

# ***Report on European Institutions***

***Presented by  
the Committee of Three to the European Council  
(October 1979)***

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## Foreword

On 5 December 1978 the European Council entrusted us with a mandate to consider adjustments to the machinery and procedures of the Community institutions. The full text of the European Council's mandate is appended to this Report as Annex 1. We shall explain in the body of the Report the practical conception of our task and of its limitations which has guided us in our work. There are, however, two points we should like to make here. First, we understood the mandate to mean that we should not make proposals which demanded Treaty amendment. Secondly, we regarded the European Council's reference to 'specific proposals... which may be implemented swiftly' as a determining factor in deciding the character of the proposals we should make. We have however permitted ourselves certain wider reflections in the final chapter of our Report.

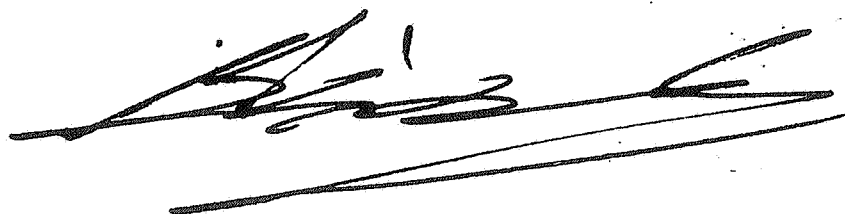
Our Committee first assembled in Brussels on 18 December 1978. Since then we have visited all the Member States of the Community and have had discussions with Heads of State and Government and with Foreign and other Ministers. We have held meetings with the then President of the European Parliament, the President of the Commission, the European Court of Justice, the Economic and Social Committee and the European Court of Auditors, and also with the Committee of Permanent Representatives and the Council Secretariat. We have met the Committee set up under Ambassador Spierenburg to study the functioning of the Commission. We have also had discussions, separately, with many others including Members of the Commission, officials of the Commission and of Member Governments and many other individuals. We have received a number of written representations.

We are grateful to Heads of State and Government for devoting considerable time to explaining to us their purpose in inviting us to undertake this responsibility. We should like to thank them and other members of the Governments and the institutions and organs of the Community who contributed to our work for the hospitality with which they received us, and the frank and thoughtful manner in which they expressed their views. We are grateful to all the many other individuals and organizations who offered their ideas and expertise. Our special thanks

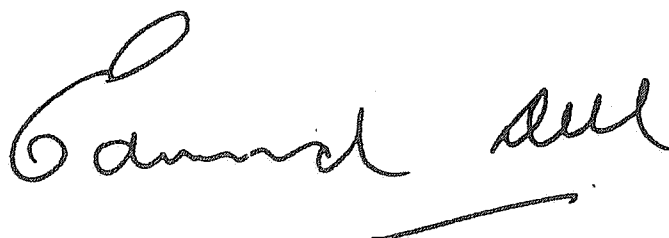
are due to the members of the Council Secretariat, particularly Mr Paul Guében, who supported us in the organization of our tasks; and to our assistants Alyson Bailes, Philippe Petit and Carlo Trojan, without whose dedicated work this Report could not have been completed by the date required by the mandate.

With these words of explanation, acknowledgment and thanks, and on our own entire responsibility, we present our Report to the European Council.

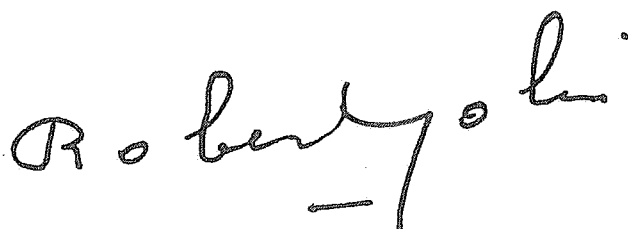
October 1979

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Barend Biesheuvel

A handwritten signature in black ink, appearing to read 'Edmund Dell', with a horizontal flourish underneath.

Edmund Dell

A handwritten signature in black ink, appearing to read 'Robert Marjolin', with a horizontal flourish underneath.

Robert Marjolin

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## I. Introduction

We have been asked to report on the adjustments to the machinery and procedures of the institutions which are required for the proper operation of the Communities, and for progress towards European Union. This mandate reflects, as we see it, both a hope and a concern. The hope is that the European Community, in the changed circumstances brought about by the accession of new States, direct elections to the European Parliament and the development of the European Monetary System, will be able to deepen and extend co-operation among its members; and that the goals laid down both in and beyond the Treaties can be brought nearer realization and new agreed objectives added to them. The concern is that this may prove a very difficult task, and that the Community's present methods of functioning, far from allowing the new challenges to be faced with confidence, may be showing themselves inadequate even for the demands of today.

The terms of our mandate require us to seek procedural and mechanical adjustments which will allay the concern and allow the hope to be realized. We must state clearly at the outset that we do not believe a solution can be found in such simple terms. An analysis of the reasons for concern — the failures, omissions and inadequacies in Community performance — will show that their deeper causes are not mechanical or procedural. If the desire of Member States for progress has not been realized despite joint declarations and agreed deadlines, it is not because the structures for implementing the latter did not exist. More important were the political and economic strains that discouraged initiative and limited resources, and the lack of clear guidelines for advance such as existed at an earlier stage. If the general agreements on directions for progress have not been translated into specific action programmes, genuine new 'common policies', it is not because the forums for discussing them were absent. The reasons lie rather in political circumstances and attitudes that sometimes produced conflicting conceptions of the right way forward, and sometimes produced no clear conception at all.

In these conditions the role of the machinery and institutional procedures is a strictly secondary one. The substantive problems may be aggravated when the

machinery and procedures are cumbersome and inappropriate. Our discussions with those experienced in Community affairs show that this has all too often been the case. If so, by correcting what is faulty in the mechanics we may hope to remove one additional and gratuitous obstacle to progress. But we cannot guarantee progress thereby, either in the existing or in the enlarged Community. Progress would require that the Community be able to break through the underlying economic and political constraints which currently constitute the main obstacles to advance, and thus to establish a practical consensus on the path as well as the goals for development. Such a task lies far beyond the scope of our report. In our studies we have, however, been confronted at every turn with the problems of substance as well as procedure that inhibit progress towards European Union, and we have been struck in particular by the gravity of the difficulties likely to face the Community in the 1980s quite independently of its internal organization. We shall offer some thoughts on this in the closing section of our report, after completing our practical proposals.

The first part of this report consists of an analysis of how the Communities are performing at present. To achieve objectivity when dealing with the present-day Community is not easy: the same facts will be seen as cause for reassurance by some, as cause for concern by others. We have limited ourselves as far as possible to the facts themselves, taking account of ideological differences only where they have, by obstructing agreement, proved an obstacle to progress in their own right.

### **The State of the Community: the Positive Side**

The credit side is presented first here because it is all too often overlooked or undervalued. In fact the achievements of the Community are impressive both for their richness and for the unique manner in which they have been obtained. For the Community is a quite unprecedented creation. It may be less than a federation, or even less than a confederation, but it represents a great deal more than a traditional alliance or international organization. In establishing the Community Member States have been ready to transfer important powers, although in a limited number of domains, to the Community institutions; they have done so not just once but repeatedly and across a wide range of what has become Community business. A new legal order has been created and common laws have been extended over many fields of public administration. A major new entity — whose standing is often rated far higher by its external partners than by its own members — has taken its place on the world negotiating scene.

The elements of the Community's unique achievement may be traced in four main fields. First, it is generally agreed that the greater part of the Treaties — which seemed so ambitious when first drawn up — has now been implemented.



The fundamental new creation is that of the common market for industrial and agricultural products, labour, capital and services, which with its remaining imperfections still comes closer than ever before outside the confines of a single State to establishing a homogeneous economic area with uniform conditions for competition. The Community today has become one of the most important single trade blocs in the world. The elaboration of a common competition policy and a common trade policy constitutes, overall, a major work of construction. The same applies to common policies as applied for example in the steel sector.

Secondly, the Six and then the nine Member States have managed to co-operate in many ways not prescribed in detail in the Treaties. In some cases they built on a Treaty provision to go further than the basic text would require: signature of the Lomé Convention, collaboration in international negotiations like the North-South Dialogue, progressive extension of the capital and activities of the European Investment Bank. In other cases they have used Article 235 of the Treaty to launch new policies and create new organs serving the general aims of the Treaty. Examples are the Regional Development Fund, the 'Ortoli' loan facility, the first outlines of a common energy policy, a programme of aid to non-associated developing countries. The European Monetary System is a major new creation employing partly the framework of Community obligation and partly special mechanisms of its own. Finally there are the areas of co-operation developed wholly outside the Treaty: the 'Political co-operation' which takes place in the field of foreign affairs, or the discussions among the Nine on judicial and security questions.

A third very important achievement has been the preservation in very different economic circumstances of what has already been created. In the 1970s the Community found itself plunged into a major economic crisis, both external and internal. It was trying simultaneously to absorb three new members and had no common economic or monetary system on which to base a united front. Despite all this, it managed to survive with its central policies and its political solidarity intact, thus sparing its peoples all the consequences of a breakdown in European trading relations.

Even in the area of institutional performance — whose inadequacies prompted our mandate — there are some positive points to set against all the criticisms we shall be making later. The institutions are dealing with a far greater and more complex burden of business today than in the early years, and on the whole they are getting the necessary work done. In the four years 1975—1978 the Commission presented a total of 2 798 legislative proposals to the Council and withdrew 212 proposals (a balance of 2 586). The Council for its part adopted 2 481 acts. (Of the 431 earlier Commission proposals which were held up for want of a Council decision on 1 February 1979, the great majority had been delayed or set aside for reasons acknowledged by the Commission and only a handful were

subject to serious conflicts of view between the institutions.) The institutional system itself has shown a capacity for fresh growth and innovation. Two amending Treaties have given the European Parliament further budgetary powers and created a new organ of financial control, the Court of Auditors. Direct elections to the Parliament have finally taken place. New forums for discussion and new types of inter-institutional contact, like the conciliation procedure, have been created.

### **Problems and Anxieties**

Since the negative side of the picture helped to inspire our appointment, it has naturally loomed largest in the exchanges of view we have had with member Governments. The problems they have mentioned, and the underlying anxieties we have detected, fall under very much the same headings as the four categories of achievement mentioned above.

Many gaps remain in the implementation of the Treaties. There are major lacunae in transport policy, free movement of capital and financial services and so forth. These reflect the emergence of real practical and political obstacles which have so far proved stronger than the best of intentions; but they still cause serious concern in some quarters. Anxiety is even more widely spread, though for varying reasons, about the 'hard core' of policies that have already been constructed on a Treaty base. Some States are now seriously dissatisfied with their effects and operations, to the point sometimes of querying their basic rationale. Others are distressed by precisely this tendency to criticize what they see as the Community's most essential achievements.

This feeling of insecurity about the *acquis* has not been offset, but rather aggravated, by the performance of the Community in new areas. All Governments have confirmed that their co-operations is not limited to the letter of the Treaties. Besides the explicit aims set out when they first came together, there are implicit joint objectives demanding activity in ever newer fields. Some of these aims were spelt out in considerable detail in the Summit declarations of 1972 and 1974. But attempts to follow this up by the extension or further definition of Community competences have made slow and painful progress. Some results have been obtained, as mentioned above — some of them remarkably quickly. But these various initiatives have not, taken as a whole, fulfilled the intention of the original declarations, nor have they cohered into one or more full-scale 'common policies'. This failure to maintain the momentum of integration is deeply worrying. The tendency to relapse into a static, narrow interpretation of the Treaties can be seen as a step towards the actual dismantling of the *acquis*.

The Community has survived the economic crisis, but it has been able to do very little to combat it. Unemployment, inflation, problems of growth and balances of payments have been constantly discussed in Community forums over recent years. Yet the action taken through Community instruments in this field has been extremely limited. There has been no real overall co-ordination of States' economic, financial and monetary policies. The challenges of the 1970s did not, as might have been expected, furnish a new incentive for progress in this field: instead, States have sought to protect their own industries by special measures which have made the conditions more difficult, not only for the harmonization of economic policies, but for the functioning of the common market itself. A new start is being made now with the European Monetary System. This is an experiment of real significance in both substantive and procedural terms.

On the institutional front, the main complaint is not that the work is not getting done. The problem is the disproportionate effort, in terms of energy, time and money, that seems to be needed to produce even a rather modest output. Apart from the waste involved, the cumbersomeness of the process itself discourages higher productivity. The participants have little time to stand back and examine the justification for and operational efficiency of their proceedings, let alone to discuss the more general directions in which they should be striving.

These problems are exposed most sharply in the Council, as the centre of Community decision-taking. There are three or four times as many Council meetings now as there were in 1958 and the lower levels of the Council machinery have ramified even faster. Yet the significance of the business concluded has not increased in proportion to the volume. Many would say it has declined. Partly a contributory cause and partly an effect of this is the declining authority of the Commission. Within both these institutions and in the web of interinstitutional relations that surrounds them there is a trend to fragmentation and loss of central control. While specialized Councils and working groups have multiplied, the 'General' Council of Foreign Ministers<sup>1</sup> has failed to live up to its traditional task of overall co-ordination. The 13-man Commission has not developed a coherent overall vision of its own which could help to give proportion and direction to the large number of its proposals. This general phenomenon of an excessive load of business aggravated by slow and confused handling may be summed up in the one French word *lourdeur*, which will be used as a kind of shorthand elsewhere in this report.

Naturally these problems have not gone unnoticed. One major practical step has been taken in response: the establishment of the European Council as a regular,

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<sup>1</sup> That formation of the Council of the European Communities which is attended by Foreign Ministers can be variously described as the Foreign Affairs Council, the General Affairs Council, the Council of Foreign Ministers and so on. These expressions will be used interchangeably in this Report depending on the context.

thrice-yearly event. Heads of State and Government created this special forum as an escape from the bureaucracy weighing down the other institutions, in order to provide leadership and guidance. They succeeded in this to a remarkable extent, generating and implementing a number of valuable initiatives. But the philosophical uncertainties and practical problems associated with the creation of the European Council have not yet been wholly laid to rest and its relations with the Treaty institutions — including the Parliament — have yet to be properly defined.

The existence of the European Council also contributes to wider concerns about the way in which the Community handles its business today. The increasing variety of forums and procedures mentioned earlier means that Member States more often reach their agreements by methods which depart from Treaty rules and from the traditional framework of Community competence. No clear view has emerged of precisely how these methods will fit in with any model of integration. The lack of consensus about the proper uses of Treaty and non-Treaty methods is made more serious by the smaller States' concern that any departure from Treaty norms may upset the institutional balance and erode their own rights *vis-à-vis* their larger partners.

## The Causes

In seeking the causes of these shortcomings, in both policies and procedures, we have not been looking for scapegoats. It would be both irresponsible and defeatist to blame everything on the deliberate ill-will of nations or individuals. Our objective is to identify the historical and material factors of which we have all in some sense been the victims.

The first and most important factor is the profound transformation in the economic and political environment of Western Europe in the last ten years. The period of the 'construction of Europe' in the sixties was a time of sustained growth and relative monetary stability. The Governments of the day were sure enough of their authority to take a gamble or to make a sacrifice for the common good. Since 1970 the pendulum has swung back to inflation and lagging growth, accompanied by severe monetary disturbances. Among the countries which make up the Community, defensive reactions, reluctance to experiment and the jealous guarding of scarce resources were only to be expected. Economic and social adversity have, moreover, tended in some countries to weaken the authority of the Governments themselves and to reduce their room for manoeuvre — precisely at a time when increasing Government intervention in national economies has made the latter more dependent on political will and political possibilities. The remarkable thing in these circumstances is not that the tempo of European construction has slowed down, but that the nine Member States have managed to preserve

their solidarity at all and that the more obvious temptations to protectionism have been avoided.

Even with a more favourable economic background, the Community of the 70s could not have escaped two further types of difficulty: those created by the nature of the subject-matter, and those created by membership.

The subject-matter of Community activity has multiplied and become more complex since the early days — not least because of the successes of the period of construction. The *acquis* created then has to be administered, preserved, further adjusted in the light of current demands or criticisms; when new tasks and policies arise, genuinely new resources must be found to cope with them. The three new members of 1973 brought new ideas of their own and new themes they wanted to pursue. The evolution of the institutional system itself increased the range of business. For instance Ministers now spend far more time communicating with the European Parliament, and in far more different ways, than in the time of the founding fathers. Finally, although the expansion of political co-operation and other consultations among the Nine has not increased the load on the Community institutions as such, it has widened the range of tasks between which the Member Governments must allocate resources, particularly while holding the Presidency.

The new areas of activity now being developed present special problems of their own. The issues to be tackled are ones for which, for the most part, no detailed guidelines can be found within the Treaties, so that no agreed definition of Community competences in a particular field exists at the outset. To establish precisely what the Community should be doing, and what precise role each institution should play in the process, becomes a heavy labour giving plentiful opportunities for dispute. In some cases Member States have not even seriously embarked on the work of definition.

To mention membership as the second major administrative problem is not to call in question the validity of the first enlargement. The accessions of 1973 reflected a political decision taken by all concerned on their own responsibility and — as with the second enlargement — those who willed the act must also will the consequences. But apart from the operational difficulties caused by the simple increase in numbers, the special interests of the newcomers were such as to increase the difficulty of agreement on certain key issues such as food prices, fisheries and energy.

How have the institutions themselves reacted to these problems: the hostile environment, the proliferating subject-matter and number of participants? The verdict must be that, in spite of many useful studies and efforts for reform, they have all too often added to instead of easing the difficulties. The rational response to a

