framework program in July 1987. *See* Council Decision of 28 September 1987 Concerning the Framework Programme for Community Activities in the Field of Research and Technological Development, 1987 O.J. (L 302) 1. For a discussion of the various R & D projects involving telecommunications, see Ungerer & Costello, *supra* note 298, at 172-83.

[331]*See* Commission Proposal for a Regulation on Community Action in the Field of Information Technology and Telecommunications Applied to Health Care--Pilot Phase, COM(87)352 final.

3. Procurement Contracts

In November 1984, the Council issued a recommendation regarding public telecommunications contracts.[332] According to the recommendation Member State governments asked to ensure that their telecommunications administrations allow companies from other Member States to tender bids for various equipment contracts, including those for telematic terminals, switching and transmission equipment.[333]

B. The Green Paper on Telecommunications

Despite the progress made regarding the 1984 Community Action Program, more wide-sweeping changes in the regulatory environment were necessary before the far-reaching effects of telecommunications would help the Community meet its established goals. To that end the Commission issued a Green Paper in June 1987 addressing the future regulatory environment of telecommunications.[334] The Commission issued the Green Paper "to initiate a common thinking process regarding the fundamental adjustment of the institutional

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[332]*See* Council Recommendation of 12 November 1984 concerning the First Phase of Opening Up Access to Public Telecommunications Contracts, 1984 O.J. (L 298) 51.

[333]*Id.* para. 2-3.

[334]*See* Green paper, *supra* note 19.

and regulatory conditions which the telecommunications sector now faces."[335] This process was conceived as a consultative one that would build on the consensus achieved in the 1984 Community Action Program.[336] It would take into account the views of all parties concerned--Community institutions, PTTs and recognized private operating agencies, industry representatives, users, trade unions and other organizations with interests in the area--and identify common positions, analyze common objectives and examine the external problems posed by the world telecommunications market.[337] More than forty-five organizations would eventually participate in the process.

The importance of the telecommunications sector to future Community development is reiterated at the beginning of the Green Paper.[338] In general, the thrust of the Green Paper proposes increased competition in a Community-wide market in order to fully develop the potential of

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[335]*Id.* at 10.

[336]*Id.* at 19.

[337]*Id.*.

[338]The Commission stated that "a technically advanced, Europe-wide and low cost telecommunications network will provide an essential infrastructure for improving the competitiveness of the European economy, achieving the internal market and strengthening Community cohesion--which constitute priority Community goals reaffirmed in the Single European Act. Telecommunications have a great influence not only on services in general, such as financial services, transport and tourism, but also in trade in goods and on European industrial cooperation." *Id.* at 9.

telecommunications. To that end the Commission identifies three tasks the Community must perform:

1) creating the necessary European scale and dimension in the sector;

2) avoiding the creation of new barriers within the Community during the adjustment of regulatory conditions; and

3) removing existing barriers in the course of the adjustment.[339]

These tasks involve restructuring the telecommunications sector in the Member States to take advantage of Community-wide economies of scale. In turn, the tasks are related to the general objectives the Commission implies throughout the Green Paper:

1) creating a common market in terminal equipment in order to ensure broad choices for users;

2) creating a common market in services to develop the infrastructure necessary to achieve the overriding objective of the 1992 market; and

3) creating a common market in network equipment to assure the Community's future position in information technology.[340]

These objectives involve the close relationship between the telecommunications sector and establishing the single market.

The Commission sets out ten proposed positions regarding issues that the Commission believes must be resolved at the Community level for all Member States

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[339]*Id.* at 10-11.

[340]*See id.*, Figure 13.

(Figure 6).[341] The proposed positions deal with a number of areas, including safeguarding the ability of the telecommunications administrations (PTTs) to develop networks and services (Positions A and B), opening the market for services and terminal equipment (Positions C, D, E and F), creating the regulatory dynamics for an open market (Position G), fairness of competition (Positions H and I) and the external Community position in international telecommunications regulation (Position J). In the ten proposed positions the Commission tries to balance the responsibilities and needs of the PTTs with the requirements for developing competition in the sector and establishing the single market.

After receiving comments on the Green Paper from concerned parties, in February 1988 the Commission further outlined its program of action for the progressive opening of the Community telecommunications market to competition.[342] The Commission established priorities

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[341]*Id.* at 184. Issues to be dealt with at the national level are left for the Member States to decide individually. Such issues include the status of telecommunications administrations best suited for a developing competitive market, the method of financing the telecommunications administrations and their employment relations concerns. *Id.*

[342]*See* Towards a Competitive Community-wide Telecommunications market in 1992--Implementing the Green Paper on the Development of the Common market for Telecommunications Services and equipment--State of Discussions and Proposals by the Commission, COM(88) 48.

A. Member State telecommunications administrations (PTTs) to continue to have exclusive rights to provide and operate the network infrastructure, with the possible exception of two-way satellite communication.

B. PTTs to continue to have exclusive rights to provide certain basic services, especially voice telephony.

C. Free and unrestricted provision of all other services, including value-added services, within and between the Member States.

D. Strict requirements regarding standards for the network infrastructure and services provided by the PTTs to maintain or create Community-wide inter-operability, otherwise known as open network provision (ONP).

E. Clear definition in directives of the general requirements imposed by PTTs on providers of competitive services for use of the network, including definitions regarding network infrastructure provision.

F. Free and unrestricted provision of terminal equipment within and between Member States subject to type approval.

G. Separation of the regulatory and operational activities of PTTs to avoid conflicts of interest.

H. Strict review of commercial activities under Article 90 of the EEC Treaty and the competition rules.

I. Strict review of private service providers in the newly liberalized sectors under the competition rules.

J. Full application of the Community common commercial policy to telecommunications, particularly to build up a consistent Community position for GATT negotiations.

Figure 6

Proposed Positions of the Green Paper

proposed positions in the Green Paper and announced a schedule of planned measures for their implementation.[343] On June 30, 1988, the Council issued a resolution announcing its support for the major policy objectives outlined by the Commission.[344]

C. Implementing the Green Paper

1. Competition in Terminal Equipment

After outlining its policy program the Commission wasted little time before taking action. Even before the Council announced its approval of the program--which was not required--the Commission issued its directive on competition in the market for terminal equipment (Terminal Equipment Directive).[345] The Commission issued the directive under Article 90(3) of the EEC Treaty, which requires the Commission to ensure the application of the competition rules and issue directives or decisions to the Member States whenever necessary.[346] France and other Member States

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[343] *Id.*

[344] *See* Council Resolution of 30 June 1988 on the Development of the Common Market for Telecommunication Services and Equipment up to 1992, 1988 O.J. (C 257) 1.

[345] *See* Terminal Equipment Directive, *supra* note 21.

[346] *See* EEC Treaty, *supra* note 1, art. 90(3). The Court of Justice had already held that a public body such as a telecommunications administration was considered an undertaking engaged in commercial activity and therefore subject to the Community competition rules. *See* Case 41/83,

challenged the validity of the directive,[347] but the Court of Justice rejected their application for the most part, holding that the Commission had authority under Article 90(3) of the EEC Treaty to issue the directive.[348]

The Terminal Equipment Directive is intended to correct the monopoly control Member States have extended beyond network infrastructure to the supply of user terminal equipment for connection to the network.[349] The Commission believes that the extension of monopoly control to terminal equipment disadvantages suppliers of equipment from other Member States and restricts consumers from renting or purchasing cheaper equipment.[350] Because the Commission considers such control incompatible with the EEC Treaty, it issued the Terminal Equipment Directive to abolish such control and to introduce greater competition in the market in terminal equipment. The Commission seeks to accomplish

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Italy v. Commission, 2 C.M.L. Rep. 368 (1985) (British Telecom judgment). Article 90(3) does not require the Commission to consult other Community institutions before issuing a directive.

[347]*See* Case C-202/88, France v. Commission, Proceedings of the Court of Justice and the Court of First Instance of the European Communities, Mar. 11-22, 1991, No. 07-91, 5.

[348]*Id.* However, the Court did declare the directive void in two respects: (1) in so far as it applied to special, but not exclusive, rights and (2) in so far as it applied to the termination of state contracts. *Id.*.

[349]*See* Terminal Equipment Directive, *supra* note 21, Recitals, para. 1.

[350]*Id.* para. 5.

this goal, in part, by the following means:

1) All exclusive rights granted by Member States to a public or private body for the importation, marketing, connection, bringing into service or maintenance of telecommunications terminal equipment are abolished;[351]

2) Economic operators must have the right to import, market, connect, bring into service or maintain terminal equipment;[352]

3) Users must have access to new public network termination points, and the physical characteristics of such points must be published;[353]

4) A body independent of public or private telecommunications monopolies must have the responsibility for drawing up all technical specifications and type approval procedures for terminal equipment;[354]

5) Member State PTTs must allow customers to terminate, with maximum notice of one year, leasing or maintenance contracts which concern terminal equipment.[355]

6) Member States must submit an annual report to the Commission regarding compliance with the Directive.[356]

The Terminal Equipment Directive implements proposed

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[351]*Id.* art. 2. The text of Article 2 also refers to special rights. However, the Court of Justice declared the Directive void for lack of reasoning in so far as it refers to special rights. *See* Case C-202/88, *supra* note 347.

[352]*Id.* art. 2.

[353]*Id.* art. 4.

[354]*Id.* art. 6.

[355]*Id.* art. 7.

[356]*Id.* art. 9.

positions from the Green Paper.[357] Before the Directive was issued, Member State PTTs had distorted the market for terminal equipment through their exercise of monopoly control. However, their assent to developing a more open, Community-wide terminal equipment market was evidenced in the Council resolution approving the Green Paper objectives.[358] Therefore, although the Commission issued the Terminal Equipment Directive without having consulted other Community institutions, the Member States had had input into its development.

2. Competition in Services

The Commission complemented its Terminal Equipment Directive by issuing a directive on competition in the market for telecommunications services in June 1990 (Services Directive).[359] Like the Terminal Equipment Directive, the Services Directive was issued under Article 90(3) of the EEC Treaty. The Services Directive opens up value-added services to competition immediately and basic data transmission beginning January 1, 1993. Telex, mobile

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[357]*See* Figure 6, *supra*, Position F and H.

[358]*See* Council Resolution, *supra* note 344, para. 4. The Council Resolution was adopted by a Technical Council comprised of the telecommunications ministers of the Member States.

[359]*See* Services Directive, *supra* note 22.

radiotelephony, paging and satellite services are excluded from the Services Directive.[360] In addition, voice telephony is excluded on the grounds that opening it up to competition might threaten the financial stability of the PTTs.[361]

The Services Directive promotes the goal of opening up services to competition in the following ways:

1) Special and exclusive rights for providing services to the general public other than voice telephony are to be abolished;[362]

2) Technical interfaces providing information necessary to private operators must be published;[363]

3) All restrictions on the processing of signals before and after their transmission via the public network must be abolished;[364]

4) A body independent of the PTTs must carry out the grant of operating licenses, the control of type approval and other regulatory activities;[365] and

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[360]*Id.* art. 1, para. 2.

[361]*Id.* Recitals, para. 18; art. 2. Under Article 90(2) of the EEC Treaty, "[u]ndertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly" may be excluded from the Community competition rules where their application would obstruct the performance of such undertakings. The Commission recognized this provision in noting that revenues from voice telephony provide substantial financial resources for the development of the network. *Id.* Preamble, para. 18.

[362]*Id.* art. 2.

[363]*Id.* art. 3.

[364]*Id.* art. 6.

[365]*Id.* art. 7.

5) Long-term contracts should be allowed to be terminated.[366]

Although the Services Directive has not been challenged, the judgment of the Court of Justice regarding the Terminal Equipment Directive[367] is relevant to the validity of the provisions regarding special rights and the termination of contracts.

Like the Terminal Equipment Directive, the Services Directive implements policy positions the Commission proposed in the Green Paper.[368] Before the Services Directive was issued Member State PTTs had distorted the market for services through their exercise of monopoly control. A more competitive market in services was necessary to achieve the objective outlined in the Green Paper and establish the single market. At the same time public service obligations had to be respected, so the PTTs were allowed to retain their monopoly with respect to voice telephony. Although the Directive requires a separation of the regulatory and operational functions of the PTTs, such a separation may amount to more a matter of form than of substance. The same civil servants may still be deciding such matters, although under the name of a new organization.

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[366]*Id.* art. 8.

[367]*See supra* notes 347-48 and accompanying text.

[368]*See* Figure 6, *supra*, Positions B, C, G and H.

3. Open Network Provision

The Services Directive is tied to the adoption of the Open Network Provision Directive (ONP Directive) adopted by the Council on the same day.[369] The ONP Directive is a framework directive concerning the "harmonization of conditions for open and efficient access to and use of the public telecommunications networks...."[370] The conditions must be based on objective criteria and be transparent, published and non-discriminatory.[371] A Member State may limit access to one of its public networks or services only for reasons regarding the security of network operations, the maintenance of network integrity, the interoperability of services or the protection of data.[372]

As a framework directive the ONP Directive provides for the development of further rules and principles. ONP conditions are to be defined in stages[373] from the following areas: leased lines, packet- and circuit-switched data services, ISDN, voice telephony, telex and mobile

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[369]*See* ONP Directive, *supra* note 24.

[370]*Id.* art. 1.

[371]*Id.* art. 3, para. 1.

[372]*Id.* para. 2.

[373]*Id.* art. 4.

services.[374] The Commission may call upon the ETSI to draw up European standards as a basis for harmonized technical interfaces and service features related to ONP.[375]

The ONP Directive established a framework for implementing one of the proposed positions in the Green paper.[376] Issued under Article 100a of the EEC Treaty, which requires the cooperation procedure, the ONP Directive is the work of several Community committees and institutions. In general the text of the ONP Directive follows the substance of the Commission proposal.[377] The Parliament prepared Opinions after both its readings[378] and

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[374]*Id.* Annex I. A timetable for the adoption of specific directives in these areas is set forth in Annex III. The Commission has already proposed a directive on the application of ONP to leased lines, including provisions regarding the disclosure of information with respect to leased lines and supply and usage conditions. *See* Proposal for a Council Directive on the Application of Open Network Provision to Leased Lines, COM(91)30 final.

[375]*See* ONP Directive, *supra* note 24, art. 4, para. 4(c).

[376]*See* Figure 6, *supra*, Position D.

[377]See Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP), 1989 O.J. (C 39) 8.

[378]*See* Parliament Opinion on the Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP), 1989 O.J. (C 158) 300; Parliament Opinion on the Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP), 1990 O.J. (C 149) 1.

the ESC also prepared an Opinion.[379] However, the text of the ONP Directive reveals that Council changed little from the Commission proposal. Those changes that were made are changes in of form rather than substance.[380]

4. Radio Paging

In October 1990, the Council issued a directive following the cooperation procedure, which designated the frequencies to be reserved for pan-European land-based public radio paging service (Radio Paging Directive).[381] Issued under Article 100a of the EEC Treaty, the Radio Paging Directive is designed to allow the effective introduction of the European Radio Messaging System, an advanced radio paging system specified by the ETSI.[382] The Parliament and the ESC approved the proposal by the Commission for the Directive, which simply lists the

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[379]See Economic and Social Committee, Opinion on the Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP), 1989 O.J. (C 159) 37.

[380]Such changes by the Council are not uncommon and include renumber or reorganizing the articles in the Commission proposal.

[381]*See* Council Directive of 9 October 1990 on the Frequency Bands Designated for the Coordinated Introduction of Pan-European Land-Based Public Radio Paging in the Community, 1990 O.J. (L 310) 28.

[382]*Id.* Recitals.

frequencies to be reserved.[383]

5. Full Mutual Recognition of Terminal Equipment

Given that the terminal equipment sector is so vital a part of the telecommunications industry, the Community institutions have paid particular attention to it in the directives that implement the objectives of the Green Paper. In April 1991, the Council issued a directive on full mutual recognition of terminal equipment (Full Mutual Recognition Directive).[384] As of November 1992, the Full Mutual Recognition Directive repeals the directive issued in July 1986 which introduced limited mutual recognition of type approval for mass-produced telecommunications terminal equipment.[385] Full mutual recognition will enable manufacturers of terminal equipment to go through a single equipment approval procedure common to all twelve Member States which is conducted by a laboratory or certification body on a Community list.[386]

The Full Mutual Recognition Directive applies to

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[383]*Id.* art. 1-4.

[384]*See* Full Mutual Recognition Directive, *supra* note 21.

[385]*See supra* Chapter V.

[386]*See* Full Mutual Recognition Directive, *supra* note 21, art. 2-3. Under the old system of mutual recognition for type approval, a manufacturer wanting to market equipment various Member States was required to go through a separate body in each Member State.

terminal equipment intended to be connected to the termination of a public telecommunications network or to interwork with a public telecommunications network.[387] The connection may be by wire, radio, optical or other electromagnetic system.[388] Member States are prohibited under the Directive from restricting the free circulation and use of terminal equipment that complies with the provisions of the Directive.[389] Of particular importance are the essential requirements that terminal equipment must satisfy:

1) user safety;

2) safety of employees of public telecommunications operators;

3) electromagnetic compatibility;

4) protection of the public telecommunications network from harm;

5) effective use of the radio frequency spectrum;

6) interworking of terminal equipment with public telecommunications network equipment; and

7) interworking of terminal equipment via the public telecommunications network equipment.[390]

Member States must presume compliance with the essential requirements regarding safety with respect to terminal

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[387] *Id.* art. 1, para. 2.

[388] *Id.*.

[389] *Id.* art. 5.

[390] *Id.* art. 4.

equipment which is in conformity with the national standards implementing the relevant harmonized standards determined by standards organizations.[391] Manufacturers may subject their terminal equipment to either a type examination or a declaration of conformity.[392]

Like the other directives, the Full Mutual Recognition Directive implements a proposed position from the Green paper.[393] The Full Mutual Recognition Directive was issued under Article 100a of the EEC Treaty, which requires the cooperation procedure. After the Commission issued its proposal for a directive,[394] on its second reading the Parliament proposed amendments to the common position of the Council.[395] However, those amendments amounted to changes in form rather than substance. In its final draft of the Directive the Council did not include any of the amendments suggested by the Parliament. The ESC approved the proposal

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[391]*Id.* art. 6, para. 1.

[392]*Id.* art. 9-12.

[393]*See* Figure 6, *supra*, Position F. The history of the involvement of the Member States in policy making in the area of mutual recognition of telecommunication terminal equipment pre-dates the 1984 Community Action Program.

[394]*See* Proposal for a Council Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity, 1989 O.J. (C 211) 12.

[395]*See* Decision on the Common Position Established by the Council with a View to the Adoption of a Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity, 1991 O.J. (C 19) 88.

without suggesting any amendments.[396]

6. Digital European Cordless Communications

In June 1991, the Council issued a directive, following the cooperation procedure, which designated the frequencies to be reserved for Digital European Cordless Communications (DECT Directive).[397] Issued under Article 100a of the EEC Treaty, the DECT Directive is intended to allow the coordinated introduction of the European cordless telephone system developed by the ETSI.[398] Like the Radio Paging Directive, the DECT Directive is technical in nature and the proposal of the Commission was approved by the Parliament and the ESC before the Council issued the Directive.

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[396]*See* Economic and Social Committee Opinion on the Proposal for a Council Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity, 1989 O.J. (C 329) 1.

[397]*See* Council Directive on the Frequency Band to be Designated for the Coordinated Introduction of Digital European Cordless Telecommunications (DECT) into the Community, 1991 O.J. (L 144) 45.

[398]*Id.* Recitals.

D. Conclusion

Community policy development in the telecommunications sector has been considered a success story[399] and reflects the importance of the sector in achieving the goal of establishing the internal market. Opening up national markets in terminal equipment and services to competition, liberalizing procurement by the Member State PTTs and harmonizing standards procedures should all help increase demand for products and services. Although changes in technology and the global market have spurred the need for changes in telecommunications regulatory regimes, the Community policy making system has been responsible for the work necessary to surmount barriers to more fully realizing the potential of telecommunications in the Community.

Since June 1987, all of the policy positions proposed in the Green Paper have been enacted, either directly or indirectly, at the Community level through the Terminal Equipment Directive, the Services Directive, the ONP Directive and the Full Mutual Recognition Directive. Such swift enactment through processes that are often slow is evidence of the assent of the Member States to the goals and ideals expressed in those positions. Behind that assent, however, is control. The Member States have retained a good

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[399]See Economist Intelligence Unit, Special Internal Market Report: Telecommunications, 4 European Trends 14 (1991).

measure of control in determining Community telecommunications policy. Although their input is not always obvious on the face of the Community documents and legislation, it is inherent in the policy making processes at all levels, from the pre-proposal stages in the working committees and DGs to the final stages of implementation at the national levels.[400]

Evidence of Member State control in Community policy making is most apparent in the final stage: implementing the directives at the national level. The language of the recent telecommunications directives is imprecise but makes clear the policy goals to be achieved. Those directives that require implementation through national measures[401] clearly give the Member States that authority rather than delegate any rule-making authority to the Commission.[402] Critics of the directives note that change in the telecommunications regulatory regimes at the national level will not come easily, especially given the stake the PTTs

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[400]*See supra*, Chapter IV.

[401]Only the ONP Directive and the Full Mutual Recognition Directive require specific measures for implementation at the national level. The two directives issued by the Commission, the Terminal Equipment Directive and the Services Directive, require the Member States and their PTTs to ensure fair business practices in opening up the markets to competition.

[402]*See* ONP Directive, *supra* note 24, art. 11; Full Mutual Recognition Directive, *supra* note 21, art. 17.

have in their national markets.[403] Thus, there is the potential for the Member States to exert ultimate control by interpreting the imprecise language of the directives to the benefit of their national telephone monopolies.

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[403]*See* Linda Bernier, Political Compromise May Tangle Europe Telecom Deregulation, Electronic Business, Apr. 16, 1991, at 70.

CHAPTER VII

CONCLUSION

The unique qualities of the European Community (Community) are apparent in its legal order and institutions, but at its heart the Community remains international, an organization of twelve different nation-states. Although over time the Community has changed, growing in size and enlarging its scope, its basis has always been its Member States, without which there would be no Community.

As the Community continues its path toward establishing a single market, it continues to evolve from its inception as a customs union to becoming a complete common market. It engages in this process by working as a confederation in which Community policy is determined as a collective but implemented on the national level, in most cases, individually. Although under the Community legal order Community law has direct effect and supremacy over national law, the Member States still retain a good measure of control within that legal order. The Member States are not only actively involved in the policy making processes that determine what becomes Community law, but also in specifically implementing and enforcing Community law at

home.

The Community has recognized the importance of the telecommunications sector to its economic improvement and future goals. Through a series of recent action programs, research and development programs and, most importantly, legislation the Community has taken affirmative steps to translate Community goals into Community policy. However, the effectiveness of that policy remains to be seen as the Member States endeavor to implement it on the national level and change business practices that have become habitual and entrenched over the years. It is at this final stage of telecommunications policy making that the Member States may exert the most control in order to protect their PTTs and national suppliers.

Telecommunications policy making in the Community is by no means at an end and can provide sources for additional research. Many more telecommunications directives are on the way, particularly in the area of ONP. The specific ways in which the Member States implement existing and future directives can provide sources of both qualitative and quantitative evidence regarding national control in the telecommunications sector, especially where differences in national implementation arise. In addition, future developments in technology and in the political structure of the Community might result in changes in the dynamics and structure of the current policy making processes. Thus, the

control Member States currently enjoy in the Community policy making might change with the Community.

BIBLIOGRAPHY

BIBLIOGRAPHY

Antonelli, Cristiano. "Information Technology and Derived Demand for Telecommunications Services in Manufacturing." Information Economics and Policy, 4 (1989/90), 45-55.

Ask, Frede. "Standards and the Role of ETSI." European Communications. Edited by David Shorrock. London: Blenheim Online Publications, 1989.

Balassa, Bela. The Theory of Economic Integration. Homewood, IL: R. D. Irwin, 1962.

Bardi, Luciano and Pasquino, Gianfranco. "The Institutionalization Process Under the Draft Treaty." An Ever Closer Union. Edited by Roland Bieber, Jean-Paul Jacqué & Joseph H. H. Weiler. Luxembourg: Office for the Official Publications of the European Communities, 1985.

Beloff, Max. "International Integration and the Modern State." Journal of Common Market Studies, 2 (April 1963), 52-62.

Bennett, Walter Hartwell. American Theories of Federalism. University: University of Alabama Press, 1964.

Bernhardt, Rudolf. "The Sources of Community Law: The "Constitution" of the Community." Thirty Years of Community Law. Luxembourg: Office for the Official Publications of the European Communities, 1983.

Bernier, Linda. "Political Compromise May Tangle Europe Telecom Deregulation." Electronic Business, April 16, 1991, 70.

Bieber, Roland. "The Institutions and Decision-making Procedure in the Draft Treaty Establishing the European Union." An Ever Closer Union. Edited by Roland Bieber, Jean-Paul Jacqué and Joseph H. H. Weiler. Luxembourg: Office for the Official Publications of the European Communities, 1985.

Bogdanor, Vernon and Woodcock, Geoffrey. "The European Community and Sovereignty." Parliamentary Affairs. 44 (October 1991) 481-492.

Bozeman, Adda. Politics and culture in international history. Princeton: Princeton University Press, 1960.

Bulmer, Simon and Paterson, William. The Federal Republic of Germany and the European Community. London: Allen & Unwin, 1987.

Bulmer, Simon and Wessels, Wolgang. The European Council: Decision-making in European Politics. London: Macmillan, 1987.

Calhoun, John C.. The Works of John C. Calhoun. Edited by R. K. Cralle. New York: D. Appleton, 1968.

Commission of the European Communities. Commission Directive of 28 June 1990 on Competition in the Markets for Telecommunications Services. Official Journal of the European Communities, 1990 (L 192) 10.

Commission of the European Communities. Commission Directive of 16 May 1988 on Competition in the Markets in Telecommunications Terminal Equipment. Official Journal of the European Communities, 1988 (L 131) 73.

Commission of the European Communities. Communication from the Commission to the Council on Telecommunications, Progress Report on the Thinking and Work Done in the Field, and Initial Proposals for an Action Programme. COM(84)277 final.

Commission of the European Communities. Completing the Internal Market: White Paper from the Commission to the European Council. COM(85)310 final.

Commission of the European Communities. Commission Proposal for a Regulation on Community Action in the Field of Information Technology and Telecommunications Applied to Health Care--Pilot Phase. COM(87)352 final.

Commission of the European Communities. Community Policy for Data-Processing. COM(75)467 final.

Commission of the European Communities. European Society Faced with the Challenge of New Information Technologies. COM(79)650 final.

Commission of the European Communities. New Information Technologies: First Commission Report. COM(80) 513 final.

Commission of the European Communities. Proposal for a Council Directive on the Application of Open Network Provision to Leased Lines. COM(91)30 final.

Commission of the European Communities. Proposal for a Council Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity. Official Journal of the European Communities, 1989 (C 211) 12.

Commission of the European Communities. Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP). Official Journal of the European Communities, 1989 (C 39) 8.

Commission of the European Communities. Rules of Procedure of the Commission. Official Journal of the European Communities, 1975 (L 199) 43.

Commission of the European Communities. Towards a Competitive Community-wide Telecommunications market in 1992--Implementing the Green Paper on the Development of the Common market for Telecommunications Services and equipment--State of Discussions and Proposals by the Commission. COM(88) 48.

Council of the European Communities. Act Concerning the Election of Representatives of the Assembly by Direct Universal Suffrage. Official Journal of the European Communities, 1976 (L 278) 1 and 5.

Council of the European Communities. Council Decision of 28 September 1987 Concerning the Framework Programme for Community Activities in the Field of Research and Technological Development. Official Journal of the European Communities, 1987 (L 302) 1.

Council of the European Communities. Council Decision of 22 December 1986 on Standardization in the Field of Information Technology and Telecommunications. Official Journal of the European Communities, 1986 (L 36) 31.

Council of the European Communities. Council Decision of 25 July 1985 on a Definition Phase for a Community Action in the Field of Telecommunications Technologies--R&D Programme in Advanced Communication Technologies for Europe (RACE). Official Journal of the European Communities, 1985 (L 210) 24.

Council of the European Communities. Council Directive of 29 April 1991 on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity. Official Journal of the European Communities, 1991 (L 128) 1.

Council of the European Communities. Council Directive of 24 July 1986 on the Initial Stage of the Mutual Recognition of Type Approval for Telecommunications Terminal Equipment. Official Journal of the European Communities, 1986 (L 217) 21.

Council of the European Communities. Council Directive of 28 June 1990 on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision. Official Journal of the European Communities, 1990 (L 192) 1.

Council of the European Communities. Council Directive of 3 June 1991 on the Frequency Band to be Designated for the Coordinated Introduction of Digital European Cordless Telecommunications (DECT) into the Community. Official Journal of the European Communities, Official Journal of the European Communities, 1991 (L 144) 45.

Council of the European Communities. Council Directive of 25 June 1987 on the Frequency Bands to be Reserved for the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community. Official Journal of the European Communities, 1987 (L 196) 85.

Council of the European Communities. Council Directive of 9 October 1990 on the Frequency Bands Designated for the Coordinated Introduction of Pan-European Land-Based Public Radio Paging in the Community. Official Journal of the European Communities, 1990 (L 310) 28.

Council of the European Communities. Council Recommendation of 25 June 1987 on the Coordinated Introduction of Public Pan-European Cellular Digital Land-based Mobile Communications in the Community. Official Journal of the European Communities, 1987 (L 196) 81.

Council of the European Communities. Council Recommendation of 12 November 1984 concerning the First Phase of Opening Up Access to Public Telecommunications Contracts. Official Journal of the European Communities, 1984 (L 298) 51.

Council of the European Communities. Council Recommendation of 12 November 1984 concerning the Implementation of Harmonization in the Field of Telecommunications. Official Journal of the European Communities, 1984 (L 298) 49.

Council of the European Communities. Council Recommendation of 22 December 1986 on the Coordinated Introduction of the Integrated Services Digital Network (ISDN) in the European Community. Official Journal of the European Communities, 1986 (L 382) 36.

Council of the European Communities. Council Regulation of 27 October 1986 Instituting a Community Programme for the Development of Certain Less-favored Regions of the Community by Improving Access to Advanced Telecommunications Services (STAR) Programme. Official Journal of the European Communities, 1986 (L 305) 1.

Council of the European Communities. Council Resolution of 30 June 1988 on the Development of the Common Market for Telecommunication Services and Equipment up to 1992. Official Journal of the European Communities, 1988 (C 257) 1.

Council of the European Communities. Council Resolution of 16 February 1978 on a Single Designation for the Community. Official Journal of the European Communities, 1978 (63, 13 March) 36.

Council of the European Communities. Minutes of the 979th meeting of the Council. December 17, 1984.

Council of the European Communities and Commission of the European Communities. Treaty on European Union. Luxembourg: Office for Official Publications of the European Communities, 1992.

Dumont, Alain. "Technology, Competitiveness and Cooperation in Europe." The Technical Challenges and Opportunities of a United Europe. Edited by Michael S. Steinberg. Savage, Maryland: Barnes & Noble Books, 1990.

Easton, David. A Systems Analysis of Political Life. New York:John Wiley & Sons, Inc., 1965.

Economic and Social Committee. Opinion on the Proposal for a Council Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity. Official Journal of the European Communities, 1989 (C 329) 1.

Economic and Social Committee. Opinion on the Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP). Official Journal of the European Communities, 1989 (C 159) 37.

Economist Intelligence Unit. "Special Internal Market Report: Telecommunications." European Trends. No. 4 (1991) 14-18.

El-Agraa, Ali M.."General Introduction." The Economics of the European Community. Edited by Ali M. El-Agraa. 3rd edition. New York: St. Martin's Press (1990).

Etzioni, Amitai. Political Unification. New York: Holt, Rinehart and Winston, Inc., 1965.

European Communities. Treaty Establishing the European Atomic Energy Community, March 25, 1957. Treaties Establishing the European Communities. Luxembourg: Office for Official Publications of the European Communities, 1987.

European Communities. Treaty Establishing the European Coal and Steel Community, April 18, 1951. Treaties Establishing the European Communities. Luxembourg: Office for Official Publications of the European Communities, 1987.

European Communities. Treaty Establishing the European Economic Community, March 25, 1957. Treaties Establishing the European Communities. Luxembourg: Office for Official Publications of the European Communities, 1987.

European Communities. Treaty Establishing a Single Council and a Single Commission of the European Communities, April 8, 1965. Treaties Establishing the European Communities. Luxembourg, Office for Official Publications of the European Communities, 1987.

European Court of Justice. Commission v. Italy. Report of Cases Before the Court of Justice of the European Communities. Case 39/72 (1973) 101.

European Court of Justice. Costa v. ENEL. Report of Cases Before the Court of Justice of the European Communities. Case 6/64 (1964) 585.

European Court of Justice. France v. Commission. Proceedings of the Court of Justice and the Court of First Instance of the European Communities. Mar. 11-22, 1991, No. 07-91, Case C-202/88.

European Court of Justice. Grad. Report of Cases Before the Court of Justice of the European Communities. Case 9/70 (1970) 825.

European Court of Justice. Granaria. Report of Cases Before the Court of Justice of the European Communities. Case 18/72 (1972) 1163.

European Court of Justice. Italy v. Commission. Common Market Law Reporter. Case 41/83 (1985).

European Court of Justice. Les Verts v. Parliament. Report of Cases Before the Court of Justice of the European Communities. Case 294/83 (1970) 1357.

European Court of Justice. NV Algemene Transport--en Expeditie Onderneming Van Gend en Loos v. Nederlandse administratie der belastingen. Report of Cases Before the Court of Justice of the European Communities. Case 26/62 (1963) 1.

European Court of Justice. Politi. Report of Cases Before the Court of Justice of the European Communities. Case 43/71 (1971) 1039.

European Court of Justice. Polydor Ltd. et al. v. Harlequin Record Shops Ltd et al. Report of Cases Before the Court of Justice of the European Communities. Case 270/80. (1982) 329.

European Court of Justice. Royer. Report of Cases Before the Court of Justice of the European Communities. Case 48/75 (1976) 497.

European Court of Justice. SACE. Report of Cases Before the Court of Justice of the European Communities. Case 6/68 (1968) 409.

European Court of Justice. Simenthal. Report of Cases Before the Court of Justice of the European Communities.Case 106/77 (1978) 643.

European Court of Justice. Zuckerfabrik Watenstadt GmbH v.

Council. Report of Cases Before the Court of Justice of the European Communities. Case 6/68 (1968) 409.

European Parliament. Decision on the Common Position Established by the Council with a View to the Adoption of a Directive on the Approximation of the Laws of the Member States Concerning Telecommunications Terminal Equipment, Including the Mutual Recognition of Their Conformity. Official Journal of the European Communities, 1991 (C 19) 88.

European Parliament. Parliament Opinion on the Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP). Official Journal of the European Communities, 1989 (C 158) 300.

European Parliament. Parliament Opinion on the Proposal for a Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision (ONP). Official Journal of the European Communities, 1990 (C 149) 1.

Fitzmaurice, John. "European Community Decision-Making: The National Dimension." Institutions and Policies of the European Community. Edited by Juliet Lodge. New York: St. Martin's Press, 1983.

Forsyth, Murray. Unions of States. New York: Holmes & Meier, 1981.

Franck, Thomas. The Power and Legitimacy of Nations. New York: Oxford University Press, 1991.

Freeman, Chris. "Long Waves of Economic Development." The Information Technology Revolution. Edited by Tom Forester. New York: Basil Blackwell, 1985.

Friedrich, Carl J.. "Federal Constitutional Theory and Emergent Proposals." Federalism: Mature and Emergent. Edited by Arthur W. Macmahon. New York: Doubleday, 1955.

Friedrich, Carl J.. Trends of Federalism in Theory and Practice. New York: Praeger, 1968.

Gonzalez, Veronica, "Breaking Points and Visual Elements in Public Communications Campaigns." Unpublished Ph.D. dissertation, Michigan State University, 1992.

Haas, Ernst B.. "Technocracy, Pluralism and the New Europe." A New Europe?. Edited by Stephen R. Graubard. Boston: Houghton Miflin, 1964.

Haas, Ernst B.. The Uniting of Europe: Political, Economic and Social Forces, 1950-57. Stanford: Stanford University Press, 1958.

Haggard, Stephan and Simmons, Beth A.. "Theories of International Regimes." International Organization, 41 (Summer 1987) 491-517.

Hay, Richard. The European Commission and the Administration of the Community. Luxembourg: Office for the Official Publications of the European Communities, 1989.

Hinsley, F. H. Power and the Pursuit of Peace: Theory and Practice in the History of Relations Between States. Cambridge: Cambridge University Press, 1963.

Hitiris, T.. European Community Economics. New York: Harvester Wheatsheaf, 1988.

Hoffman, Stanley. Contemporary Theory in International Relations. Englewood Cliffs, NJ: Prentice-Hall, 1960.

Isaac, G.. Droit Communautaire General. 2nd edition. Paris: Masson, 1983.

Jacobs, Francis and Corbett, Richard. The European Parliament. Boulder: Westview Press, 1990.

Kapteyn, Paul Joan George and VerLoren van Themaat, P. Introduction to the Law of the European Communities. Edited by Laurence W. Gormely. 2nd edition. Deventer, the Netherlands: Kluwer Law and Taxation Publishers, 1989.

Keohane, Robert. After Hegemony: Cooperation and Discord in the World Political Economy. Princeton: Princeton University Press, 1984.

Keohane, Robert O. and Hoffman, Stanley. "Conclusions: Community Politics and Institutional Change." The Dynamics of European Integration. Edited by William Wallace. London: Pinter Publishers, 1990.

Keohane, Robert and Nye, Joseph. Power and Interdependence: World Politics in Transition. Boston: Little Brown and Co., 1977.

Kirchner, Emil Joseph. Decision-making in the European Community: The Council Presidency and European Integration. New York: Manchester University Press, 1992.

Kirchner, Emil and Schwaiger, Konrad. The Role of Interest Groups in the European Community. Aldershot, Hampshire: Gower, 1981.

Kondrat'ev, Nikolai Dmitrievich. The Long Wave Cycle, trans. by Guy Daniels. New York: Richardson & Snyder, 1984.

Krasner, Stephen. "Structural Causes and Regime Consequences: Regimes as Intervening Variables." International Regimes. Edited by Stephen Krasner. Ithaca: Cornell University Press, 1983.

Kunze, Renate. Kooperativer Föderalismus in der Bundesrepublik. Stuttgart: Fischer Verlag, 1968.

Laski, Harold J. "The Economic Foundations of Peace." The Intelligent Man's Way to Prevent War. Edited by Leonard Woolf. London: V. Gallancz, Ltd., 1933.

Levi, Lucio. "Recent Developments in Federalist Theory." Altiero Spinelli and Federalism in Europe and in the World. Edited by Lucio Levi. Milan: Franco Angeli, 1990.

Lindberg, Leon L.. "The European Community as a Political System: Notes Toward the Construction of a Model." Journal of Common Market Studies, 5, (June 1967), 344-387.

Lindberg, Leon L.. "Integration as a Source of Stress on the European Community System." International Organization, 20 (Spring 1966), 233-265.

Lindberg, Leon L.. The Political Dynamics of European Integration. Stanford: Stanford University Press, 1963.

Lindberg, Leon L.. "Political Integration as a Multidimensional Phenomenon Requiring Multivariate Measurement." Regional Integration. Edited by Leon L. Lindberg and Stuart A. Scheingold. Cmabridge: Harvard University Press, 1971.

Locksley, Gareth. "European Integration and the Information and Communications Technologies: The Double Transformation." The Single European Market and the Information and Communication Technologies. Edited by Gareth Locksley. London: Bellhaven Press, 1990.

Lodge, Juliet. "EC Policymaking: Institutional Considerations." The European Community and the Challenge of the Future. Edited by Juliet Lodge. New York: St. Martin's Press, 1989.

Louis, Jean-Victor. The Community Legal Order. Luxembourg: Office for Official Publications of the European Communities, 1990.

Ludlow, Peter. "The European Commission." The New European Community: Decisionmaking and Institutional Change. Edited by Robert O. Keohane and Stanley Hoffman. Boulder: Westview Press, 1991.

Macmahon, Arthur W.. "The Problems of Federalism: A Survey." Federalism: Mature and Emergent. Edited by Arthur W. Macmahon. New York: Doubleday, 1955.

Merle, Marcel. "Federalism and France's Problems with its Former Colonies, 1945-63." Public Policy. Edited by John D. Montgomery and Arthur Smithies. 1965.

Mitrany, David. A Working Peace System. Chicago: Quadrangle, 1966.

Muller, Jurgen. The Benefits of Completing the Internal Market for Telecommunication Equipment and Services in the Community. Luxembourg: Office for Official Publications of the European Communities, 1988.

Nora, Simon and Minc, Alain. The Computerization of Society. Translated by Massachusetts Institute of Technology. Cambridge: MIT Press, 1980.

Nugent, Neill. The Government and Politics of the European Community. Second edition. Durham: Duke University Press, 1991.

Office for the Publications of the European Communities. The Court of Justice of the European Community. Luxembourg, Office for the Publications of the European Communities, 1986.

Pentland, Charles. International Theory and European Integration. London: Faber and Faber Ltd., 1973.

Pinder, John. "The European Community, the Rule of Law and Representative Government: The Significance of Intergovernmental Conferences." Government and Opposition. 26 (Spring, 1991) 204.

Puchala, Donald and Hopkins, Raymond. "International Regimes: Lessons from Inductive Analysis." International Regimes. Edited by Stephen Krasner. Ithaca: Cornell University Press, 1983.

Ramsey, Thomas J.. "Europe Responds to the Challenge of the New Information Technologies: A Teleinformatics Strategy for the 1980s." Cornell International Law Journal, 14, (Summer 1981) 237-285.

Reuter, Paul. Organisations Europeennes. 2nd edition. Paris: Presses Universitaires de France, 1970.

Robbins, Lionel. The Economic Causes of War. London: J. Cape, 1939.

Schermers and Waelbrock. Judicial Protection in the European Communities. 4th edition. Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1987.

Schmitters, Peter. "Three Neofunctionalist Hypotheses." International Organization. 24 (Winter 1970), 161-166.

Schumpeter, Joseph A. Business Cycles: A Theoretical, Historical and Statistical Analysis of the Capitalist Process. New York: McGraw Hill, 1964.

Sewell, James P.. Functionalism and World Politics. Princeton: Princeton University Press, 1966.

Ungerer, Herbert and Costello, Nicholas P.. Telecommunications in Europe. Brussels: Commission of the European Communities, 1988.

van Tulder, Rob and Junne, Gerd. European Multinationals in Core Technologies. Chichester: John Wiley & Sons, 1988.

Vincent, Andrew. Theories of the State. Oxford: Basil Blackwell, 1987.

Wallace, Helen. "National Bulls in the Community China Shop: The Role of National Governments in Community Policy-Making." Policy-Making in the European Community. Edited by Helen Wallace, William Wallace and Carole Webb. 1st edition. London: John Wiley & Sons, 1977.

Wallace, William. "Europe as a Confederation: The Community and the Nation-State." Journal of Common Market Studies, 21 (September/December 1982), 57-68.

Webb, Carole. "Introduction: Variations on a Theoretical Theme." Policy-Making in the European Community. Edited by Helen Wallace, William Wallace and Carole Webb. 1st edition. London: John Wiley & Sons, 1977.

Weiler, Joseph. "Community, Member States and European Integration: Is the Law Relevant?." Journal of Common Market Studies, 21 (September/December 1982), 39-56.

Weiler, Joseph. "The Transformation of Europe." Yale Law Journal. 100 (1991) 2403-2483.

Wheare, K. C.. Federal Government. 4th edition. New York: Oxford University Press, 1964.

Williams, Frederick. The New Telecommunications. New York: The Free Press, 1991.

Williams, Shirley. "Sovereignty and Accountability in the European Community." Political Quarterly, 61 (July-September, 1990) 299-317.

Woolf, L. S. International Government. New York: Brentano's, 1913.