

'The Community's decision-making body: the Council of the European Union' from 30 Jours d'Europe (November 1976)

Caption: Published in November 1976 in the monthly journal 30 Jours d'Europe, this article describes the role, composition, operation and activities of the Council of the European Communities. It emphasises, in particular, the decision-making processes and the difficulties that these entail, the role of the Foreign Ministers, of Coreper, of the Presidency of the Secretariat and the successes and failures of the institution over the years. The article also describes the proceedings of an agricultural marathon and the origins of the European Council.

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‘The Community’s decision-making body: the Council of Ministers’ from *30 Jours d’Europe* (November 1976)

The Community’s decision-making body: the Council of Ministers

Four institutions are responsible for effecting the tasks entrusted to the European Community: the European Parliament, the European Commission, the Court of Justice and the Council of Ministers of the Communities. ‘30 Jours d’Europe’, which has already devoted four special reports to the first three, has pleasure in presenting in these pages the fourth institution, the institution that brings together representatives of the governments of the Nine and is the Community’s decision-making body: the Council of Ministers.

In the December 1974 Summit, the Heads of Government agreed to meet at least three times a year in a Council dedicated to Community issues and to political cooperation among the Nine. These meetings are called the ‘European Council’.

To give our readers a better understanding of the true role of the Council of Ministers of the Communities, this report sets out to describe how the Council operates and its dialogue with the European Commission, to analyse the life of the Council and the problems it faces as the Community’s legislator, to show — by way of illustration — the events of the last great agricultural marathon, and lastly to demonstrate the significance of the European Council of Heads of Government.

1. How the Council of Ministers operates

The Community’s decision-making body, the Council of Ministers, brings together representatives of the governments of the Nine. Each government delegates one of its members to it. Its composition may vary depending on the subjects under discussion. While Ministers for Foreign Affairs are to some extent regarded as their countries’ ‘main’ representatives on the Council, Ministers for Agriculture, Transport, Finance, Industry and others often take part in the meetings, either on their own or alongside their foreign affairs counterpart.

Each member of the Council holds the Presidency in turn for a six-month term. The Council is assisted by a ‘Committee of Permanent Representatives’ (Coreper) and many expert groups. This Committee is made up of the Permanent Representatives (Ambassadors) of the Nine to the Communities, and its mandate is to prepare the work of the Council.

The basic rules governing the operation of the Council of Ministers of the Communities under the Treaty of Rome are that it is responsible for adopting all decisions of general import or of particular importance, and that, except in a small number of cases, it may issue a decision only on a proposal from the European Commission. The latter therefore has a standing duty of initiative. If it fails to submit proposals, the Council is paralysed and the Community’s progress is blocked. This applies equally to agriculture, transport, commercial policy and harmonisation of legislation, and so on.

Dialogue with the European Commission

To give some idea of the extent of the activities of the Council of Ministers of the Communities, it is worth pointing out that last year, the European Commission forwarded to it 531 proposals, 125 drafts and recommendations, 15 requests for assent, 58 budgetary documents, 167 communications and memorandums and 68 reports, and that excluding purely procedural documents, budgets and financial regulations, it adopted 441 regulations, 49 directives and 106 decisions, in other words a total of 596 European legal instruments.

The submission of a proposal initiates a dialogue among the nine ministerial Council members, who express their national viewpoints, and the Commission as a European institution, whose mission is to express the interests of the Community and to seek European solutions to shared problems.

It might be feared that this dialogue would be distorted if the Commission's position were to be too weak in comparison with the governments, conscious of their authority and of the attributes of their sovereignty.

In fact, when the Commission formulates the proposal on which the Council's debate will be based — and the Council is dependent on this basis for its debate — the former is already exerting a genuine influence. But there is more.

Article 149 of the Treaty of Rome, which is one of the cornerstones of the Community's institutional system, stipulates: *'Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal.'*

Thus when the Council of Ministers is unanimously agreed, it may, on its own responsibility, even take a decision contrary to the European Commission's proposal. This is entirely reasonable, given that it is then expressing the view shared by all the governments of the Nine.

On the other hand, a majority decision may be taken only if it is in conformity with the Commission's proposal. In other words, if the countries of the Community have differing opinions, they may reach a majority decision only if they agree with the European Commission's proposal, and cannot amend it. In such a case, only the Commission may amend its proposal. Thus when the majority rule can apply, the situation is as follows: either the Council adopts the Commission's proposal as it stands, by a majority vote, or it adopts a different decision on a unanimous vote, or it does not succeed in adopting a decision. In other words, the Commission has real power to negotiate with the Council of Ministers. The dialogue can begin.

From majority to unanimity

This dialogue has its own dynamic. The application of majority rule — as relatively extensive experience in the Community has shown — does not mean that the minority is left out in the cold. When the European Commission drafts its proposal, it takes into consideration the (often very varied) interests of our different countries, and applies itself to identifying the general interest. As is the norm in such a restricted 'club', both the members of the Council of Ministers and the European Commission prefer to reach a common position. Thus the prospect of a majority decision may lead a member to abandon an extreme or isolated position, while concern for harmony may stimulate the European Commission and those members of the Council of Ministers who have rallied round its proposal to do all they can to help achieve agreement. This means (and practice has confirmed this slightly paradoxical conclusion) that as a result of majority rule, a proposal can be adopted unanimously much faster and more easily. The European Commission always plays a decisive part in this delicate interplay.

Thus the Commission holds a key position in the Council, where it can always play the part of 'honest broker', of a conciliator between governments, by exerting the impetus and pressure required to bring out formulas for agreement.

But there is more. Proposals made by the European Commission are the expression of a policy that it has decided solely on the basis of the common interest of the Community as a whole. The permanent nature of the Commission for the duration of its mandate ensures continuity for this policy, especially since the Council may issue a decision only on the Commission texts that put this policy into practice. This means that it is not possible for the Council to adopt contradictory proposals depending on the subject, with varying majorities, carried along by coalitions of interests or battles between governments for influence. It is equally impossible for the Council, without the Commission's agreement, to impose on a minority Member State a measure that would seriously damage its fundamental interests.

When the common market was first being put in place — between 1958 and the end of 1965 — unanimity was required for the majority of the Council's decisions. However, it was planned that as from 1 January 1966, the possibilities for majority decisions would be substantially extended. It was then that application of majority rule became the central component of a very serious crisis — one government, that of France,

asked if it was conceivable that a Community Member State could be defeated when one of its fundamental interests was at stake.

National interests and the general interest

A question like this cannot be answered simply by referring back to the texts, any more than, incidentally, an objective definition of a ‘fundamental interest’ can be provided. Moreover, if we limit ourselves to reasoning in terms of interests, we cannot exclude the fact that, in areas where each Member State has renounced its freedom of action for the benefit of the Community, vetoing a Community decision in the name of a national interest undermines the fundamental interests of other Member States, which are damaged when the Community is paralysed. On the other hand, those who accept the Community system and put their trust in its internal logic, in its institutions, their rules and their traditions will find fair guarantees therein.

The general interest of the Nine must necessarily take account of the fundamental interest of any one member of the Community. Thus it is the duty of the institutions to take full account of such an interest. Furthermore, it would not be possible to realise the close union among the peoples that the Community needs to establish if the fundamental interests of one of these peoples were to be damaged. In short, the system of debate in the Council of Ministers tends to lead to the broadest possible consensus. Conversely, even when unanimity applies, no member of the Community may disregard the general interest in evaluating its own interests — unanimity within the Community must not be identified with an unconditional right of veto.

This means that in a living Community, abuse of majority voting (probably in the same way as abuse of the unanimity requirement) involves a theoretical risk that is becoming ever less likely as a result of the ongoing strengthening of internal bonds as the Community develops, while the option of majority decisions ensures flexibility and dynamism throughout the system.

Following the 1965–1966 crisis, for a long time recourse to majority decision-making remained limited only to administrative or budgetary measures. Subsequently the position was gradually relaxed. This tendency was powerfully stimulated by the December 1974 meeting of Heads of Government, when they decided that the practice of requiring the unanimous assent of the Member States for all decisions needed to be waived. Since then, majority or ‘quasi-majority’ decisions (with the dissenting Member State abstaining) have been seen quite commonly on particularly important issues.

Preparing decisions

When a memorandum of general import from the European Commission or a proposal relating to a specific point is submitted to it, the Council of Ministers entrusts preparation of its work to Coreper, the Committee of Permanent Representatives (although a special committee covers agriculture), which relies on a large number of working groups or committees, some of which are standing committees.

The Council’s decisions may be taken only by the Ministers themselves. However, in the case of questions of minor importance and when unanimous agreement has been reached between the Permanent Representatives and the representative of the Commission, the Council takes the decision without discussion.

On the other hand, all important questions or questions of political import are subject to in-depth discussions in the Council between Ministers and Members of the Commission, who have the right to participate in the Council’s meetings.

The meetings are not purely formal, as is sometimes the case with the ministerial meetings of other international bodies, but working sessions in which the debate is sometimes heated and the outcome may long be uncertain. Moreover, the Council meets very frequently and its meetings are often very long.

Last year, the Council held 60 meetings lasting a total of 67½ days (including three meetings of the European Council). The Committee of Permanent Representatives met 67 times, with its meetings lasting a total of 118 days.

2. The life of the Council of Ministers and its problems

After people die, people find only good things to say about them. Everything that follows below goes only to prove that the Council of Ministers of the European Community is an institution that is definitely alive. When it meets, television and the press are never far away — because it means something is happening.

When the Ministers of the Nine leave the meeting room, flashes go off and journalists cluster around them, hold out their microphones and aim their television cameras. The Ministers of the Nine are inside sources to be interrogated. They are the people who take major Community decisions, who set agricultural prices, who adopt European regulations — all measures that, once published in the Community's *Official Journal*, become legal instruments directly applicable in our countries. And these documents are of considerable import, since they relate to the rights, the protection or the living standards of 250 million citizens of Europe.

The European Parliament can do nothing about the Council of Ministers of the Communities and its decisions, since it is the Council that is the true legislator (only the European Court of Justice in Luxembourg can, ultimately, annul a Council decision if it is not lawfully taken). The Council of Ministers of the Communities needs only one thing in order to make laws and set prices, but this one thing is important — a proposal by the European Commission. It also needs the opinions of the European Parliament and the Economic and Social Committee. Whatever these opinions may be, however, they carry little legal weight, since the Council is not obliged to respect them. They need only be there, on the table in front of it.

The Council's sickness

If the European Community has a ruler in the traditional sense, it is definitely its Council of Ministers. Like the overlord of feudal times, and the parliament in a democratic regime, the Council has the right to make laws and to determine what is lawful. To make laws that are not applicable solely in one country, but in all nine Member States at the same time. This ruler's power is without precedent, but is comparable with that of Charles the Fifth of Spain, who had '*an empire on which the sun never set*'.

Of course, the Council of Ministers is the legislator of a Community based primarily on the economy. In the modern world, however, it is the economy that increasingly determines political life — are not international summits usually held in connection with economic and monetary problems? Moreover, the Council of Ministers of the Communities may, by unanimous decision, address topics that are not formally included in the European Treaties, and, following discussion, may take decisions, provided, however, that they are unanimous.

Possessed of power and strength, the Council is a ruler that does not, however, seem to be aware of the fact. Curiously, it is very often vulnerable to real crises in which it is paralysed. Unlike the despot who imposes his will on his subjects, at such times it seems to be indecisive, perplexed, without willpower.

Why is it so difficult to take decisions?

If the European Community's decision-making body finds it so difficult to take decisions, it is because of its complex nature. A little further analysis shows that the Council of Ministers is based on a nine-part philosophy that is completely original, and at least as difficult to penetrate as the mysteries of the Kremlin.

The Council of Ministers of the Communities is composed of the representatives of nine national governments with, in principle, equal rights. However, these countries vary so much in size and power that the European Treaties could not ignore their differences. Independently of the simple '*one Member State, one vote*' formula for problems that require unanimity, the European Treaties laid down for the Council

rules of procedure that also provide for simple majority voting and a weighting of votes for qualified majority voting. This means that the Community's four large countries are entitled to ten votes, Belgium and the Netherlands to five, Denmark and Ireland to only three, and Luxembourg to two. The qualified majority is 41 votes.

Since 1966, it has often been suggested that it is the principle of unanimity in the Council of Ministers that causes its indecisiveness. However, the problem is not that simple. Firstly, the major crisis instigated in 1965 by the French 'empty chair' policy did not end in Luxembourg in January 1966, when the Council of Ministers of the Communities decided that in future it would continue to apply the unanimity formula to crucial issues. Certainly this was what France wanted, but the other five governments merely took note of it, without being won over to it. Secondly, in Paris in December 1974, the Heads of Government of the Nine demonstrated their intention of abandoning the unanimity rule in as many cases as possible, to enable the Community to function better.

The Treaty of Rome itself, however, distinguishes between unanimous decisions and majority decisions. Generally speaking, majority decisions relate only to cases in which policies unanimously determined in advance by the Community's members need to be put in place and managed. These include agricultural market organisations, the budget and the granting of tariff quotas.

Of all the proposals currently submitted to the Council for a decision, only around a third are the result of a majority vote. Whenever new Community policies need to be specified and national laws need to be approximated, it is preferred to make reference to the principle of unanimity. This means that if new areas are to be a matter for the Community's authority, a unanimous decision is required.

Furthermore, in future it will be more difficult not to take account of the principle of unanimity, since little by little all the policies provided for in the European Treaties have been put in place, to the extent that, henceforth, any progress in constructing Europe can be realised only by adopting new common policies. Today, however, progress is being achieved not so much by making simple declarations renouncing the principle of unanimity, but rather by exerting pressure in the Council of Ministers on the country that is failing to forge ahead. This pressure comes not only from the other eight governments, but also from the press, who pester Ministers as they come out of the Council meeting, ready to mobilise public opinion if one Member State is simply, for a while, opposing decisions designed to further the building of Europe.

In reality, if, when important issues are involved, the Council of Ministers of the Communities fails to take decisions or does not take them fast enough, it is not so much because of the voting system, but rather because it is having to address topics that are increasingly difficult and increasingly linked to national interests.

The crux of the problem: national prerogatives

Any claim that the Council of the Communities does not take any decisions can easily be refuted by the statistics. It is constantly adopting regulations, decisions and resolutions. Nonetheless, 241 proposals from the European Commission are still on the table with the Council of Ministers, waiting to be dealt with, even though the European Parliament gave its opinion on 111 of them over a year ago.

An examination of these waiting proposals shows the real crux of the problem. Their subject matter includes, for example, standardisation of the tonnage and weight of goods vehicles, which the Council has been vainly discussing since the early 1960s, and harmonisation of taxes on unearned income. They also involve the creation of the European public limited company and the approximation of laws on joint-stock companies. It is obvious that each of these proposals will alter national prerogatives acquired many years ago or, more simply, practices and customs, to adapt particular national characteristics in line with Community requirements.

The opposition manifested to these proposals by the countries involved or placed at a disadvantage holds up any decisions. It often remains more deeply embedded in the governments they are aimed at than the

pressure to which they are subjected in Council meetings in the name of European solidarity.

The proposals that have been awaiting a decision for a number of years also include an important set relating to energy policy. France believes in the power of the state, which, as the main buyer and distributor, must accept responsibility for supply and assert it en bloc vis-à-vis the oil-producing countries. Another group, with Germany and the Netherlands, can, in contrast, instance the lessons learned from the oil crisis, during which the best-supplied countries with the best prices over time were those that allowed market rules to prevail as regards distribution and pricing.

In the context of energy policy, however, it is not just the well-known theoretical opposition between liberalism and interventionism that delays decisions. In fact, the Community includes one country — the UK — that has few oil resources, and eight others that are essentially oil consumers. When they have to decide, in the space of a few hours, on a common position reconciling such fundamentally different national interests, Ministers experience genuine distress, even though they are aware that adoption of a common energy policy and a common approach to non-Member States can only benefit the Nine as a whole. This means that in this sphere, the Community finds itself facing a crucial problem, which no longer has anything to do with the efficiency of the Council's working methods.

Despite this, as long as the Council of Ministers of the Communities exists, people will talk about its lack of efficiency and the inadequacy of the control that citizens can exert on it.

Some would-be reformers would like to remedy the latter shortcoming by, for example, calling for the discussions to be public, instead of taking place strictly behind closed doors. It is very obvious that such a move would only further compromise the institution's efficiency — governments are not inclined to discuss their interests in front of an audience of attentive observers.

A very restricted circle

In reality, all attempts to rationalise the Council's working methods have always tended towards intensifying the confidential nature of its work and restricting still further the number of people authorised to be present at meetings.

Before each meeting, a meeting takes place between the President of the European Commission and the President of the Council of Ministers, after which the Council meeting begins with a limited discussion of the work programme, such that everything can subsequently go off more smoothly. Often, however, this preliminary meeting takes time away from Ministers who are always under pressure, time that they will subsequently lack in order to get through the agenda. Since the opening up of the Council's plenary meeting, which numbers more than 100 participants, its President has been seeking to limit the number of participants. Sometimes only Ministers, their secretaries of state and the Permanent Representatives remain in the room. Sometimes, the nine Ministers even retire with a Member of the European Commission for a 'superconclave'. Almost no major decisions are taken at Community level without giving rise to a very restricted Council of Ministers of this kind.

The esprit de corps of Ministers for Agriculture

The Council of Ministers of the Communities does not possess the attributes of an organic unit. Of course, officially there is only one 'Council of the European Communities' that acts as legislator and specifies European law on a proposal from the European Commission.

However, this Council is first divided into 11 specialised Councils depending on the issues to be discussed (industry, agriculture, foreign affairs, etc.), each composed of nine Ministers accompanied by a team of secretaries of state, high-level officials, administrators and staff. Each of these Councils has its own original character.

Some of them, which meet frequently, have developed an esprit de corps that can help them to overcome

national differences. For example, Ministers for Agriculture tend to be annoyed when they sense the threat of interference from Ministers for Foreign Affairs in their domain. So they try to be the first to take a decision, braving the prospect of three or four marathon sessions spread over several nights, but which enable them to settle their business amongst themselves, within the framework of biennial collegiate meetings taking place in the country holding the Presidency of the Council. Ministers for Foreign Affairs visit faraway countries and sign commercial agreements and ambitious cooperation agreements with half the world. They often grant the other countries very generous import quotas for agricultural products. However, it is the Ministers for Agriculture who must subsequently examine, in Brussels, how these burdens can be equitably divided among our countries.

Like the agricultural Council, the Council of Ministers for the Economy and for Finance meets regularly, almost every month. However, the breaking up of the European currency ‘snake’ and the wide range of inflation rates have weakened their spirit of solidarity. Ministers of countries that are part of the ‘snake’ hold their own meetings, an initiative not really appreciated by the British, the Irish and the Italians, who left the ‘snake’ in 1972–1973, before the French.

Ministers for Energy, Budgetary Matters, Social Affairs, Transport and the Environment meet two or three times a year, which is not enough to create an esprit de corps. Ministers for Justice and Education meet once a year. The secretaries of state of Ministries for Finance, in combination with the budgetary affairs Council, do of course show solidarity in putting their red pens through the European Commission’s budget proposals. However, when it is a matter of applying the single European unit of account to the Community budget, diverging national interests again come to the fore. Ministers for Research and Development too do, of course, share common objectives, but when it comes to the money required to fulfil them, their solidarity often disappears as if by magic.

Ministers for Foreign Affairs with two hats

Until 1975, the Council of Ministers of the Communities was, in fact, only a collection of Councils of specialised Ministers, under the undisputed authority of the Council of Ministers for Foreign Affairs. The latter, which met monthly, was ultimately responsible for the success of the work of the Nine, and it did not hesitate to exploit the veiled threat in order to interfere in certain domains when dithering tended to go on too long.

The monitoring role of the Ministers for Foreign Affairs remains in force. They have actually been charged with coordinating political cooperation, independently of their own Community activities, as provided for in the Treaty. Under pressure from the French Minister for Foreign Affairs, Michel Jobert, they had first had to distinguish very strictly between their tasks in the Council of Ministers of the Communities and their tasks as coordinators of their own countries’ national foreign policies. Hence the paradoxical situation that involves them having to meet — as was the case in the midst of the oil crisis — on the same day in Copenhagen to deal with political cooperation and in Brussels for the Council of Ministers of the Communities, and thus to waste both time and (ironically) aviation fuel. This extreme case highlighted the artificial nature of the distinction. Today, the Ministers for Foreign Affairs manage virtually to combine their two hats as official members of the Council of the Communities and ‘participants’ in an informal meeting ‘in the context of political cooperation’.

Several times a year, they travel to palaces of enchantment with well-filled tables to reflect collectively on the problems that arise. It matters little whether the discussions relate to political cooperation or to Community tasks in the true sense of the term.

It is not possible for the Council of Ministers to sit permanently. So they have created in Brussels a ‘Committee of Permanent Representatives of the Member States’, more familiarly known as Coreper, a body that is not mentioned in the European Treaties.

Coreper does the sorting out

This Committee is the Community's major 'sorting' body. Everything that may be the subject of a decision by the Council of Ministers has to pass through it. This is because only issues reviewed by the Permanent Representatives are addressed in a meeting of the Council of Ministers.

The Permanent Representatives are always on the go. All of them constantly commute between the capitals of their own countries and the European centres of activity, to act as intermediaries between national departments and those of the Eurocrats. It should also be noted that this difficult post often leads the holder to the positions of secretary of state in his own country or Member of the European Commission.

The early Permanent Representatives performed substantial work on Europe's behalf. They did not hesitate to assume responsibilities themselves, and to make the most difficult subjects as straightforward as possible for their Ministers, in such a way that all the latter had to do was to say 'yes'. Today, in the Community of the Nine, which is larger and more bureaucratic, with more ramifications, the Permanent Representatives still prepare more than 100 decisions down to the last comma, so that all the Council has to do is to adopt them 'as an A item', i.e. simply as a formality. On the other hand, they no longer try to find solutions to the major policy problems. Indeed, how could they when even Ministers for Finance and Foreign Affairs make sure that they do not encroach on areas reserved for the Heads of Government?

The Presidency

Below the Permanent Representatives, the committees of the Council of Ministers of the Communities hold specialised meetings (2 000 in 1975), in which they endeavour to move plans forward in such a way as to enable them to reach the Council via the narrow channel of the Permanent Representatives. In 1975, no fewer than 10 000 national experts attended these specialised meetings, in either Brussels or Luxembourg.

Each of the nine countries in the Community holds the Presidency of the Council of Ministers in turn for six months. During these six months, the Presidency tries to maximise the value of the results achieved. In reality, it only chairs the meetings, without the power to make decisions. It can manoeuvre skilfully and, for example, make progress within the time limits with certain projects that it wishes to see brought to a conclusion before its mandate expires. However, any other country may disrupt its plans. So the Presidency usually considers itself satisfied if it has completed one third of the projects that it had initially planned.

For our countries, the Presidency involves organisational effort that is becoming increasingly difficult. The large countries put in place a team of 100 officials responsible for chairing the various specialised committees. The small countries have to fulfil the same tasks with only half a dozen or a dozen senior officials. For the small countries in particular, the Presidency is a task that goes beyond anything that can reasonably be expected in terms of physical stamina on the part of the Permanent Representatives and their teams.

Infrastructure

The authors of the first European Treaty, the Treaty establishing the European Coal and Steel Community, had wished to establish a strong High Authority intended to become the main institution in the ECSC. In contrast, according to Konrad Adenauer, the secretariat of the Council of Ministers was to be given responsibility for purely technical duties, and should therefore go to a young man, well versed in local conditions.

Even now, the Secretariat of the Council still sees its task as being predominantly technical. However, the technique of organising 100 days of Council meetings and two thousand specialised committee meetings a year calls for its own administration. Including translators but excluding interpreters, this numbers 1 500 officials, distributed across five General Directorates and a legal department. The strength of the Council's Secretariat lies in its framework, which has remained unchanged since 1952.

It now seems that if it had not been possible for the Council's Secretariat to accomplish its technical tasks in irreproachable fashion, the European experience would have had to be broken off, since it is so difficult to

organise.

The Council of Ministers of the Nine calls the shots in the Community. The names linked to its decisions since its earliest days and right up to the present are significant in this respect: from Alcide De Gasperi to Valéry Giscard d'Estaing, via Konrad Adenauer, Jean Bech, Paul-Henri Spaak, Willy Brandt, Edgar Faure and Joseph Luns. All the great names are there in its annals.

Council cycles

Years or periods of failure or success for the Council of Ministers of the Communities form alternating cycles, which are just as difficult to decipher as economic cycles are.

The early years of expedition of the Customs Union and of the creation of the common market in agriculture, from 1959 to 1962, were periods favourable to the internal organisation of Europe.

Early in 1963, the failure of the United Kingdom's first attempt at accession precipitated the Community into a phase of slowdown, soon followed by a recovery phase. However, the crisis in the second half of 1965 and France's further refusal in 1967 in response to the UK's second application for accession had two serious repercussions. Not until the decisions on gradual implementation of Economic and Monetary Union and the opening of enlargement negotiations in 1970–1971 did the Community experience another recovery phase. This phase lasted until the international monetary crisis gave rise to new problems.

After the oil crisis reached its lowest point in 1974, the decision on direct elections to the European Parliament opened up new prospects in the field of policy. However, we still have to wait and see whether the conditions are fulfilled for an upturn in the area of the Community's internal organisation.

Greater success externally than internally

The Community's successes in its external relations, on the back of the confidence shown in it by the world as a whole, form a curve that is more positive than that of its internal successes.

There is nothing surprising in that, given that the representatives of our countries' governments, meeting within the Council, start by seeing the Community as a means of representing their national interests jointly vis-à-vis the outside world more effectively than if they were put forward in isolation. Therefore they give priority to the facade, and cultivate its splendour.

On the other hand, it pains them when, internally, it is not possible for them to renounce national governmental prerogatives for the benefit of the Community.

However, the European Community cannot long endure too great a contradiction between the spectacular external successes and a weak internal structure. Consequently the Council of Ministers of the Nine must, like any national government, endeavour to conduct an internal Community policy. Ultimately, external successes will come up against the strength and quality of its internal structure. A Council that sees itself only as an assembly of government representatives assuring their countries' interests cannot define a common internal policy.

Despite the national origins of its nine members, the Council of Ministers of the Communities must, like the European Parliament, the European Court of Justice and the European Commission, see itself as a Community body in order to see its mission through. The reason why it finds this so difficult to achieve is that it is obliged to merge nine mentalities into a single body.

Rainer Hellmann

3. Detailed breakdown of a marathon

The marathons to which the Ministers for Agriculture of the Nine commit themselves every year are a striking example of the way in which the Council of Ministers of the Communities functions. So to illustrate this issue, we shall present our readers with an analysis of the Homeric marathon that ended with the dawn on 6 March last with the victory, as is only proper, of nine athletes in the grip of complete exhaustion.

Arriving in Brussels well rested, the Ministers for Agriculture of the Nine had to cover, over four days, from 10 a.m. on Tuesday 2 March to 3.04 a.m. on Saturday 6 March, an obstacle course totalling 54 hours of intense effort, marked by dramatic climaxes but leading to a happy ending that was useful to the European Community as a whole.

As happens every year at the same time, they had to determine agricultural prices for the next harvest. Time was short for the Ministers for Agriculture, for dairy farmers and beef producers were waiting impatiently for the pricing decisions. Moreover, in the south of France the wine war was wreaking havoc, after hanging over agricultural debates for months.

The Ministers were fully aware of the many problems inherent in the situation. However, they knew that what was at stake was far more than the common agricultural policy, the interests of European farmers, and those of the Community's consumers and taxpayers. Ultimately, what was at stake was the very existence of the entire Common Market and the pursuit of efforts to achieve European integration on the basis of the Treaty of Rome. They knew that the negotiations would be difficult and the bargaining tenacious, but they had all come armed with the will to reach a compromise solution, the course towards which we shall outline below.

Venue

Brussels, Charlemagne Building, 15th floor, Room b, 190, rue de la Loi (opposite the Berlaymont building that houses the Commission).

Participants

The nine Ministers for Agriculture, namely Jean Hamilius (Luxembourg), President of the Council, and Mr Van der Stee (Netherlands), Mr Peart (UK), Mr Lavens (Belgium), Mr Dalsager (Denmark), Mr Ertl (Germany), Mr Bonnet (France), Mr Clinton (Ireland) and Mr Marcora (Italy), and Mr P. J. Lardinois, Member of the European Commission responsible for agricultural issues.

The action

Tuesday 2 March 1976:

10.15 a.m.: once Mr Hamilius has opened the meeting, the Council decides to continue its discussions in closed session (six persons per delegation). The other officials and experts leave the room.

3 p.m.: after lunch, the discussions continue on the basis of a 130-page document drawn up by the Special Committee for Agriculture.

8 p.m.: the session ends. The participants leave for their last normal night of the week.

Wednesday 3 March 1976:

9.30 a.m.: second Council meeting.

3 p.m.: the Council continues the work begun in the morning and discusses the various production sectors.

5 p.m.: break in negotiations. Mr P. J. Lardinois, Member of the European Commission, crosses the street to take part in the Commission's deliberations on subsidies.

8 p.m.: the Council resumes its deliberations in closed session.

9.30 p.m.: the President of the Council retires with his colleagues to prepare the first compromise proposal.

Thursday 4 March 1976:

4 a.m.: the Ministers return to their hotels, while the President's compromise proposals are translated and copied by the Council's General Secretariat.

9 a.m.: the secretaries of state meet to discuss the compromise on wine. In the meantime they have learned that the demonstrations in the south of France have cost two people their lives.

11 a.m.: the Council meets in closed session (three persons per delegation). The President explains his proposed compromise. The delegations retire to consider it. Telex lines to the Community's capitals are overloaded.

4 p.m.: President Hamilius invites his colleagues to make their responses known. Mr Lardinois makes a careful note of the various positions adopted — the picture of what is 'politically possible' begins to emerge.

11 p.m.: the session is broken off and the European Commission is invited to submit a new compromise proposal. Mr Lardinois receives each of the Ministers for Agriculture in turn and subsequently retires with his colleagues.

Friday 5 March 1976:

8 a.m.: the European Commission's compromise proposal is sent for translation.

12 p.m.: the Council meets in closed session following fresh bilateral discussions between Mr Lardinois and the Ministers.

4 p.m.: the nine delegations make their initial responses known.

6 p.m.: break. Mr Lardinois amends his compromise proposal.

9.30 p.m.: President Hamilius invites his colleagues to accept this new proposal. Eight Ministers accept it and only one rejects it. The session is broken off.

10 p.m.: the nine Ministers and Mr Lardinois meet on their own to seek a solution in an informal setting.

Saturday 6 March 1976:

3 a.m.: the Council resumes its meeting. The ninth Minister says 'yes'. President Hamilius closes the meeting. Press conferences follow to inform the journalists waiting on the ground floor.

Epilogue

On 15 March, the Special Committee for Agriculture irons out last-minute difficulties. This is necessary because Ministers for Finance, meeting in the Council, had undone in five minutes the 54 hours of laborious construction work owing to monetary problems. At 5 p.m., the Council of Ministers for Finance formally approves the regulations that have appeared in that day's *Official Journal* No L 67. The agricultural year can begin as planned, i.e. on 15 March.

Adrien Ries

4. The new power. The European Council

The 'European Council', formed of the Heads of Government of the Community's nine Member States, made its appearance in the constellation of European institutions — while retaining its ad hoc nature, as we shall see later — at midnight on 10 October 1974, when President Giscard d'Estaing declared to several hundred journalists assembled in avenue Kléber, Paris: *'We have attended the last European Summit and participated in the first European Council. The European Summit is dead, long live the European Council!'*

Thus Giscard d'Estaing succeeded, in a manner that was somewhat theatrical but undoubtedly effective, in immediately imposing on public opinion a designation that his colleagues had disputed and one which, in fact, does not appear in the document adopted at the time by the Nine. Only later, once Denmark had ended its rearguard action, was this designation of 'European Council' officially used.

He also succeeded in creating in public opinion the sentiment that a new 'European power', more effective,

more concrete, more directly in touch with reality, had at last been born. It is significant that at the same time as they decided to create the 'European Council', on the one hand, the nine Heads of Government publicly affirmed their wish to realise, 'as soon as possible', European Parliament elections based on universal suffrage, mentioning 1978 as the date for the first time, and, on the other, they also mandated one of their colleagues, Leo Tindemans, Prime Minister of Belgium, to draw up a report on European Union, with a view to enabling the Nine to agree as soon as possible on an overall conception of this Union.

In the eyes of most observers, these three elements, which are linked, constituted a historic turning point in the process of European construction.

A good balance

If we leave out of account the meeting of December 1974 — which marked its birth —, we find that to date the European Council has held five meetings:

— in Dublin on 10–11 March 1975

(President Cosgrave)

— in Brussels on 16–17 July 1975

(President Moro)

— in Rome on 1–2 December 1975

(President Moro)

— in Luxembourg on 1–2 April 1976

(President Thorn)

— in Brussels on 12–13 July 1976

(President den Uyl).

It also met in The Hague on 29–30 November (President Den Uyl), and we already know that it will meet, under the UK Presidency, in Brussels on 21–22 February 1977 and in London on 28–29 June. A third meeting will doubtless be held in Brussels under the Belgian Presidency.

In line with the communiqué of December 1974, the European Council is therefore meeting three times a year, but also 'whenever necessary'. Although this is not included in the published texts, the Heads of Government agreed that they would meet every six months in the capital of the Member State holding the Presidency of the Council, and a third time in the course of the year in the same place where the Council of the Communities normally meets. This 'balance' should satisfy supporters of orthodoxy, for whom the European Council should always have met in the same place as the Council of Ministers of the Communities, an institution provided for in the Treaties.

A little sentence

Another concession to Community orthodoxy lies in the fact that the Heads of Government will meet '*accompanied by the Ministers for Foreign Affairs*' (whereas originally the idea was to hold meetings with the Heads of Government 'only') and, above all, that they will meet '*in the Council of the Communities and in the context of political cooperation*'.

This last sentence is very important and merits a brief comment. It means, firstly, that the Heads of Government did not wish to create a new European institution in law, which would, moreover, have necessitated revision of the Treaties. Apparently they accepted the thesis of those who believe that the Council of the Communities provided for in the Treaties can perfectly well meet at the level of heads of government, without actually changing in nature. This point is very important inasmuch as it implies that the European Council is following Community procedures, including the presence of the European Commission.

Secondly, this little sentence indicates that the Nine have sought to put an end to the absurd dichotomy in which the 'political cooperation' meetings of the Ministers of the Nine, intergovernmental in nature and legally based on a 'diplomatic protocol' (known as the Davignon Report), had to be carefully separated (in

time and space) from those of the Council of Ministers of the Communities. It will be remembered that this concern for ‘separation’ had led to ridiculous developments like the ubiquity imposed by Michel Jobert on the Ministers for Foreign Affairs on that day in 1973, when they had to be in both Brussels and Copenhagen.

It goes without saying that the Heads of Government can discuss both Community issues and intergovernmental issues that are not bilateral, and that the same applies to the Ministers for Foreign Affairs. Thus the next paragraph of the communiqué states that the Ministers for Foreign Affairs ‘*charged in the Council with providing an impetus and with a coordination role... may meet at the same time in the context of political cooperation*’. Let us note in passing the wish, expressed in these words, to strengthen the role of the Ministers for Foreign Affairs, in explicitly entrusting them with the task of ‘*coordination and providing an impetus*’ with respect to the ‘technical’ work effected in the context of ‘sectoral’ meetings of the Council (Ministers for Agriculture, Finance, Transport, etc.).

Before we analyse the extent to which these fundamental characteristics of the ‘European Council’ reflect the role that it has actually filled since it was created, we need to go back in time a bit further in order better to understand why and how this new ‘entity’ took shape, this entity that is not yet a true Community institution, but which could become one.

Jean Monnet launches the European Council

Jean Monnet’s recent ‘*Memoirs*’ (1) make public for the first time something that a few ‘initiates’ knew at the time. In August 1973, Jean Monnet commissioned an initial report on the status of execution of the programme adopted by the Summit held in Paris in October 1972 (cf. ‘30 Jours d’Europe’ No 184, November 1973). At the time, it seemed to him that nothing was happening. The Community institutions were unable to accomplish the tasks provided for. The Community’s Council of Ministers was no longer able to make decisions, it was now no more than the stage for fragmentary technical discussions that upholding of the unanimity rule made it impossible to conclude.

Faced with this situation, at the end of August Jean Monnet produced a text in which he suggested that the nine Heads of Government should decide ‘*to form a provisional European government*’. In compliance with the Treaties in force, this would have constituted an organising committee for European union. It would have met every three months. For Jean Monnet, it was a question of breaking the old habits of European construction and — according to his method — altering the data at the root of the problem, in order to solve it. Still following his own method, he set about persuading the Community’s main leaders to accept his ideas. He discussed them personally with Chancellor Brandt and Mr Heath. He obtained the agreement in principle of Mr Pompidou through Michel Jobert (who had sent the text of Jean Monnet’s proposals to the President while the latter was en route to China).

The idea was very quickly given a public launch, first by Ted Heath in Blackpool on 13 October 1973, and then by Georges Pompidou in a press conference. Willy Brandt, Mario Rumor and the other Heads of Government agreed to it in principle.

Admittedly the powerful wording used by Jean Monnet had been changed quite a lot along the way. There was no longer talk of a ‘*provisional government*’ or an organising committee for European union. The formal proposal made by Georges Pompidou on 3 November was to ‘*hold meetings at regular intervals between Heads of State or Government alone*’.

The first of these meetings was to be held in Copenhagen on 14 and 15 December (when the Presidency returned to Denmark). Those who remember the political and economic situation prevailing at the time (Yom Kippur War, oil embargo, presence in Copenhagen of leaders of the oil-producing countries), as well as certain psychological factors (Georges Pompidou’s illness, the extreme weakness of Heath’s political position) and the somewhat botched organisation of this ‘experimental’ Summit, were not surprised to see it end in complete failure. Indeed, although the ‘principle’ of regular meetings was confirmed in Copenhagen, it was not implemented in practice, primarily owing to the death of Georges Pompidou, the enforced departure of Willy Brandt from the Chancellorship and the fall of Ted Heath’s government. The European

political framework had suddenly changed — other leaders took over ...

The coming to power of Valéry Giscard d'Estaing reawakened hope. And Jean Monnet returned to the attack. He met the French President on 19 September 1974, and told him that the main thing European decisions lacked was authority — the debate was organised, but not the decision. Valéry Giscard d'Estaing confirmed to Monnet his wish to continue his European line: *'I support the idea of regular meetings of Heads of State and Government — a true European Council. I also believe that a date needs to be fixed by which European elections by universal suffrage must be organised. And then one day we shall need to abandon the policy of unanimity so that decisions can be taken by qualified majority.'*

Thus this led to the summit meeting preceded by an 'intimate dinner' at the Elysée, which facilitated the broad preliminary agreement of 9–10 December ...

Has the necessary impetus been achieved?

In his Report on European Union, Leo Tindemans notes that the heads of government were led to meet, at first occasionally and subsequently regularly, because in practice the institutional structures put in place by the Treaties had proved to be too weak to ensure, in ongoing fashion, the necessary impetus for building Europe.

On the other hand, Ambassador Dondelinger, Luxembourg's Permanent Representative to the Community, comments in an extremely relevant study that received only limited circulation that the step taken in December 1974 was not a powerful blow aimed at overturning the current institutional system, but an attempt to fill an apparent vacuum at the very heart of a body dangerously lacking in vitality and every day a little more at risk of breaking down. Ambassador Dondelinger sees the reason for this apparent vacuum as being not the absence of appropriate bodies, but the inability of those that exist to function correctly.

This is the point that calls for more detailed analysis. If these Community bodies are not working, it is probably because the 'political will' to make them work is lacking. How, then, can we believe that all of a sudden it will reveal itself and emerge, as if by magic, from the meetings of heads of government?

This analysis cannot yet be effected, since the life of the European Council does not yet provide enough data. It has experienced highs and lows, organisational problems, legal and political uncertainties in the very nature of the 'decisions' taken. The general feeling is that it is gradually being led to fulfil the role of a true European institution, but in a context that requires major changes.

One thing is certain — in the minds of some people, probably including President Giscard d'Estaing, the European Council is destined to constitute the *'centre of political power'* of a confederal Europe, and to have as its natural discussion partner a European Parliament elected by universal suffrage.

For the moment, it is difficult to say whether the European Council has fulfilled its role of 'giving an impetus'. Nor can it be said that, as some people feared, it has helped to paralyse the normal decision-making process, by playing the part of a court of appeal to which are referred all cases that are 'difficult' or regarded as such.

It must be remembered that in its March 1975 meeting in Dublin, the European Council made it possible to overcome the last remaining obstacles in the renegotiation process with the UK, that in its meeting in Rome last December, the formal decision on the European elections was taken (although it took nine months to be translated into a formal document), and that, also in Rome, a very important problem, that relating to single representation of the Community in the North-South dialogue, was resolved. On the other hand, in the European Council meeting in Luxembourg last April, we saw the agreement on the European elections called into question, as well as obvious disagreement on the subject of economic policy options. In contrast, the meeting held in Brussels in July had a positive outcome, with complete agreement on the composition of the elected European Parliament and the (admittedly informal) appointment of Roy Jenkins as the future President of the European Commission. The meeting due to be held in The Hague at the end of November

should, above all, show that the governments of the Nine do not wish to shirk responsibility for taking essential decisions on behalf of the European Union, on the basis of the report delivered to it by the Belgian Prime Minister, Leo Tindemans, in January.

And the future? The lines written by Jean Monnet are inspired by the belief that scepticism is overridden by hope, and by the will, the innate conviction, that willpower and action can change the course of events. He says that there is nothing to equal the decision-making capacity of nine Heads of State and Government meeting regularly around a table with the President of the European Commission to attempt to resolve problems raised in terms of common interest. If they fail on one occasion, or several times in succession, there will be nothing surprising in that, for such an ambitious enterprise cannot fail to experience major difficulties. If they do not find, between them, the strength to succeed, well, we will look for new ways of achieving joint decision-making.

This is a call to action, with a very specific aim.

Emanuele Gazzo

(1) Éditions Fayard, Paris