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THE BUDGETARY AND THE LEGISLATIVE POWERS OF THE EUROPEAN PARLIAMENT

M.A.THESIS

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INTRODUCTION

The European Parliament is one of the four basic Institutions of the European Community and the most important of them. Now, it is the weakest of the four Institutions. But as is often stated, it is the Institution of the future it is the only Institution that is directly elected. As the European Community develops into a more democratic budy the powers of the European Parliament shall inevitably increase. This is why we selected this Institution as our subject. In the first part of this thesis we are going to provide the reader with a general outlook of the Communities as a whole.

In the second part, we are going to study the budgetary powers of the Parliament. In the third part the legislative powers will be studied. In the fourth part the reasons why the Parliament's powers should increase will be discussed. By doing all these, we will try to show the trend in which the Parliament's powers have constantly increased and try to explain why they shall increase further.

PART I

A GENERAL VIEW OF THE EUROPEAN COMMUNITIES

1- European Community as a New Legal Order

(a) The Concept of the Community

In the second half of the twentieth century, the world history witnessed and marked the birth of a completely new and amazing political and legal entity: European Community, the first and the only supranational organization that appeared on the scene throughout human history.

Three basic Treaties gave birth to the integrals of what is now called the EC: The Paris Treaty signed in 1951 which created the European Coal and Steel Community and the Treaties of Rome signed in 1957 which created the European Economic Community and Euratom.

Before providing a brief history of these significant events, we consider it useful to go through the main factors that induced the founders of these communities to decide to get involved in economic integration.

It would not be possible to claim that the intentions of the founders of the EC were the first steps taken in pursuit of a unified Europe. There had been many attempts to form a union circumscribing Europe by using force. The most recent attempts of that sort were made by the followers of two totalitarian ideologies (i.e. the Nazis and the communists.)[1] Inter alia, these forces clashed in the Second World War which stimulated the desires to construct a United Europe through peaceful means.

We have already stated that the Second World War had been one of the main stimuli that gave impetus to the formation of the EC. First of all "it

resulted in a new division based on the conquest of its eastern half and generating mutual distrust between the West and the East. Each division of Europe felt the need to get integrated economically and -to some extent- politically[2]. It is possible to claim that fear, inter alia, underlied the formation of the EC, at least in the beginning.

The Second World War had another effect that vitalized the ideas of creating a United Europe. The disastrous results of the Second World War showed that "the concept of nation-state which was considered the ideal form of political organization was no more capable of guaranteeing the protection of the citizen and so the traditional concept of allegiance based on a sui generis contract broke down. Interdependence of states rather then independence became the key to post-war international relations"[3]. The decline of the sovereign nation-state automatically gave way to the revival of federalist ideas.

We believe that another factor should be mentioned: The founders of the EC -at least most of them- controlled large markets in the era of colonialism. They had attained a desirable level of prosperity by exploiting the resources and the needs of their colonies. Europe had become the most magnificent center of wealth and luxury and the focus of political and economic power. Then came the decline of Europe. The Second World War, leaving Europe in ruins and agony, revealed this decline in a very dramatic way European countries we believe, had to do something to retain the remainders of what had once been the basis of European pride. The best and the most practical way of doing it was to recover by making use of the advantages provided by a large single market.

Moreover, it must be observed that the European countries had always been remarkable traders under the pressure exerted by the fact that the natural resources of the continent were poor. Consequently they were bound to replace the advantages they had lost at the end of the era of colonialism with those provided by a large market free of internal barriers. We have to admit that we have mentioned only a few of the factors that led to the formation of the EC-probably the most important ones- but a thorough and exhaustive examination of such factors is beyond the scope of this thesis.

Thus, great enthusiasm to unite Europe through economic integration was shared by at least six European countries (i.e. Belgium, Netherlands, Luxembourg, France, Germany and Italy) due to the factors cited above and some others. However, they preferred to take practical measures in pursuit of solutions to the problems cited above, instead of falling into the deep waterspins of great ideologies which would probably remain too theoretical. "Robert Schuman, the great French European, said: "L'Europe ne se fera pas d'un coup dans une construction d'ensemble, elle se fera par des réalisations concrètes créant d'abord une solidarité de fait..."[4]

THE ECSC, EEC and the Euratom

The first of the entities which were joined together and gave birth to a European Community was the European coal and Steel Community. (Hereafter it will be referred to as the ECSC). It was established by the six countries which later formed the EEC and the Euratom, namely, Belgium, the Netherlands, Luxembourg, France, Germany and Italy. The legal basis of the formation of this political entity was a treaty signed in Paris on 18

April 1951 by the aforesaid states. It entered into force after being ratified by all the founding states according to their constitutions.

The founders of the ECSC were inspired by the Schuman plan, to a great extent. "In May 1950, France, through her Minister of Foreign Affairs, Robert Schuman proposed to place all the Franco-German production of coal and steel under a common authority and invited other countries to do the same."[5]

The main objective of the ECSC was to avoid another disastrous war in Europe by establishing a supranational body possessing the powers to administer and control the production, distribution and marketing of coal and steel in Europe, the basic materials which play a vital part in a war.

In realization of this objective the Treaty of Paris, consisting of 100 articles, endowed the community with five organs:

(1) an executive, called the High Authority,
(2) a Consultative Commuttee attached to the High Authority,
(3) a Special Council of Ministers,
(4) an Assembly, and,
(5) a Court of Justice."[6]

These instutions will be discussed in chapter I (b) and (c). Nevertheless, it must be emphasized here that the foundation of ECSC was of historical significance, because it was the first supranational entity that appeared on the scene throughout the world history even though its activities were limited to a special sector of production and that it provided its founders

hope, courage and a basic model for further integration.

After the first successful step taken towards integration by the six came a more ambitious but abortive attempt: The European Defense Treaty of 1952. The Community (EDC) founded by it was modelled basically on ECSC. Surprisingly, France, which pioneered in elaborating and signing the aforesaid treaty, killed its own child by refraining form ratifying it.

After the defeat they faced on their way to integration in the field of defense, the attention of the six turned to economic integration. The Messina Conference held in June 1955 was an important land mark as they declared their determination to "pursue the establishment of a United Europe through the development of common institutions, a progressive fusion of rational economies, the creation of a Common Market and harmonization of social policies"[7]. As the Conference proceeded, the participants agreed that the "constitution of a European Common Market must be their objective".[8] As a result of continuous preparatory activities carried out subsequently, two Treaties were signed on 25 March 1957 in Rome: The Treaties Establishing the European Economic Community and Euratom (Hereafter these two communities will be referred to as EEC and Euratom respectively. The signatories of EEC and Euratom Treaties were the same states which founded the ECSC.

The above mentioned three Treaties are generally considered the constitutions of the three communities (i.e. the ECSC, the EEC and the Euratom) to which they gave birth. The EEC and the Euratom Treaties were designed in such a way that they provided the communities with policy directives rather than detailed rules.[9] They also laid down

escape-clauses in case of difficulties.[10] These features enabled the member states to develop the communities in a very practical way, with room for manoeuver. So, the communities began to evolve under the influence of changing circumstances and new needs, within a flexible framework designed by the Treaties. This aspect of the communities will be discussed below in chapter 1 (c).

The EEC and the Euratom Treaties, which were modelled on the ECSC Treaty, endowed the communities with Institutions similar to those of ECSC. They were:

1) The Commission
2) Council of Ministers
3) The Assembly, and
4) The Court of Justice.

Each of the institutions of the EEC was supposed to act within its competence and use the powers conferred upon it by the Treaties in order to attain the following objectives:

a) To eliminate, as between member states, the customs duties and quantitative restrictions on the import and export of goods, and all the other measures having equivalent effect.[11]
b) To establish a common customs tariff and a common commercial policy towards third countries.[12]
c) To abolish, as between Member States, the obstacles to freedom of movement for persons, services and capital.[13]
d) To adopt a common policy in the sphere of agriculture[14]

e) To adopt a common policy in the sphere of transport[15]

f) To institute a system ensuring that competition in the common market is not distorted.[16]

g) To apply procedures by which the economic policies of Member States can be coordinated and disequilibria in their balances of payments remedied.[17]

h) To approximate the laws of Member States to the extent required for the proper functioning of the common market.[18]

i) To create a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living.[19]

j) To establish a European Investment Bank to facilitate the economic expansion of the Community by opening up fresh resources.[20]

k) To associate the overseas countries and territories in order to increase trade and to promote jointly economic and social development.[21]

The principle of attributed powers was also in effect for the Institutions of Euratom. however, the objectives of Euratom were limited in comparison with those of the EEC. We prefer to qualify them as measures to be taken in order to promote and facilitate the growth of nuclear industries.[22]

From this point on the focus of our attention will be either directed at EEC, the community which has the broadest scope, or at the European Community as a whole.

a1) THE LEGAL CONCEPT OF THE EC

Even though the European Community was borm and continued to develop

as a sui generis legal and political entity, if has often been qualified as a federation by some scholars and as a Confederation by others.

The two schools of thought have their own proponents and opponents, taking the concepts of confederation and federation as they are generally understood. We are inclined to take a third way and try to indicate why the EC is neither a federation, nor a confederation.

Firstly, "federation is associated with statehood; and the Communities, are not states."[23] because they have no territory of their own, no population which is not a citizenry of the member states[24], Yet, it is doubtless that they amount to something more than a group of states that has associated in pursuit of common goals[25] and obviously, a transfer of some sovereign powers governing a very limited sphere took place. For example, the communities have both the treaty-making power and the competence of sending and receiving envoys. Which are the two basic criteria that indicate that a political body is sovereign.

Secondly, the European Communities lack the sentiment of unity that federations must be based on.[26] Member states may withdraw from the communities freely although there is no provision on withdrawal in the Treaties. It must be noted that one of them, the ECSC was established for a limited duration of fifty years. We believe that the present stage of development the Communities are in fact one of the ways federations are usually formed; two or more independent states may draw closer together, establishing at first, partial federal relationships. This is a functional-federal relationship. As time goes by, the federalizing process may in time encompass so many aspects of life that the conditions

may in time encompass so many aspects of life that the conditions disappear which favor the continued existence of the participaling states as sovereign states; a fedreral state is then formed."[27] The communities have usually been visualized as a body which will form into a federation in the end, but it is not possible at the time being to foresee whether the cooperation between the member states mainly in the economic sphere will induce them into such a developed stage of integration. It must be noted again that the member states take their steps very cautiously and gradually, avoiding commitments which will bind them in a way that might limit their sovereignty too far. Therefore it is only reasonable to argue that the EC as it stands today is a sui generis entity partaking in nature of both a federation and a confederation but can not be identified with either of them.

(b) The Institutions of The EC

We have already mentioned that the ECSC Treaty had established five basic Institutions. Of these, the first one, "the High Authority occupies a central place in the institutional structure of the Community."[28] It constituted the executive body consisting of nine members eight of which were appointed by the common agreement of the governments of the Member States. The ninth was coopted by the other eight. Unlike the Commissioners of the other two Communities, they did not have to be the nationals of the Member States, which means that there wasn't a fixed number of seats allocated to the nationals of each Member State. This is a very important point indicating the supranationality of the ECSC and the enthusiasm of the founders to build a truly supranational organization. This enthusiasm was later overshadowed by concerns about national

sovereignty in the process of formation of the other two. The High Authority was supposed to carry out the duties deemed necessary to attain the objectives of the ECSC. and was responsible to the Court and Assembly only, not to the Member States.

The Consultative Committee assisted the High Authority and consisted of the representatives of employers, trade unions and consumers.[29]

The Member States tried to keep some control in their hands by establishing a Special Council of Ministers in which they were represented by the members of their governments. It was supposed to harmonize the economies of the Member States in the sphere of coal and steel production and distribution. The Assembly of the ECSC consisted of 68 members chosen by the Member States' national parliaments.

The Court of Justice consisted of seven judges. Its tasks were mainly "to act as a watch-dog over the application of the Treaty, examine the decisions of the High Authority in the light of the Treaty provisions and adjudicate upon the alleged breaches of the Treaty."[30]

The Treaties of the EEC and Euratom established four basic Institutions which have been cited above. However, a Convention relating to certain Institutions was signed along with the Treaties of Rome. According to the Convention, the three Communities would have separate Commissions and a High Authority and separate Councils, but a common Parliamentary Assembly and a common Court of Justice. Later, with a view to facilitating the activities aiming at attaining the Community objectives and the coordination of policies in different areas, a Merger Treaty was signed on

April 8, 1965 and entered into force on July 1, 1967.[31] It was stipulated by this Treaty that a single Commission and a single Council common to the three Communities would undertake the duties of the Commissions and the Councils of the EEC and Euratom and the High Authority and the Council of ECSC.

This is one of the important steps taken towards a more integrated political entity. Even though the development is just an institutional one, it is a substantial change, because it enabled the peoples of the Member States to visualize the Community as a corporate body instead of three separate entities acting in different spheres.

Being founded by six European States, the Community enlarged three times. After the accession of Denmark, Ireland and the UK in 1972, of Greece in 1981 and of Spain and Portugal in 1985 the number of the Member States is now twelve.

Having given a very brief summary of the developments in the institutional structure of the EC, we wish to study each Community Institution briefly.

i) The European Parliament

This Institution will be studied as comprehensively as possible in the following chapters. Therefore, only a general glance will be attributed in this chapter.

The European Parliament consists of representatives of the peoples of the States brought together in the Community and exercises mainly advisory

and supervisory powers[32] which are conferred upon it by the founding Treaties. The number of seats allocated to the representatives of each Member State is as follows:

Belgium	24
Denmark	16
Germany	81
Greece	24
Spain	60
France	81
Ireland	15
Italy	81
Luxembourg	6
Netherlands	25
Portugal	24
United Kingdom	81
Total	518[33]

The number of seats each Member State has in the European Parliament is roughly based on how large its population is, but does not reflect the differences in population in direct proportion. This is based on the concern to provide the smaller states with a reasonable number of seats to enable them to have a satisfactory representation. Otherwise, the opinions of the delegations of smaller States would often be suppressed easily by the States having larger populations.

According to Art.138 of the EEC Treaty, the members of the European Parliament must be elected by the peoples of the Member States by direct

universal suffrage. Until the Decision and annexed Act concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage was passed by the Council on September, 20, 1976[34], the members of the European Parliament were designated by the national parliaments from among their members. The first direct elections took place in June 1979[35], but not by universal suffrage. They are still being held according to the procedures governed by the national laws of the Member States.

The MEPs are elected for a period of five years. An MEP may be re-elected. Although being a parliamentarian of the national parliament of a Member State is no more a must for being elected to the European Parliament, a person may hold both of these posts at the same time.

The rules governing the procedure of the European Parliament are adopted by the Parliament itself.[36] The Euroepan Parliament meets regularly every year on the second Tuesday in March. Extraordinary sessions may be held at the request of a majority of its members or the Council or the Commission.[37]

"Members of the European Parliament enjoy certain privileges and immunities. These include freedom of movement when travelling to and from meetings of the parliament and freedom from legal porcess in respect of the opinions expressed or votes cast in the performance of their duties. During sessions of the European Parliament they are also entitled to enjoy in this own state the privileges and immunities accorded to the members of parliament of that state, and in other Member States immunity from detention and from legal proceedings."[38]

ii) The Council

The Council consists of the representatives of the governments of Member States delegated by their governments.[39] So, a minister from each Member State attends the Council Meetings. Generally, the Member States are represented by their foreign ministers, but this is not a rule without exceptions. Some meetings of the Council are held with the attendance of ministers of finance, transport, agriculture, etc.; depending on what kind of affairs the Council will be dealing with in that certain meeting Sometimes, Councils composed of Ministers working in different fields of activities may be convened simultaneously. Yet, there is only one Institution named the Council fulfilling the tasks stipulated by the Treaties. The members take turns in undertaking the post of presidency according to the order laid down in the Treaty; for a period of six months each.[40] To convene the Council, the request of its president or one of its members or the Commission is needed.[41]

"Save as otherwise provided in the Treaty, the Council acts by a majority of its members."[42] The wording of this paragraph induces one to belive that taking decisions by simple majority is the general rule for the Council, However, this is not true. Qualified majority is required in so many cases (e.g.; Art.21/1,2; Art.25/1; Art.28; Art.38/3; Art.43/3; Art.49; Art.59; Art.69; etc.) that it may be claimed that qualified majority, not simple majority, is the rule." Where the Council is required to act by a qualified majority, the votes of its members are weighted as follows:

Belgium	5 votes
Denmark	3 votes

Germany	10 votes
Greece	5 votes
Spain	8 votes
France	10 votes
Ireland	3 votes
Italy	10 votes
Luxembourg	2 votes
Netherlands	5 votes
Portugal	5 votes
United Kingdom	10[43] votes

To maintain the qualified majority; fifty-four votes must be cast in favor of a proposal coming from the Commission. In other cases, at least fifty-four votes must be cast by at least eight members.[44] There are also some cases whereby the Treaties require unanimity. For example, the proposals of the Commission may be amended by the Council only by unanimous vote. The kind of majority by which the Council takes decisions is closely related to the concept of national sovereignty and the balance between Community interests and concerns about the sovereignty of the Member States which will be studied in the next chapter. According to Art.150 of the EEC Treaty, a member of the Council may authorize another member to vote on his behalf if he will not be present in a meeting, but a member may not vote on behalf of more than one other member.

The main duties of the Council are; to ensure coordination of the general economic policies of the Member States; to take decisions and to confer on the Commission powers for the implementation of the rules which the Council lays down.[45] The Council may be described as the legislative

Institution of the EC, but revertheless, it must be kept in mind that the legislative function within the Community is carried out collectively by the Commission, the Council and the European Parliament, although the Council is the decisive participant in the legislative process.

iii) The Commission of the EC

The Commission is mainly the executive body of the EC. "It consists of seventeen members who are chosen on the grounds of their general competence and whose independence is beyond doubt."[46] At present, the Commission is composed of two nationals of each of the larger States (i.e., UK, France, Germany, Italy and Spain) and one national of each of the smaller ones (i.e., Portugal, Belgium, Denmark, the Netherlands, Greece, Luxembourg and Ireland). This is in compliance with Art.157 of the EEC Treaty which provides that "only nationals of Members States may be members of the Commission and the Commission must include at least one national of each of the Member States, but may not include more than two members having the nationality of the same State".

It has been mentioned in the preceding paragraph that the independence of the Commissioners must be beyond doubt. The founders of the Community wanted the most vital Institution of the EC to be purely a Community Institution the members of which are not allowed to "seek or take instructions from any government or from any other body" and are obliged to "refrain from any action incompatible with their duties.[47] This is a very inevitable outcome emanating from the fact that the EC is a supranational entity. The provisions stipulating that the Commissioners must be completely independent have a basic aim: to keep the Member

States powers and interference from exceeding the limits of the powers enjoyed by the Council and thus ensure that the supranational character of the EC is not marred by national interests.

Yet the Commissioners are chosen by the common agreement of the governments of the Member States,[48] some of the Member States have twice as many nationals in the Commission as others and all the members have to be nationals of the Member States.

To what extent can an official be independent from the State(s) that appointed him, especially if the appointment is renewable? This is indeed a very idfficult question to answer. What is the logic of allocating more posts to the nationals of the larger states if the Commissioners are to be completely independent of their States? Why do the tasks of the Commission have to be carried out by nationals of the Member States instead of other persons who might possibly be more competent and more independent? All these questions pointing out some contradictions create some skepticism about the independence of the Commissioners. However it is beyond the scope of this thesis to consider such questions. "In the event of the breach of the obligation (among others), the Court of Justice may, on application by the Council or the Commission, rule that the member concerned be, according to the circumstances, either compulsorily retired in accordance with the provisions of Art.13 of the Merger Treaty or deprived of his right to a pension or other benefits in its stead."[48]

The Commission's main tasks are:

"- to ensure that the provisions of the Treaty and the measures taken by the Institutions pursuant there to are applied;

- to formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;

- to have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;

- to exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter."[41]

The members of the Commission are appointed for a term of office of four years. The appointment is renewable.[50]

The Commission acts by a majority of the number of its members.

iv) The Court of Justice

The Court of Justice is the Institution which exercises juridicial powers. Like in all the modern democracies, the judicial functions within the Community are completely separated and isolated from the other functions. Unlike the legislative functions which are fulfilled by the Commission, the Council and the European Parliament collectively, the

judicial power is exercised by a single Institution which is completely independent from the other Institutions of the Community and the national governments.

The main duty of the Court of Justice is descibed in Art.164 of the EEC Treaty: "The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed".

"The Court of Justice consists of thirteen Judges who have to sit in plenary session, but they may form chambers, each consisting of three or five Judges, either to undertake certain preparatory inquiries or to adjudicate on particulers categories of cases in accordance vith rules laid down for these purposes."[51] "However, they have to sit in plenary session when they are to give preliminary ruling."[52]

Each of these Judges is the national of one of the Member States. Although not provided in the Treaty, this is a natural outcome of the fact that the Member States choose the Judges with unanimity. The thirteenth Judge is drawn in rotation from one of the big four States (France, Germany, Italy and UK)[53]

The Court of Justice is assisted by six Advocates-General.[54] Both the Judges and the Advocates-General are obliged to be independent. They must be persons "who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence they shall be appointed by common accord of the Governments of the Member States for a term of six years."[55] Every three years the Judges and the Advocates. General are

partially replaced. The appointment is renewable.

The task of the Advocates-General is to "make reasoned submissions in open court, with complete impartiality and independence on cases submitted to the Court of Justice, with a view to assisting the Court in the performance of the duty assigned to it in Art.164"[56] However, their submissions are just enlightening, not binding on the Court.

Like all the other Community Institutions, the Court has the right to exercise the powers attributed to it by the Treaties. It can not extend its jurisdiciton beyond the limits laid down by them.

The main powers of the Court can be listed under four headings:

"A) Judicial review
B) Actions for damages
C) Actions against Member States
D) Preliminary Rulings Procedure"[57]

The Member States may be sued in the Court of Justice by other Member states and the Community Institutions. An action may be taken against a Community Institution (or an act of the Institutions) by Member States, by the other Institutions and by natural and legal persons."[58]

The Single European Act has four articles amending the ECSC and EEC Treaties with regard to the Europeen Court of Justice: Article 4 supplements the ECSC Treaty, with Art.32(d) and Art.11 supplements the EEC Treaty with Art.168 A. Article 5 and 12 bring supplementary

paragraphs to Art.45 of the ECSC Treaty and Art.118 of the EEC Treaty, respectively.

The first two of the aforementioned articles provided that "a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only", should be attached to the European Court of Justice. This court shall be (is) competent to hear "certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community institutions, or questions referred for a preliminary ruling under Art.41 (of the ECSC Treaty) and under 177 (of the EEC Treaty). The judges of this court are more or less subject to the same conditions as the judges of the European Court of Justice with regard to their obligation to be independent the way they are appointed and reappointed, and their term of office. However, since this court is subordinate to the European Court of Justice the requirements the judges must meet are different.[59]

The Community Institutions are located in Brussels, Strasbourg and Luxembourg. The Commission is based in Brussels. The Council usually convenes in Brussels. The Court of Justice works in Luxembourg while the European Parliament has departments in three cities. The plenary sessions are usually held in Strasbourg, the meetings of the committees take place in Brussels and its administration is in Luxembourg.

c) The Community as an Evolving Entity Supranationality and Sovereignty

It has been mentioned several times above that the European Community

is the first and the only sui generis supranational organization. The fact that it is a supranational organization automatically entails two characteristics of its legal system; Direct applicability and supremacy along with a transfer of sovereigh powers, albeit in a limited, field, from the Member States to the Community. Some, of the judgments of the European Courth of Justice reflect this situation very clearly:

"The EEC constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the Member States but also their nationals. Independendently of the legislation of Member States, Community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the Institutions of the Community."[60]

This historical judgment of the Court points out significant aspects of the Community law:

a) There has been a transfer of sovereign powers from the Member States to the European Community.

b) Nationals of the Member States are affected by Community as well as the States themselves, which means that Community law confers rights and obligations upon them. The international law may influence nationals of states only through the states of which they are citizens. On the other

hand, Community law is applicable to the nationals of the Member States independently of their national laws. This fact indicates: that Community law is supreme to national laws of the Member States in the field it operates. The relationship between the Community and the Member States is based on the principle of delegation of sovereign powers and the division of functions. However, the Member States enjoy a residual power which means that they enjoyed their sovereigh rights until the Community has acted. This is the doctrine of the "occupied field". So, whenever a community law provision is in conflict with national law(s) of one or more Member State(s), national law has to give way, unless the Community law provision is subject to annulment for one of the reasons laid down in the Treaty. Community law prevails over national law as a whole, including the secondary legislation enacted by the Community Institutions. The Member States may retain their sovereignty by exercising the powers of the Council in which they are represented by their ministers. It may be claimed to be a fact that there is a direct link between the powers of the council vis-a-vis the Commission and the European Parliament and the balance between the powers of the EC and the national sovereignty of the member States.

This transfer of sovereignty is a continuous process. Since the Treaties laid down a framework only and it is a matter of time to attain the objectives they laid down, the scope of the Community law will broaden as the member states advance in the process of integration. It must also be noted that there is a gradual flow of power from the Council (the castle of national sovereignty) to the Commission and particularly to the European Parliament. This shift in the Institutional balance of power will be studied in the next chapters.

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(35) Ibid., p.42.
(36) EEC Treaty, Art.142.
(37) EEC Treaty, Art.139.
(38) Lasok,D. and Bridge,J.W., op.cit., p.218.

(39) EEC Treaty, Art.146.
(40) EEC Treaty, Art.146.
(41) EEC Treaty, Art.147.
(42) EEC Treaty, Art.148.
(43) EEC Treaty, Art.148.
(44) EEC Treaty, Art.148.
(45) EEC Treaty, Art.146.
(46) EEC Treaty, Art.157.
(47) EEC Treaty, Art.157.
(48) EEC Treaty, Art.157.
(49) EEC Treaty, Art.155.
(50) EEC Treaty, Art.158.
(51) EEC Treaty, Art.165.
(52) EEC Treaty, Art.165.
(53) Lasok,D. and Bridge,J.W., op.cit., p.248.
(54) EEC Treaty, Art.166.
(55) EEC Treaty, Art.167.
(56) EEC Treaty, Art.166.
(57) Freestone,D. and Davidson,J.S., The Institutional Framework of the Communities, Croom Helm, 1988, p.137.
(58) Lasok,D. and Bridge,J.W., op.cit., pp.258-264.
(59) See Art.32d(3) of ECSC Treaty and Art.168A(3) of the EEC Treaty.
(60) see Van Gend en Loos V.Nederlandse Administratie der Belastigen European Court Reports, 1963. p.2.

PART II

THE BUDGETARY POWERS OF THE EUROPEAN PARLIAMENT

THE BUDGETARY POWERS OF THE EUROPEAN PARLIAMENT

The budgetary powers of the European Parliament are its most outstanding powers. Like the national parliaments whose development had been gradual and stable, the European parliament gained the powers having to do with the budget of the EC before all the other substantial powers a parliament ought to posses.

Why does the embryo of a legislative body grow faster in the financial filed than in other legislative activities? Why are the powers to create revenues and govern expenditures the first powers that parliamets get hold of before the other legislative powers and functions?

We think that this fact is closely related to human psychology. Once the people of a state get acquainted with democratic opinions and feel the desire to influence their fate through political power, they are usually keener on the money taken from them for the needs of the state (namely, the taxes) than anything else. They wish to be able to say a word on the way it is taken from them and the way it is spent. It is a human instinct for one to control his patrimony, even after it is transferred to the state under the name of some kind of tax. They wish to make sure that the money they had to give up is spent in their own favor, or at least in favor of the society.

This is exactly what happened in regard to the European Parliament. As soon as the EC began to possess its own resources on January 1, 1975, a remarkable increase in the budgetary powers of the European Parliament was realized.

Up until the date January 1, 1975, when the EC began to depend on its own resources of income, only ECSC was granted the right to impose a levy on steel and coal production and the other two Communities depended completely on Member States. The amount to be provided by each of the Member States was laid down by the founding Treaties. The Member States acted very hesitantly vis-a-vis attempts made by the Commission with a view to endowing the Communtiy with its own sources of income, because;

(1) it entailed automatically the question of a remarkable increase in the budgetary powers of the European Parliament, since it would be unthinkable, and quite contrary to democratic theory and tradition to divert the Parliament (the assembly of the representatives of the peoples) from control over the way the peoples' money is received and spent. A body which lacked representation would not be able to fulfill this function.

(2) Therefore, such a shift could very probably strengthen the supranational quality of the Community to the detriment of the control the Member States had been enjoying.

On the other hand, the Commission was insistent on creating autonomous sources of income for the Community, "firstly because while governments were responsible for paying for the Communities' expenditure, it was likely that they would feel inclined or obliged to get out what they put in rather than to support expenditure in the common interest. Secondly, the Commission wished to escape from a system of financial control in which expenditure was earmarked by national governments for specific purposes

as a conditon of its supply."[1] It is obvious that such a change was considered necessary by the Commission for the future development of the EC and its autonomy.

The Commission submitted a proposal to the Council with a view to creating autonomous sources of income for the EC and vesting the Parliament with new budgetary powers. The proposal was rejected severely by the French minister in 1965 and the dispute over the matter started one of the most serious crises the Community had to encounter.[2]

The crisis was overcome and the 1966 agreements were conluded within a year, but "settlement of the wider question of own resources and the powers of the Parliament was, however, postponed until the end of the transitional period. (December 31, 1969)"[3]

Attempts to resume the activities in pursuit of endowing the EC with its own resources began to gain impetus in 1969. Two factors underlied this thrust:

(1) The resignation of De Gaulle, who opposed the increase in the budgetary powers of the European Parliament.

(2) The fact that the period of transition had ended had a remarkable psychological influence on the supporters and the opponents of a more powerful Parliament and a more autonomous Community.[4]

In 1969, on a proposal from the Commisison, the Europeen Council, meeting at the Hague decided to agree before the end of the year on the

question of own resources and greater powers for the Parliament.[5] Since the main topic of our study is the current system we do not intend to go through these preparatory activities in detail.

The most important and the most concrete steps which finally maintained settlement have been the Decision Concerning Replacement of the Contributions of the Member States with the Own Resources of the Community and the Luxembourg Treaty which were enacted and signed consecutively on April 21 and 22, 1970.

when the Luxembourg Treaty is studied, the details of the historical change will be observed: The Luxembourg Treaty consists of five parts three of which are the most significant. Each of these parts amends the founding Treaties: They are, Art.78 of the ECSC Treaty, Art.203 and the last paragraph of Art.206 of the EEC Treaty and Art.177 and the last paragraph of Art.180 of the Euratom Treaty.

The Treaty laid down the principles of the new regime by stipulating two stages: (1) The provisional stage when the EC would continue to depend on the Member States' contributions. (2) The final stage in which the EC would get hold of its own resources of income (from Jan 1, 1975 on).

During the provisional period, the Parliament had the right to put forward proposals with a view to amending some parts of the budget. If the proposal for an amendment was aiming at increasing the expenditures of an Institution, the proposal would gain validity only if the Council adopted it by qualified majority. If it stipulated no increase in the expenditures of an Institution, it would gain validity unless the Council rejected it by a

qualified majority.[6]

Thus, the budgetary powers of the European Parliament remained advisory until the fixed date when the EC would get hold of its own sources of revenue, and the right to have the final word still rested with the Council.

The Procedure to be folloved after Jan 1, 1975 would be as follows:

After receiving the expenditure estimates of all the Institutions of the Community, the Commission prepares a first draft and submits it to the Council by September 1 every year. The Council, consulting the Commission or the other related bodies, may adopt this first draft with or without amendments. The draft adopted by the Council must be submitted to the Parliament by October 5.

The Parliament may submit proposals of amendment on the parts of the draft concerning compulsory expenditures by a majority of the votes cast and amend the parts concerning non-compulsory expenditures by a majority of its members.[8]

If the Parliament makes no amendments or proposals of amendment or explicitly adopts the draft in forty-five days, the draft will gain the quality of being the final budget. If it makes some amendments or proposals for amendments, then these proposals and amendments will be submitted to the Council again.[9]

The amendments made by the Parliament (it must be noted again that they are the changes concerning non-compulsory expenditures) will be passed

unless the Council modifies them by a qualified majority in fifteen days. The proposals of amendment (they concern the part of the draft that lays down the compulsory expenditures) must be adopted by the Council in order to be enacted.[10] So, if the Council remains inert during the fifteen days following the transfer of the draft from the Parliament to it, the amendments will gain validity and the proposals of amendment will take no effect at all .

If the Council modifies some of the amendments made by the Parliament or if it does not adopt the proposals of amendment put forward by the latter, the draft must be sent back to the Parliament. There is nothing the Parliament can do about the proposals of amendment which the Council did not adopt. On the other hand, it has the right to insist on its original amendments and to finalize them by a majority of 3/5 of the votes cast in a session in which the majority of its members attended."

It is obvious that the Council has the right to make the final decision on compulsory expenditure and the Parliament enjoys the same right on the non-compulsory expenditure.

What could be the reasoning that underlies this partitioning of budgetary powers? We will try to analyse it after providing the reader with the descriptions of the compulsory and non-compulsory expenditures.

The compulsory expenditures are those which "necessarily result from the Treaty of Rome or from Acts adopted in accordance there with"[12] All the other kinds of expenditure must be classified under the heading "non-compulsory expenditure". The latter are, mainly, the administrative

expenditures of the Institutions, and the expenditures of the Social Fund, Regional Fund, and of Research, Energy and Industrial Policies.[13]

The main problem in drawing a line between the budgetary powers of the Council and those of the Parliament originates from the difficulty in deciding which kind of expenditure is compulsory and which is non-compulsory. In fact, the Council tries to diminish the scope of non-compulsory expenditure as much as possible while the tendency of the Parliament is quite the opposite. However, it must be noted that the ratio of non-compulsory expenditure has risen from 3 or 4% in the budget of 1972[14] to approximately 1/3 of the budgets of the recent years.[15]

It is very well possible to deduce from this fact that the European Parliament will be controlling a larger portion of the Community budget even if no major change in its budgetary powers takes place. Yet, there are some "subjective, objective and technical limits on its (budgetary) powers. The subjective limit concerns the majorities that must be achieved at Parliament's first and second readings of the budget. Secondly, the Commission is required to establish the maximum rate which limits increases in expenditure, on the basis of:

(1) the trend, in terms of volume, of the gross national product within the Community;
(2) the average variation in the bugdets of the Member States; and
(3) the cost of living during the preceding financial year."[16] And these are the objective limitations.

According to Kapteyn, there are some technical limitations beside the ones

mentioned above: The non-compulsory expenditures mainly consist of administrative costs. "The budgetary authority, when making provision for administrative expenditure, is bound by financial commitments already authorized under previous budgets."[17]

Let us go back to the question that we asked ourselves above: What logic underlies the partitioning of the right to have the last word on compulsory and non-compulsory expenditures? To answer this question, we think that we need to recall the two basic characteristics of the legislative powers of a national parliament in a democratic constitutional framework: They are ORIGINAL and GENERAL. They are received directly from the people (the governed) and they have a general scope within which a national parliament may legislate on any matter as long as its legislation does not infringe the provisions of the Constitution. A national Constitution constitutes an inner core which must be observed and which must remain intact. On the other hand, the Treaties which founded the Communities and the ones which followed the founding Treaties constitute an outer core that circumscribes secondary legislation. The Institutions of the Communities, unlike a national parliament, may not legislate on anything they deem fit. They have to keep within the limits of the powers conferred upon them by the Treaties.

In the case of non-compulsory expenditures, which, as mentioned above, do not result from the Treaties, or the activities of the Institutions are very similar to those of a national parliament, though in a very limited field. Surely, the Council of Ministers also represents the peoples at the first glance, because the governments of the Member States are elective and responsible to national parliaments. But the Ministers of the Member

States who represent them in the Council are not elected for this specific purpose by their voters. They are elected as members of their national parliaments. The voter usually does not have a clear idea about the outcome of the elections and about who will be a Minister of Foreign Affairs or a Minister responsible for some other subject. Therefore he (or she) does not take Community affairs into account when he (or she) votes in the national elections National interests and national affairs are prevalent in his (or her) mind. This is true even for the elections of the European Parliament. But it must be kept in mind that this situation is very likely to change as the European Parliament maintains a significant increase in its powers. On the other hand, the way ministers are appointed is too indirect to give the voters a chance to consider Community affairs whilst voting. Therefore, in our view the Council lacks the qualities to maintain democratic representation and legitimacy. The concerns of the Member States about national sovereignty and their resistance with a view to keeping the right to say the last word in hand may be overcome as the European Community grows into a more supranational entity. The noncompulsory expenditures do not originate from the Treaties which means that they resemble real legislative activities more than other fields of legislation.

Then, by whom could they be determined but the representatives of the peoples of the Member states in a Community of democratic States. As has been defined in the founding Treaties, the European Parliament is the only Institution of the Community, which is accepted as an assembly of the representatives of the peoples of the Member States. Consequently the right to say the last word on non-compulsory expenditures was the least of what should belong to the Parliament and it was conceded that right via

the Luxembourg Treaty.

Now, what does all this imply to us? That, some day, if that day ever comes, the affairs of the Community may gain such an impetus that it may no longer be possible to handle them by means of a static structure built by the founding Treaties and the ones amending them. Then, the Institutional balance of power will have to be revised in favor of the European Parliament which is the only Institution that can be considered the direct representative organ of the real source of power: The peoples of the Community. Taking it for granted that the Community, will reach an advanced stage of integration where its needs can not be met by means of frozen powers lying in a set of Treaties any more, it seems inevitable that the Parliament will be the holder of the legislative powers, the powers which will inevitably become similar to the legislative powers of a national parliament in the aspect that they will have a general scope. But, nobody can tell for sure whether such an advanced stage of integration will ever be reached. Nevertheless, there is a strong link between the extent up to which it is satisfactory to cope with Community affairs by means of a set of Treaties and the legislative and budgetary powers of the Parliament.

Another power the Luxembourg Treaty endowed the Parliament with is to discharge the Commission in regard with the way the budget is administered. The Parliament exercised this power after the Commission was discharged by the Council, which means, it was not a power granted solely to the Parliament.

Four or five years after the entry into force of the Luxembourg Treaty, the Parliament enjoyed another increase in its budgetary powers, by means of

the Brussels Treaty (Treaty amending certain financial provisions of the Treaties establishing the European Economic Community and the Treaty establishing a single Council of the European Communities) which was signed on July 22, 1975.[18]

The most important change it has made in the budgetary powers of the Parliament is the right to reject the budget as a whole. To do that, the Parliament, if it has satisfactory reasons, must act by the 2/3 majority of the votes cast in a session which is attended by the majority of its members, during the stage when the draft budget is submitted to it by the Council for a second and final reading.[19]

In such a situation, the monthly expenditures will be met with amounts equalling to 1/12 of the expenditures of the previous financial year.[20] The Brussels treaty also established a Court of Auditors whose duty is to assist the Council and the Commission in auditing the budget.[21]

The Brussels Treaty enhanced the status of the Parliament by granting it the power to discharge the Commission for the administration of the budget, upon a recommendation from the Council. According to the Luxembourg Treaty, it could discuss the administration of the budget and discharge the Commssion after it was discharged by the Council. Now, the Council has no decisive role in the process, it is allowed to issue an opinion which is not binding on the Parliament. Also by means of the Brussels Treaty, the privilege of declaring that the budget is finalized has been granted to the president of the Parliament.[22] This rule of procedure which may look rather symbolic indicates that the European Parliament has a superior role in the making of the budget.

There are still some difficulties concerning the enactment and administration of the Community budget. The power to administer the execution of the budget still belongs to the Commission and the Parliament is still deprived of the means of inducing the former to observe the decisions it has issued. Along with the Luxembourg Treaty, a list of expenditures called "The Harmel List", classifying them under the headings "compulsory expenditures" and "non-compulsory expenditures" was agreed on. The creation of new common policies (like the regional policy) raises new problems concerning the classification of related expenditures and the determination of the powers of the Parliament and the Council in regard with these expenditures.[23]

Besides these, the Parliament insists that some expenditures which are not included in the annual budget of the Community must be governed by the budgetary procedure. Thus, these expenditures which amount to a quarter of the general budget will be controlled by the Parliament to some extent and such a change will be in accordance with the principle of generality of the budget and with Art.199 of the EEC Treaty. Another claim put forward by the Parliament is that the maximum amount which restricts the quantity of VAT collected by the Member States and transferred to the Community budget must be eliminated.

THE DIFFERENCES BETWEEN THE BUDGETARY POWERS OF THE EUROPEAN PARLIAMENT AND THOSE OF NATIONAL PARLIAMENTS

To what extent do the budgetary powers of the European Parliament are comparable to the budgetary powers of a national parliament in a

democratic society? It is certainly impossible to discuss and examine all the democratic parliaments with a comparative approach within the scope of this thesis. Therefore, we will try to confine ourselves to listing the basic, fundamental budgetary powers common to most of the democratic national parliaments and see to what extent the European Parliament exercises them

The budgetary powers exercised by democratic national parliaments are, roughly:

1. To give or refuse to give approval for all expenditure and revenue proposed by the government.
2. To approve or refuse to approve of the way expenditure is allocated among different items.
3. To give or refuse to give approval for the way the government executed the administration of the budget in order to check that the government conformed to the provisions of the budget.[24]

It is apparent that the European Parliament has no decisive role in determining the magnitude of the Community revenues. The power rests with other bodies: "The agricultural levies and customs duties are established by the Commission and the Council and the Member States' financial contributions are determined by the Council."[25] The third source of the part of VAT collected by the Member States and transferred to the EC budget is determined by the Council. So, there is no doubt about the fact that the European Parliament is, for the time being, deprived of the right to approve or disapprove of the decisions which determine the magnitude of revenue. We have mentioned above that it is endowed with

some powers which enable it to control the allocation of expenditure among different items. However, a national parliament is not bound by the various restrictions which limit the scope of the control exercised by the European Parliament. First of all, it possesses the right to make proposals for amendment only, in regard to compulsory expenditure. Which means that its budgetary powers in this sphere are just advisory. A national parliament is not subject to such a restriction. In the sphere of "non-compulsory" expenditure, which has a tendency to constitute a greater share of the overall expenditure as time goes by, but amounts to only one third of the budget now, it has more effective powers. Yet, the fact that it can finalize its amendments rejected by the Council by a 3/5 majority of the votes cast is a factor that diminishes its influence in this field. The majority required is too high to attain sometimes. Furthermore, the subjective, objective and technical limitations which restrict the grounds of manoeuver within which the European Parliament can enjoy its budgetary powers concerning non-compulsory expenditures must be considered serious obstacles to parliamentary control in budgetary procedure. After the entry into force of the Brussels Treaty, the European Parliament gained another power which makes it look like a national parliament: To reject the budget as a whole. However, this power is visualized by Herman and Lodge as an instrument which is too frightening to be used. We will try to discuss the effectiveness of this power and the ability of using this power and other budgetary powers of the European Parliament to be used with a view to giving birth to new increases in its present powers. Anyhow the majority required for the rejection of the budget exacerbates the ability of the Parliament to exercise this power.

A brief evaluation of the budgetary powers of the European Parliament

shows clearly that it is far from enjoying the powers a national parliament possesses or from enjoying them as effectively as a national parliament does. Considering that the budgetary powers of the European Parliament are its most outstanding powers, the outlook is discouraging for the supporters of a powerful parliamentary Institution at the European level. However, it is the trend of increase in the Parliament's powers that interests us much more, not its present powers. This trend will be studied in the last chapter of this thesis.

a) Cases on Budgetary Procedure

There are several cases which concern the budgetary powers of the European Parliament.

In the first of them, Party Ecologiste Les Vertes v Parliament, the Court, for the first time, annulled an act of the Parliament pursuant to Art. 173 of the EEC Treaty. The Parliament had allocated budgetary appropriations between political parties for the 1986 elections. The political group Les Vertes sued the Parliament. The Court ruled that "the financing of election compaigns remained within the competence of the member states."[27]

In the second case, -Council v.Parliament (Case No 34/86) the Court annulled the act of the President of the Parliament declaring that the budget had been finally adopted. The Court held that the Parliament could not exceed the maximum rate of increase in non-compulsory expenditures without reaching an express agreement with the Council. Since the President of the Parliament declared that the budget was finally adopted

in the absence of such an agreement, his act was annulled.[28]

This judgment shows that the Parliament is bound by the maximum rate of increase in non-compulsory expenditures and the Council is still a powerful participant in the budgetary procedure.

In the cases 377/87 and 383/87, the Parliament sued the Council for failure to act under Art.175 of the EEC Treaty. The applications were dismissed, because the Council had adopted the budget in 2 months' time, but these cases are important, because they show that the Parliament may challenge the Council under Art.175, even though it may not challenge the legality of acts of the other institutions under Art.173.

b) A Case on the Classification of Compulsory and Non-compulsory Expeditures

An important case on the classification of compulsory and non-compulsory expenditures is Greece v.Council of the European Communities (Case No.204/86).

In this case, Greece contested the legality of an act of the Council which stipulated financial aid to Turkey. Greece claimed that it was part of non compulsory expenditures and thus subject to parliamentary approval. If it is accepted that this item of expenditure is part of compulsory expenditures, the Council may adopt it without the consent of the Parliament. If it is a non-compulsory expenditure, Parliament's concurrence is needed.

The Court held that this item was part of compulsory expenditure, because it was part of international negotiations and it was internationally binding. Therefore it decided that Greece could not challenge the legality of the act.

The Court considered the requirements of international agreements as part of compulsory expenditure and since they were internationally binding dismissed the case.

NOTES OF THE SECOND PART

(1) Coombes,D., The Power of the Purse in the European Communities, London, Chantam House, 1972, p.23.
(2) see J.Newhouse, Collision in Brussels, London, 1968.
(3) Coombes,D., op.cit., p.25.
(4) Ibid, p.26.
(5) Ibid, p.27.
(6) Bozkurt,ö., Avrupa Parlamentosu, Usuller ve Yetkiler, Ankara, O.D.Sevk ve İdare Enstitüsü, 1988, p.30.
(7) Ibid, p.28.
(8) Ibid, p.28.
(9) Ibid, p.28.
(10) Ibid, p.29.
(11) Ibid, p.29.
(12) Luxembourg Treaty, Art.4.
(13) Bozkurt,Ö., op.cit., p.32.
(14) Vedel Report.
(15) Bozkurt,Ö., op.cit., p.33.
(16) Herman,V. and Lodge,J., The European Parliament and the European Community, London, Macmillan, 1978, p.38.
(17) Ibid, p.39.
(18) Bozkurt,Ö., op.cit., p.34.
(19) Ibid, p.35.
(20) Brussels Treaty, Art.13.
(21) Bozkurt,Ö., op.cit., p.35.
(22) Ibid, p.35.
(23) Ibid, p.36.
(24) Coombes,D., op.cit., p.17.
(25) Herman,V. and Lodge,J., op.cit., p.35.
(26) Ibid, p.37.
(27) Twentieth General Report on the Activities of the European Communities, 1986, Brussels, Luxembourg, p.367.
(28) Ibid., p.368.

PART III

THE LEGISLATIVE POWERS OF THE EUROPEAN PARLIAMENT

a) THE LEGISLATIVE POWERS OF THE EUROPEAN PARLIAMENT

In this chapter, we are going to give a brief outline of the trend through which the legislative powers of the European Parliament have developed.

It has been mentioned above that the European Parliament was established by the ECSC. Treaty as a Consultative Assembly in the beginning. Art.20 of the ECSC Treaty qualifies the powers of THE ASSEMBLY as follows: "The Assembly ... shall exercise the supervisory powers which are conferred upon it by this Treaty." As defined in the Treaty, the Consultative Assembly was a supervisory body. Its members were designated by the Parliaments of the Member States from among their members.[1] although the Treaty allowed the Member States to elect them by direct universal suffrage. Germany, France and Italy had 18 seats each, 10 were allocated for each of Belgium and the Netherlands and 4 for Luxembourg.[2]

With its trivial supervisory powers the details of which we will not study here, the Consultative Assembly of the ECSC was nothing but a very undeveloped embryo of a real parliament. Although it sounds too far-reaching, we believe that there is some truth in Paula Scalingi's words: "As it was, the Common Assembly was simply democratic window dressing for an international agreement among national governments."[3]

After years of striving efforts, the founders of the ECSC achieved to come to an agreement on forming two more Communities (i.e. the EEC and the Euratom) and finally the EEC and Euratom Treaties were signed in Rome on 25 March, 1957.

Like the ECSC Treaty, the following two Treaties established an Assembly along with other Institutions which were very similar to those established by the former. The new Assembly would be the common parliamentary Institution of the three Communities according to a Convention signed simultaneously along with the EEC and Euratom. The members of the Assembly would be selected by the national parliaments of the Member States. The seats in the Assembly were allocated among the Member States as follows: Germany, France and Italy would have 36 seats each, Belgium and the Netherlands would have 14 each and Luxembourg would have 6 seats. Even though the members of the Assembly were selected by national parliaments at the beginning, it is obvious that the EEC. Treaty visualized this as a temporary arrangement. According to Art.138 of the EEC Treaty. "The Assembly shall draw up proposals for election by direct universal suffrage in accordance with a uniform procedure in all Member States". However the right to decide on the date and the methods of the direct elections rested with the Member States, and it took them more than 20 years to hold the first direct elections in June, 1979.

The Assembly of the European Communities established by the Treaties of Rome and the aforementioned Convention, possessed advisory and supervisory powers like the Assembly of the ECSC. Its powers were not much different from those of the latter and "it was the weakest of the four Community Institutions."[4] Even its title in the Treaties implied how far it was from being a real Parliament. However, the Assembly who has always been in exhaustive action to enhance its status, referred to itself as Assemblee Parlementaire Europèenne in French and used a similar expression in Italian. In German and Dutch, however, it was referred to as Europaisches Parlement and Europees Parlement right from the beginning.

From 1962 on, the expressions "Parlement Europenne" and "Parlamento Europeo" were accepted by France and Italy. Another point which indicates the great desire to exalt the European Parliament up to the status of a real parliament felt by its members is the way they designed the procedure the Europeen Parliament. They tried to make its procedure look like that of a national parliament, but since the procedure of the European Parliament does not concern us so much, we will not study the procedural rules by which its activities are governed.

In their attempts to attain their ultimate aim, they visualized direct elections as a first and inevitable thrust that would open the way leading to a parliament in its real meaning. Therefore, they concentrated their efforts soon after the formation of the first Assembly, on the realization of this aim at once. Nevertheless, the governments of the Member States felt quite the opposite, and this aim of the MEP's turned into a reality more than twenty years after the formation of the first Assembly. The first try of the European Parliament in pursuit of holding the direct elections was turned down by the Council and the Member States.

Another attempt made by the supporters of a more powerful European Parliament was launched in 1965 and created a dispute which actuated France to start boycotting Council meetings until the 1966 agreements were concluded.

However, the resignation of General De Gaulle opened the way for pro-Europeans to put forward their claims aiming at an increase in the powers of the European Parliament. Even though their goals had a broader scope, they had to be satisfied with an increase in the budgetary

powers of the Parliament, because of the resistance they had to face vis-a-vis the Member States.

It must also be noted here that the enlargement of the European Communities that took place in 1973 somewhat overshadowed the relief felt by the members of the Parliament and the other Pro-Europeans. The new Members of the Community (i.e. britain Denmark and Ireland) replaced France in slowing down European Integration whenever they felt that it would be at the expense of their mational sovereignty.

There was also a change in the conception of "European Unity" of the pro-Europeans. The first generation of pro-Europeans were supporting the ideal of a European Parliament in the true sense, because they believed that it was a must to create a United States of Europe. The second generation, however, confined itself to more practical aims such as holding direct elections and providing the peoples of the Member States with greater opportunity of representation. Nevertheless, this shift did not change the direction of the evolution of the Parliament.

In 1973, the evergreen hopes of the pro-Europeans rose again. France, which had always been the black dog of Europe had changed its position and the Council of Ministers was giving evasive replies to questions concerning direct elections. A political committee under the presidency of Dutch socialist Shelto Patijn continued to work on a new draft convention for direct elections.[5]

However, some unfavorable incidents prevented the pro-Europeans from pressuring the national governments into setting a future date. The

Arab-Israeli war, the economic crisis that followed it, the rapidly increasing suspicion about the British entry into the Community among British citizens, the determination felt by the Labour Party to hold a national referendum once they were in government again and the negative attitude of the U.S. toward the Community were the most principal ones.[6]

Nevertheless, the members of Parliament retained their hopes and efforts with a view to increasing the powers of the European Parliament and in 1974, the outlook began to seem promising again. "Both West Germany and France had new heads of state who were eager to pose as champions of European Unification."[7] (i.e. Helmut Schmidt and Valery Giscard d'Estaing). It must be noted that the operation of the Community is so sensitive and so shaky that its progress is affected by the changes of governments in the Member States (especially in the larger states), inter alia. The blockage applied by General de Gaulle is a good example of this deficiency. Upon an invitation from Giscard d'Estaing, the Heads of State or Government alias the European Council, convened on December 9-'10, 1974 and issued a communique stating that the direct elections would be held "at any time-in or after 1978". In the same communique, it was stated that "...The competence of the European Assembly would be extended, in particular by granting it certain powers in the Community's legislative process."[8] Only Britain and Denmark had reservations. Britain wanted to negotiate the British terms of Common Market entry and hold a referendum on British accession to the Community. Denmark declared that it could not get prepared for the elections by 1978.[9]

This communique opened the way for the Parliament for the realization of one of its most long lasting ideals: The holding of direct elections. Thus,

the Parliament began to debate the Patijn's draft convention. The draft the convention envisaged a Parliament consisting of 355 seats. It would be the Member State which would decide whether an MEP could also be a member of his/her national parliament at the same time. A uniform electoral procedure would be determined by the Parliament by 1980. The elections would be held on the same day in all Member States not later than the first Sunday of May 1978.[10] Despite some concerns on certain provisions, the Parliament adopted the draft convention with willingness.[11]

After studies and debates carried out in the Council of Ministers the matter was taken up by the Heads of State or Government. The European Council announced on December 1-2, 1975 that the direct elections would be held inMay or June 1978. However, unlike the Danish government, the British Labor government was still unwilling to hold the elections in 1978. Disputes over certain provisions of the draft convention prevented its ratification by the Council of Ministers. Among them were the dispute over the voting age, the system of voting, the size of the Parliament, etc. After long debates and fierce criticism, the European Council agreed on the final text of the plan. The Parliament would have 410 seats. These seats would be allocated to the Member States as follows:

West Germany:	81
France:	81
Italy:	81
United Kingdon:	81
The Netherlands:	25
Belgium:	24

Denmark:	16
Ireland:	15
Luxembourg:	6

After the second and third enlargements of the Community, the total number of members of the European Parliament has risen to 518. The Member States stated above still have the same number of seats and 24, 60 and 24 seats were allocated to Greece, Spain and Portugal, respectively.

Despite the determination of the data of the elections by the European Council and the Council of Ministers, the long lasting debates that took place in the British Parliament proved that Britain would not be able to hold the elections in 1978. Therefore "the European Council met in Copenhagen on April 7, 1978 and rescheduled the elections for June 7-10, 1979."[12]

The elections were held on the fixed date this time. Howevor the turnout was very low. (Barely over 60%). Two of the weaknesses of the European Parliament lie in this field. The citizens of the Member States are not very much inferested in European elections and the ones who vote, usually vote according to national interests and inclinations rather than concerns about Community interests. Apparently, such behavior is an expectable consequence of the fact that the powers of the European Parliament have always been and still are far from affecting their lives. The low rate of participation in elections is considered an important psychological obstacle against the activities of the supporters of a more powerful European Parliament and, on the other hand, the trivial powers of the Parliament are responsible for the low rate of participation in elections. This is

obviously a chicken-and-egg dilemma.

Nevertheless, the first elections which were held in June 1979 were the most important mile stone in its development. It is now the only Institution that is directly elected. This fact increases its political, if not legal, influence within the Community. It has and shall give impetus to its efforts to get hold of new powers. The European Parliament that was elected in 1979 issued some resolutions concerning the powers it wanted to have, and it really managed to get hold of some of them by means of the Single European Act. So, the next. important increase in Parliament's powers are maintained by the Single European Act. Until the aforementioned Treaty, the Parliament had no binding decision - making power except its powers in the budgetary field. It was just an advisory Institution. We shall study the changes maintained by means of the Single Act in the next chapter.

b) THE SINGLE EUROPEAN ACT

The Single European Act constitutes the most recent step taken by means of Treaty (in other words, by the direct participation of the Member States) with a view to strengthening and advancing European integration. The paragraphs that constitute its preamble reveal - though in very general terms which can be interpreted differently by different signatory states - that there is minimal consensus between them on some aims the attainment of which shall either necessitate or facilitate increases in the powers of the European Parliament in the future.

The first of these paragraphs is as follows:

"Moved by the will to continue the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their states into a European Union, in accordance with the Solemn Declaration of Stuttgart of 19 June 1983"[13]

The second paragraph gives a more concrete idea about how this very abstract aim implementing of the European Union) will be carried out

"Resolved to implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules and secondly, of European Cooperation among the Signatory States in the sphere of foreign policy and to invest this union with the necessary means of action."[14]

The fourth paragraph states an assumption that the aims and results mentional in it correspond to the wishes of the democratic peoples of Europe and bases the extension of the powers of the European Parliament on the ground that it is an indispensable means of expression for the peoples of Europe:

"Convinced that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democratic peoples of Europe, for whom then European Parliament, elected by universal suffrage, is an indispensable means of expression".[15]

There are some expressions in the fifth paragraph indicating the desires of the Member States to advance integration in several fields:

"Aware of the responsibility incumbent upon Europe to aim at speaking ever incerasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence"[16]

There are some encouraging points in these paragraphs implying that the trend European integration has followed so far is still in effect and the Member States are very well conscious of the economic and political factors compelling them to strengthen the relations between them in order to retain their status in a changing world. The fact that the concept "European Union", has been explicitly referred to in the preamble as an objective is very important. This is the first time it has been stated in primary legislation of the Community. Even though the concept is very vague and theoretical for the time being, its appearance in a Treaty signed and ratified by all Member States heralds important changes in the balance between the supranational character of the Community and national sovereignty of the Member States. On the other hand, no one should expect that European Union which has been the dream of the founders of the Community, will turn into a reality in a short and stable trend. The length of time needed to reach this goal will be determined by the magnitude of the economic and political pressures encountered by EC Members who, at the same time, have to cope both with the economic and Political giants of the world and the ever-increasing political influence of the developing countries in the international arena. In these days, when the Soviet block seems to be undergoing major changes, it becomes more

difficult to predict the tempo of the integration process or up to what extent it will keep on going. These paragraphs are another admission of the fact that none of the Member States feels strong enough to be able to solve its problems by itself and overcome its economic and political disadvantages emanating from the insufficiency of its economic powers and its political influence without furthering the integration between Member States. So, the factors which started the trend of European integration are still existing and the present situation of the Community is still far from being satisfactory to sustain European Community members vis-a-vis the other competitors both in the economic and the political arena.

After this introduction, now it is time to have a look at the specific provisions of SEA.

The whole text of the Single European Act will not be studied in this thesis. Only the Articles amending the EEC Treaty with a view to enlarging the legislative powers of the European Parliament will be discussed.

The Single European Act establishes two procedures changing the way the European Parliament participates in the making of the Community legislation: The cooperation procedure and the Assent Procedure. Article 6 and 7 lay down the scope and the provisions of the former and Art.8 and 9 concern the latter.

The coopreation procedure is applicable to acts based on Articles 7, 49, 54(2), 56(2) second sentence, 57 with the exception of the second sentence of paragraph 2 there of, 100A, 100B, 118A, 130E and 130Q(2) of the EEC

Treaty.[17] We deem it more appropriate to study the procedure itself before its scope.

The aforementioned procedure has been laid down by Art.7 of the Single European Act which replaced Art. 149 of the EEC Treaty with the following text:

"1. 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.

2. Where, in pursuance of this Treaty, the Council acts in cooperation with the European Parliament, the following procedure shall apply:

(a) The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the Opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively, adopt the act in question in accordance with the common position.

(c) The European Parliament may within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commisison.

If the European Parliament has rejected the Council's common opsition, unanimity shall be required for the Council to act on a second reading.

(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament. The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

(f) In the cases referred to in points (c), (d), and (e) the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed

not to have been adopted.

(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European parliament.

3. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures mentioned in paragraphs 1 and 2."[18]

A close and careful study of this article will reveal that the European Parliament has been given remarkably important powers by the Single European Act. In the first stage of the cooperation procedure, the rules which were in effect before the Single European Act still regulate the procedure according to which the European Parliament will participate in legislative activities concerning issues which fall within the scope of the articles listed in Art.6 of the Single European Act. Nevertheless, the opinion that the European Parliament gave will be taken with greater importance and gravity by the Council in the process of determining a common position, due to the fact that they are being issued by an Institution which is endowed with more influential powers in the second reading. "...the main effect of the new second reading of Community legislation provided by the cooperation procedure is to increase the importance of the first reading as a point of leverage for the Parliament."[19] Even though this evaluation (the one cited in the excerpt) is humiliating the direct impact of the powers exercised by the Parliament in the second reading, it, at the same time, points to a fact. Juliet Lodge supports the aforementioned comment by stating that the first reading is a

crucial stage for the Parliament.[20] She explains her claim with the following words: "This is because it is only at this stage that MEPs can hope to influence significantly the main parameters of the Council's view on the Commission proposal on which Parliament has deliberated and issued its opinion.[21] These remarks seem a little too far-reaching to us, because the Parliament may also exert pressure on the Council during the second reading especially by rejecting the common position.

It is a fact that "the European Parliament is denied a formal right of legislative initiative."[22] But has some means to affect Commission's proposals. An important step to this end has been taken by the attainment of an agreement between the Parliament and the Commission. "They agreed that the Enlarged Bureau of the Parliament and the Commission prepare an annual legislative programme and time-table. This opens the door for Parliament to influence the priorities in the Commission's programme and to press for the inclusion of new items or even the exclusion of some items."[23]

Since the European Parliament has become an important participant in the legislative activities subject to the cooperation procedure, it will be essential for the Commission to have some idea of MEP's wishes. The Parliament can delay the legislative process by passing the proposal back to a committee."[24] S uch behavior has not been sanctioned. The Parliament, like the other two institutions, is not bound by means of a deadline in the first reading.[25]

The obligation of the Council to inform the European Parliament fully of the reasons which led it to adopt its common position is evaluated by

Corbett as the first hint of Council's accountability to Parliament.[26] Art.7(2)(b) provides for the obligation to "inform fully...", but this is a term which can be and is interpreted differently by the European Parliament and the Council. "Council's explanations have now improved to the extent that they provide an account on each of the substantive issues raised in the consideration of draft legislation. This is a considerable improvement, but still falls short of the criteria requested by Parliament's President Plumb who stated that 'as a minimum, the Council should provide a specific and explained reaction to each of Parliament's amendments."[27] But this is an important step taken towards strengthening the position of the Parliament, from both political and legal points.

As has been seen above, after receiving the common position and the reasons which led the other two Institutions to adopt it, the Parliament has four options:

a) It may adopt the common position. To do it, it does not need an absolute majority. The majority of the votes cast is sufficient.

b) It may remain inert vis-a-vis the common position for a period of three or in some cases four mouths, which indicates implicit approval.

"In both cases Parliament's president shall declare the common position adopted (1) with a vote or (2) without a vote."[28] However, such behavior from the Parliament does not finalize the proposal and turn it into an act. "The Council must adopt the act by qualified majority within a period of time of three months (which can also be extended by a maximum of one month if Parliament and Council agree)."[29] This last phase gives the

Council the opportunity to review the common position it adopted before, in view of new circumstances and national concerns which may have arisen during the months it took the Parliament to adopt it with or without a vote. Otherwise, there would not be any point in requiring the Council to act once more the same majority on a text approved by the three Institutions.

Another option the European Parliament may take with regard to the common position is to reject it entirely. To do it, it has to act by an absolute majority of its members, which means 260 votes in favor of rejection, within a period of time of three months (or four in certain situations). However, this kind of action may be desirable for the European Parliament if and only if the common position is completely incompatible with its view on the matter in concern. "Rejection is an unattractive option as Parliament is then no longer in the position of persuading a reluctant Council to act and rejection makes it likely that the legislation will fall."[30] Nevertheless, the threat of rejection may be extremely influential on the Council where legislation to which the Council attributes great significance is in concern. Yet, the Council can override Parliamentary rejection by adopting the common position by unanimity in the second reading. "If it were to become unthinkable for a parliamentary rejection to be overridden, then a position of co-decision would be achieved and Parliament could negotiate with Council as an equal."[31] In case of rejection, if the Parliament has an ally (one of the ministers of the Member States) within the Council, its influence on the legislation may gain an insurmountable character de facto, unless the Council dares or accepts to let the legislation fall.

The Parliament may adopt a fourth position vis-a-vis the common position: To propose amendments to it. To be able to propose amendments to some provisions of the common position, it has to act by an absolute majority of its members, which means 260 votes cast in favor of the proposal, within a period of three months (which can be extended).

"If the common position has been amended or rejected, the Commission may, within a period of time of one month which can not be extended.

"- withdraw the proposal,
"- reexamine the proposal on the basis

On which the Council adopted its common position by taking into account the amendments proposed by the European Parliament. In this case, the Commission shall forward to the Council, at the same time as its reexamined proposal, the amendments of the European Parliament which it has not accepted and it shall express its opinion on them."[32]

In the case where the European Parliament proposed amendments to the provisions of the common position, the attitude of the Commission towards these proposals is very important and, in many instances, decisive.[33] It must be noted that Art. 6 retains the main principle that the Council can amend Commission's proposals if and only if it acts by unanimity. Therefore, if the Commission adopts the proposals for amendment put forward by the Parliament, these proposals will be as influential as total rejection of the common position. "If only one Member State supports the Commission's position, the Commisison's proposal can no longer be defeated unanimously."[34]

Would the Commission have a tendency to support or ignore most of the proposals for amendment of the common position, put forward by the European Parliament? It is not possible to claim that European Parliament and Commission are inseparable allies. So, we can not expect the Commission to take a uniform attitude vis-a-vis Parliamentary proposals of amendment. Nevertheless, as Van Hamme puts it "The Commisison will indeed prefer to keep the Parliament's support since the Parliament can always vote on a motion of censure on the Commission (Art.144, of the EEC Treaty). If such motion is endorsed by two-thirds majority of the votes cast representing a majority of the current members of the Parliament, it results in the Commission's collective dismissal. All this explains why the Commission has stated that the first reading debate and resulting parliamentary amendments or disapproval would set the standards for defining its own position as to the substance of the proposed legislation and such for the remaining part of the cooperation procedure."[35] "During the period of time July 87 - October 88, the Parliament adopted a total of 86 amendments to the common positions. 47 of them were supported by the Commission."[36] This clearly shows that the Commission supported only 52% of the amendment proposals put forward by the Parliament, despite the fact that these two Institutions, by their nature, should have parallel goals (to attribute priority to Community interests vis-a-vis the national interests represented in the Council).

"Within a period of time of three months (possibly four months following agreement with the Parliament) the Council may

- approve the proposal as re-examined by the Commission by qualified majority or by unanimity if the European Parliament had rejected the

common position;

- modify the proposal re-examined by the Commission unanimously;

- adopt unanimously the amendments approved by the European Parliament but not accepted by the Commission."[37]

We have mentioned above that the three institutions participating in legislative activities within the framework of Community Law are not bound by deadlines during the first reading. The situation is quite the contrary in the second reading. Such an arrangement provides each Institution with the opportunity to reflect on the position it must take vis-a-vis the matter in concern without feeling pressurized by restrictions concerning time in the first reading, but, after determining their positions, the deadlines which bind them during the second reading induce them to reconcile their views. Abstention by one of the Institutions from such reconciliation may cause the legislation in concern to fall. Each of the three institutions may use (or maybe abuse) the situation to gain more bargaining power against another which is very willing to pass that certain legislation.

The scope of Cooperation Procedure has been determined by Art.6 of the Single European Act. "A more detailed survey of the scope of the cooperation procedure is as follows:

- Article 100A and 100B of the EEC. Treaty; the progressive establishment of the internal market by 1992 through approximation of the Member States' legislation;

- Article 7 of the EEC Treaty; Prohibition of discrimination on ground of nationality.

- Articles 49, 54.2, 56(2) second sentence, 57 except for the second sentence of paragraph 2 of the EEC Treaty: free movement of workers, and self-employed persons;

- New Article 118A of the EEC Treaty: improvement especially in the working environment as regards the health and safety of workers;

- New Article 130E of the EEC Treaty; implementing decisions relating to the European Regional Development Fund;

- New Articles 130K, 130L, 130M, 130N, 130P of the EEC Treaty: research and technological development."[38]

In other areas some of which are more or less as important as the aforementioned fields such as tax harmonization, there has been no change in the legislative powers of the European Parliament. Besides, the cooperation procedure does not apply to legislation enacted under the ECSC and Euratom Treaties.

The scope of the cooperation procedure, as is expected, from time to time gives birth to disputes between the Parliament and the Council. "Parliament has been vigilant to ensure that Treaty Articles requiring the cooperation procedure are used in preference to those that do not, wherever there is scope for interpretation."[39] The same situation is indicated by Lodge with the following words: "MEPs will be bound to

scrutinize closely and possibly challenge the legal base of Commission proposals in order to ensure that as many as possible come under the coopreation procedure. The Council might be expected to do likewise with a contrary intention. Both intitutions, moreover, may query the legal base of proposed legislation with a view to augmenting their own powers even where the cooperation procedure is to apply."[40]

Before starting to discuss the assent procedure and making an overall evaluation of the increase in the Parliament's legislative powers realized by the Cooperation Procedure, we wish to provide the reader with a table of statistics which indicates the take-up rate of parliamentary amendments during first 16 months of the Single Act (between July 1987 and October 1988):

"First Readings; 53 proposals dealt with by Parliament

46 of which it amended

15 of which the Commission accepted all the amendments

9 of which the Commission acepted all but one amendment

5 of which the Commission accepted less than half amendments

0 of which the Commission accepted none

In total, Parliament approved 603 Amendments. The Commission accepted 77 percent(462)

Council already considered 30 of these proposals (2 of which were unamended by Parliament)

In 0 case did it adopt all of the amendments
In 3 cases it adopted all but one amendment
In 11 cases it adopted less than half (3 of which none at all).

In total, Council adopted 50% of Parliament's amendments (174 of the 349 it considered so far)

Second Readings: 41 common positions dealt with by Parliament
22 of which it approved
18 of which it amended
1 of which it rejected, causing it to fall

Parliament approved	86 amendments
The Commission accepted Council adopted	47 of them (55%)
Council adopted	16 of the 70 considedered during that period (23%)"[41]

Even though we considered it appropriate to provide the reader with the preceding statistical data, we must admit that a mathematical evaluation is far from being satisfactory to give a fair idea of the Parliament's weight in the cooperation procedure. It may only imply that the Parliament has turned into a participant endowed with some means of actuating the Council to take into account and accpet some of its views from a body which had only supervisory and advisory powers. From the preceding table, it is not possible to tell how important the amendments adopted by the Council were from the point of the three institutions and how important the ones which were not adopted were. But, one thing is beyond doubt; if

the Parliament rejects a proposal it is very unlikely to pass, unless all of the Member States can reach a common accord that it should. In Van Hamme's words" The new cooperation procedure entrusts the European Parliament with a negative power (a kind of veto) that could be used very effectively" to hamper the adoption of EC legislation by the Council."[42]

The cooperation Procedure may have some psychological effects on the peoples of Europe and change, up to some extent, the way that they visualize the Parliament and its legislative powers. If the Parliament can reflect the public opinion in its participation in the cooperation procedure, and make its activities more visible to the electorate it may stimulate the democratic background of the average European and may break the chicken-and-egg dilemma mentioned above. "In view of future reforms, it might be useful for the ritual of two readings to become entrenched in the public mind as it gives the impression of classic legislative procedures being followed at European level."[43]

The Commission claims that the Single European Act represents a qualitative leap forward for European integration.[44] This is a far-reaching claim, considering that the Member States have always obstructed or, at least, slowed down qualitative leaps so far. Therefore "Much will depend on how and with what political vigor the Member States attempt to realize the Single European Act's goals and implement new policies heralded by the "new frontier" approach"[45]

Lodge and Bozkurt evaluate the Single European Act in the same way: "It concretizes the EC's inherent federal principles and, in certain crucial respects, changes the institutional balance and begins to redress the

democratic deficit."[46] "By means of the Single European Act, significant changes concerning the institutional structure of the Community, the way the functions are allocated within this framework and powers, have been made, European Political Cooperation has been institutionalized, new objectives concerning the foundations and policies of the Community have been laid down, and thus an important step has been taken in the process of European integration."[47]

Two different systems of decision making within the EC complicate matters and, eventually, will have to be reconciled.[48] The trend which we have studied so far indicates or at least implies that the new cooperation procedure is very likely to constitute a model for such reconciliation.

To give a brief evaluation of the cooperation procedure, the following may be stated:

The Parliament has gained more bargaining power vis-a-vis the Council of which it may make use in forcing the latter to take its views more seriously: This power gains magnitude in cases of rejection of the common position or maintenance of the Commission's approval in favor of Parliament's amendments. Yet, the Council still has the right to say the last word on legislation which falls into the scope of the cooperation procedure, even in the aforementioned cases as long as it manages to act unanimously. It may also obstruct the Parliament's aims by letting the legislation fall, unless it considers it vital from the point of view of the Community or that of the Member States. So, the new powers conferred upon the Parliament by means of the cooperation procedure are far from turning the Parliament into a participant which acts along with or against

the Council with equal influence. Apart from the case of rejection, it always needs the support of the Commission and an ally within the Council to surmount the tendencies prevailing in the Council. Even though the Commission is a purely Community Institution like the Parliament, the current mechanism is inclined to endow the Member States with more influence on the Commission in comparison with the Parliament whose only weapon against the Commission is the motion of censure which has never been used so far. The fact that the members of the Commission are appointed and -sometimes- reappointed by the common agreement of the Member States doesnot give them any opportunity to influence the commissioners according to the founding Treaties. Some sanctions have been laid down to be applied by the court of Justice in cases of infringement of independence, but infringement of independence is a concept which is wide open to discretion and which is very hard to define. From our point of view, the Commission remains -at least in practice- more accountable to the Member States than to the Parliament.

To put it shortly, the Parliament is still far from constituting one of the chambers of a bi-cameral legislature On the other hand, the increase in the powers of the Parliament maintained by means of the cooperation procedure is in line with the trend which we consider inevitable and irrevocable as long as the future development of the Community at the present speed can be taken for granted.

Another increase is maintained in the powers of the European Parliament by the assent procedure. Articles 8 and 9 are the ones that lay down the assent procedure by amending Art.237 and 238 of the EEC, respectively.

Art.8 of the Single European Act. is as follows:

"The first paragraph of Article 237 of the EEC Treaty shall be replaced by the following provision.

'Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament which shall act by an absolute majority of its component members."

The text of Article 19 of the Single European Act is as follows:

"The second paragraph of Article 238 of the EEC Treaty shall be replaced by the following provision:

'These agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament which shall act by an absolute majority of its component members".

The first of the aforementioned articles is about accepting the demands of new countries made with a view to acceding to the European Communities. Before the Single European Act, The Council did not need European Parliament's assent to accept such applications. Since the Single European Act entered into force, the European Parliament has not had a chance to use this power of hers. This is a power which it may use very seldom, because applications for full membership are not submitted to the Communities very often but the immense importance of decisions about

enlargement for all Member States indicates that a very important power has been granted to the Parliament by means of the Single European Act.

The agreements referred to by Art.9 of the Single European Act are association agreements. The assent procedure is required not only for the basic association agreement, but for any revision or addition to these agreements.[49] There is no time limit for the Parliament to carry out the assent procedure. The Council can not accept or reject any association agreements or amendments or additions to them before the Parliament gives its assent, but the last word still belongs to the Council after the Parliament approves of the agreement.

It is quite obvious that the increase in the Parliament's powers maintained by means of the Single European Act are compatible or in compliance with the trend in which the Parliament constantly, but slowly, gains new powers, but it still has a long way to go before it becomes a real parliament.

c) Parliament's Power to Challenge Council's Decisions

The Parliament brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Council Decision 87/373 of 13 July 1987 laying down the procedures for the exercise of the implementing powers conferred on the Commission.

The Council forwarded a preliminary objection stating that the application is not admissible on the basis of the first paragraph of Art.91 of the Rules of Procedure. Therefore the Court was requested by the Council to rule on this preliminary objection without dealing with the merit of the

application.[51]

According to the Council, the Treaty did not provide, explicitly that the Parliament can bring an action for annulment. It stated further that intervention and proceedings for failure to act were quite different from proceedings for annulment.

Art.173 paragraph 1 does not mention the Parliament as one of the Institutions that can bring an action for annulment. Besides, the European Parliament is not a legal person, therefore, it cannot bring an action under the second paragraph of Art.173.

"The Parliament submitted that if it had no power to initiate an action for annulment, it would not be in a position to exercise its powers in relations with other Institutions."[52]

According to the Court of Jusitce, "the present state of the relevant texts does not permit the Court to recognize a right on the part of the European Parliament to bring an action for annulment. Therefore, the preliminary objection must be allowed and the application dismissed as inadmissible."[53]

Consequently, the court reiterated the Constitutional position; i.e. that the Parliament does not have the right to bring an action before the Court with the demand of annulment. On the other hand, it may intervene in cases directed at annulment under Art. 175 of the EEC Treaty and bring actions against the Council and Commisison on the grounds of failure to act.

d) Non-Observance of the Procedural Requirements

In its historical judgment in case 138/79 SA Roquette Fréres v.Council of the European Communities the European Court of Justice analysed this question and gave a clear answer. The applicant, SA Roquette Fre'res brought an action against the Council demanding that Regulation No.1293/79 be declared void.

"The applicant made, inter alia, a formal submission that its production quota, fixed by the said regulation be declared void on the ground that the Council adopted that regulation without having received the opinion of the European Parliament as required by Article 43(2) of the EEC Treaty which constitutes an infringement of an essential procedural requirement within the meaning of Article 173 of the said Treaty."[55]

"By judgment of 25 October 1978 in joined cases 103 and 145/77 Royal Scholten Honig Ltd. v.Intervention Board for Agricultural Produce; the Court held that Council Regulation No.1111/77 of 17 May 1977 laying down common provisions for isoglucose was invalid to the extent to which Articles 8 and 9 thereof imposed a production levy on isoglucose of 5 units of account per 100 kg. of dry matter for the period corresponding to the sugar marketing year 1977/78. The Court found that the system established by the above-mentioned articles offended against the general principle of equality (in those cases between sugar and isoglucose manufacturers) of which the prohibition on discrimination, as set out in Articel 40(3), of the Treaty, was a specific expression. The Court, however, added that its judgment left the Council free to take any necessary measures compatible with Community Law for ensuring the proper

functioning of the market in sweeteners."[56]

Following this judgment, the Commission prepared a proposal for an amendment of Regulation no.1111/77 and submitted it to the Council. The Council asked the Parliament for its opinion on the matter by a letter of 19 March 1979. The Parliament received the letter on March 22, 1979. In the aforementioned letter the Council asked the Parliament to give its opinion at its April session.[57]

"The president of the Parliament immediately referred the matter to the Committee on Agriculture for further consideration and to the Committee on Budgets for its opinion. The Committee on Budgets forwarded its opinion to the Committee on Agriculture on 10 April 1979. On 9 May 1979 the Committee on Agriculture adopted the motion for a resolution of its rapporteur. The report and draft resolution adopted by the Committee on Agriculture were debated by the Parliament at its session on 11 May, the Parliament rejected the motion for a resolution and referred it back to the Committee on Agriculture for reconsideration."[58]

The Parliament would hold a last session on 7 to 11 May before the new Parliament elected by direct suffrage would start working. "At its meeting on 1 March 1979, the Bureau of the Parliament had decided not to provide for an additional session between those of May and July."[59]

The Council adopted the aforementioned regulation which became Regulation No 1293/79 amending regulation number 1111/77 without obtaining the opinion of the Parliament. Thus it requested the Parliament's opinion, but did not wait for it to be issued. In the third

recital in the preamble of the regulation the Council stated that "the European Parliament which was consulted on 19 March 1979 on the Commission proposal did not deliver its opinion at its May part-session; whereas it had referred the matter to the Assembly for its opinion."[60]

"The consultation provided for in the third subparagraph of Article 43(2), as in other similar provisions of the Treaty, is the means which allows the Parliament to play an actual part in the legislative process of the Community. Such power represents an essential factor in the constitutional balance intended by the Treaty. Although limited, it reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly. Due consultation of the Parliament in the cases provided for by the Treaty there fore constitutes an essential formality, disregard of which means that the measure concerned is void."[61]

The Court found the compliance by the Council with the requirement of asking the Parliament for an opinion unsatisfactory.

"In that respect it is pertinent to point out that observance of that requirement implies that the Parliament has expressed its opinion. It is impossible to take the view that the requirement is satisfied by the Council's simply asking for the opinion. The Council is, therefore, wrong to include in the references in the preamble to Regulation no 1293/79 a statement to the effect that the Parliament has been consulted."[62]

The Council contended that the Parliament made it impossible for the Council to obtain an opinion in due time, but the Court did not accept this

claim.

"Without prejudice to the questions of principle raised by that argument of the Council it suffices to observe that in the present case on 25 June 1979 when the Council adopted Regulation No 1293/79 amending Regulation No 1111/77 without the opinion of the Assembly, the Council had not exhausted all the possibilities of obtaining the preliminary opinion of the Parliament. In the first place the Council did not request the application of the emergency procedure provided for by the internal regulation of the Parliament although in other sectors and, as regards other draft regulations, it availed itself of that power at the same time. Further, the Council could have made use of the possibility it had under Article 139 of the Treaty to ask for an extraordinary session of the Assembly especially as the Bureau of the Parliament on March and 10 May 1979 draw its attention to that possibility."[63]

On these grounds, the Court of Justice of the European Communities has declared Regulation No.1293/79 amending Council Regulation No.1111/77 void. This confirms the point that the European Parliament, though not a legislative body in the classical sense, may be involved in the legislative process of the Community. restricted as its porwers are in this respect, they nevertheless enable it to discuss proposed legislation and thus fulfill a part of the law-making function normally carried out by the national parliaments.

e- The Functioning of the Parliament

The Parliament holds its plenary sessions in Strasbourg, but its Secretariat

is located "provisionally" in Luxembourg. The Parliament tried to have a single seat (working place), but the lack of a solution gave way to several cases against the Parliament. The first of these cases is Case No.230/81 Luxembourg v.Parliament. We will study this case:

After the election of the Parliament by direct universal suffrage, the Parliament adopted a resolution concerning its seat and invited the Member States to decide on a single seat. The Heads of State and Government stated that preserving the status quo was the best solution. Then the Parliament decided, by adopting a resolution, to hold its part-sessions in Strasbourg and meetings of political groups in Brussels. Luxembourg brought a case to the European Court of Justice against that resolution.[64]

The Parliament contended that the action is inadmissible, because Art.38 of the ECSC Treaty, Art.173 of the EEC Treaty and Art.136 of the EAEC (Euratom) Treaty do not give a right of action against the measures of the Parliament. The Parliament stated that "the contested solution was based on the sovereign power of the Parliament to organize the way in which it performs its tasks"[65]

According to the first paragraph of Art.38 of the ECSC Treaty, "The Court may, on application by a Member State of the High Authority, declare an act of the Assembly and of the Council to be void."[66] The grounds for application are limited to lack of competence or infringement of an essential procedural requirement."[67]

The first paragraph of Art.173 of the EEC Treaty and the first paragraph

of Art.136 of the EAEC Treaty contain no express provision for active or passive participation of the Parliament in the a forementioned proceedings.

According to the Court, "the proceedings provided by Art.38 of the ECSC Treaty are applicable to measures such as the contested resolution which relate simultaneously and indivisibly to the spheres of the three Treaties."[68]

The Parliament contended that the aforesaid resolution was not an act in the meaning of Art.38 and had no legal effect. "It is a measure arising from the Parliament's power to determine its own internal organization.[69]

The court found that it was necessary to proceed to consideration of the substance of the case. Which means that the resolution of the Parliament has a legal effect and its resolutions concerning its internal organization are challengeable by the Member States.

The Luxembourg Govrenment contends that the fixing of the seat of the Parliament was reserved to the Member States. The Parliament had no right to adopt a resolution concerning its seat.[70]

According to the Luxembourg Government the Parliament, by the said resolution, in fringed Article 4 of the decision of 8 April 1956.[71]

The Court accepted that it was the duty of Governments to determine the seat of the institutions. But, it stated that "it must be emphasized that the powers of the Governments of the Member States in the matter do not

affect the right inherent in the Parliament to discuss any question concerning the Communities, to adopt resolutions on such questions and to invite the Governments to act."[72]

This way, it found the submission of lack of competence unfounded.[73]

It also dismissed the submission that the Parliament infringed an essential procedural requirement.[74]

In the case summarized above the Court states that the Parliament has an inherent right to discuss any question concerning the Communities and to adopt resolutions on such questions and to invite the Governments to act. So even though the Parliament cannot exercise leading role in the legislative process by taking binding decisions, it has the right to participate and discuss and give opinions about Community matters and does not need the Member States' assent to do so.

The Luxembourg Government brought another action against the European Parliament claiming that the adoption of the Zagari Report of 7 July 1981 be declared void.

The Parliament claimed that the application was inadmissible because of two reasons: "the first is that the application is premature and the second is that the contested resolution is not in the nature of a decision."[75] The Parliament contended that the contested resolution was not a definitive act.[76] However, the Parliament abandoned this submission later and the Court did not consider it.

According to the Parliament, the contested resolution was a simple invitation to act, addressed to the Bureau and the secretary general of the Parliament.[77]

The Luxembourg Government contended that the resolution was in the nature of a decision.[78]

According to the Court" consideration of the content of the resolution at issue showed that it was of a specific and precise decision-making character, producing legal effects."[79]

The Parliament also contended that it had an inherent right to discuss Community matters and produce resolutions on such matters.[80]

The Court held that "It must be concluded that the Parliament has exceeded the limits of its powers and that, consequently, the resolution at issue must be void."[81]

This judgment leads us to the conclusion that, even though the Parliament has an inherent right to discuss Community matters, in doing it, it cannot exceed the limits of powers attributed to it. This is the doctrine of attributed powers. Two other cases were brought before the Court by France against the European Parliament. These are cases 358/85 and 51/86.

In these cases, the Parliament had previded for the construction of buildings in Brussels for the purpose of holding temporary meetings. France objected by stating that Parliament should function in Strasbourg

where buildings were allocated provided for rent to the Parliament by the French Government.

In its judgment, the Court decided that the Parliament could take decisions about its internal organization and the parliamentary porcedure is not subject to judicial review. Therefore the Parliament may hold occasional sessions away from Strasbourg if it is necessary for its proper functioning. It is within the Parliament's competence to decide how it will carry out its activities.

The Court has concluded that the Parliament can arrange its activities originating from its internal matters without needing the consent of the Member States or any other Community Institution and such acts of the Parliament are not subject to judicial review. This situation is similar to the status of a national Parliament which can conduct its own business in accordance with its rules of procedure.

f) Judicial Review of Legality of acts

The case Group of European Right v.Parliament (Case No.78/85) gives us a fair idea about whether a political group in the European Parliament has the power to challenge an act of a parliamentary committee.

In this case, the Group of European Right brought an action against an act of the committee of inquiry.

The Court did not find the application admissible, because there was no provision in the Treaty that conferred the power to bring an action against

a parliamentary committee by a political group. Therefore, the matter was non-justiciable. The only provision that regulates the conditions of challenging the acts of an institution is Art. 173(2) of the EEC Treaty. This provision does not provide the power of suing against acts which have no legal effect. Therefore, the Group of the European Right has no locus standi and the case was dismissed.

g) A Case on Parliamentary Immunity

Article 10 of the Protocol on the Privileges and Immunities of the European Communities endows the European Parliament with some privileges and immunities. It is stated in the aforesaid Article that the members of the European Parliament shall enjoy these privileges and immunities during the sessions of the Parliament.

During the proceedings of the case Wybot v.Faure and others The Paris Court of Appeal asked the Court for a preliminary ruling to decide whether the term sessions should be interpreted in the broader sense. If the broader position is taken, the parliamentarians are protected against legal proceedings throughout the annual session of the Parliament. And since an annual session is followed by another one without interruption, parliamentarians will be protected against legal proceedings in their term of office.

"The Court confirmed the broad position. Mr.Faure had thus been right in claiming that his membership of the European Parliament was a bar to the legal proceedings against him. The Court pointed that immunity interpreted in this way did not prevent legal proceedings from being

brought, provided that Parliament was asked to waive the member's immunity."[82]

NOTES OF THE IIIrd PART

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(4) Ibid, p.40.
(5) Ibid, p.131.
(6) Ibid, p.132.
(7) Ibid, p.136.
(8) Ibid, p.140.
(9) Ibid, p.143.
(10) Ibid, p.144.
(11) Ibid, p.140.
(12) Ibid, p.144.
(13) Single European Act, preamble, par.1.
(14) Ibid, preamble, par.2.
(15) Ibid, preamble, par.4.
(16) Ibid, preamble, p.5.
(17) Ibid, Art.6(1).
(18) Ibid, Art.7.
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(23) Corbett,R., The European Parliament's, New "Single Act" Powers, Nieeuw Europa, The Haghe, Y.15, No.1, March 1989, p.12.
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(25) Van Hamme,A., The European Parliament and The Cooperation Procedure, Studia Diplomatica, Brussels, Vol.61, No.3, p.293.
(26) Corbett,R., The European Parliament's p.14.
(27) Ibid., p.14.
(28) Van Hamme,A., op.cit., p.295.
(29) Ibid, p.295.
(30) Corbett,R., The EP's..., p.12.
(31) Corbett,R., Testing the New Procedures, The EP's Fist Experiences with its "Single Act" Powers, Journal of Common Market Studies, 1989, 27/04, p.363.
(32) Van Hamme,A., op.cit., p.295.
(33) Ibid, p.298.
(34) Ibid, p.298.

(35) Ibid, p.297.
(36) Corbett,R., The EP's..., p.13.
(37) Van Hamme,A., op.cit., p.295.
(38) Ibid, p.292.
(39) Corbett,R., Testing the..., p.364.
(40) Lodge,J., op.cit., p.14.
(41) Corbett,R., Testing the..., p.371.
(42) Van Hamme,A., op.cit., p.292.
(43) Corbett,R., Testing the..., p.363.
(44) Lodge,J., op.cit., p.5.
(45) Ibid, p.5.
(46) Ibid, p.6.
(47) Bozkurt,Ö., op.cit., p.6.
(48) Lodge,J., op.cit., p.6.
(49) Corbett,R., Testing the..., p.359.
(50) Plender,R. and Usher,J., Cases and Materials on the Law of the European Communities, London, 1989, Butterworths, p.33.
(51) Ibid., p.33.
(52) Ibid., p.34.
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(55) European Court Reports, SA Roquette Freres v.Council of the European Communities, Case No.138/79, 1980, p.3352.
(56) Ibid., p.3353.
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(58) Ibid., p.3354.
(59) Ibid., p.3354.
(60) Ibid., p.3355.
(61) Ibid., p.3360.
(62) Ibid., p.3360-61.
(63) Ibid., p.3362.
(64) Plender,R. and Usher,J., op.cit. p.38.
(65) Ibid., p.39.
(66) ECSC Treaty, Art.38/I.
(67) ECSC Treaty, Art.38/III.
(68) Plender and Usher, op.cit., p.39.
(69) Ibid., p.40.
(70) Ibid., p.40.
(71) Ibid., p.40.
(72) Ibid., p.41.
(73) Ibid., p.41.
(74) Ibid., p.42.
(75) European Court Reports, Grand Duchy of Luxembourg v.European Parliament, 1984, p.1953.
(76) Ibid., p.1957.
(77) Ibid., p.1957-58.

(78) Ibid., p.1959.
(79) Ibid., p.1959.
(80) Ibid., p.1961.
(81) Ibid., p.1961.
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PART IV

SOME COMMENTS ABOUT THE FUTURE

a) The Expectations of the Peoples of Europe Concerning the Future of the European Communities

In this chapter we wish to analyze and briefly evaluate the last of the opinion polls conducted on the eve of 1979 Parliamentary elections by "the European Parliament's Federalist Intergroup, with the support of the European Commission and notably Commissioner responsible for information Mr.Ripa Di Meana and of the "Altiero Spinelli Committee for European Union."[1] These surveys aim at revealing the attitudes of citizens of European Community Member States concerning the political unity of the components of the Communities.

This survey has been conducted in October and November 1988: a total of 11.796 persons (15 years old and over) were interviewed in the twelve countries of the European Community.[2]

We have to take into account in advance, that this survey suffers from all kinds of deficiencies that every opinion poll suffers. Being a layman in the field of opinion polling, the numbers of persons interviewed seems very trivial to us to reflect the inclinations of the peoples of the Member States which cnostitute the European Community, considering that the total population of the Community is 330 million. Besides, the governments who usually take very reluctant and very slow steps in the process of integration, may have the power to change the ideas of their people. When it comes to take a final decision various centers of power (i.e. the governments, lobbies, trade unions, employers' unions, media and many other constituants of a pluralist democracy) shall interfere, each in pursuit of its own interests or the interests of the masses they represent. So, the

present inclinations of the peoples may be altered by the influence of infinitely many factors, some of which may not be predicted at the moment.

Yet, taking into account that such surveys are the only means of having an idea about the peoples' tendencies we would like to evaluate the most recent one.

In this survey, which is the third of the series conducted on the same purpose, the following questions have been asked to the persons chosen to be respondents:

a) Are you for or against a collective organization for defense?[3]

As will be observed in the relevant table, an absolute majority of the respondents from each Member Country replied in favor of such an organization. Only the Danish are against it with a percentage of 42 vs. 36, but since the supporters of such a common organization constitute 72% of all over the Community and since Denmark, despite the fact that it is an equal member of the Community, has very little political and economic emphasis in the Community, it is very unlikely that it can resist if all the other Member States embark on establishing a common defense organization. (450) 72% of all the respondents support the establishment of such an organization.

b) "Are you for or against a collective economic and social policy, particularly in the area of employment?"[4]

Again a great majority of respondents reply this question in favor of the aforementioned common policy. Even though the percentage of positive responses falls below fifty per-cent in Denmark, it still overrides the percentage of remarks against this common policy. It must be noted that respondents from the United Kingdom support the idea of establishing such common policies at high rates (respectively, 71% and 70%). The percentage of positive responses for the aforrementioned policy is 79% of the remarks made by all the respondents from all of the Member States.

c) "Are you for or against a single European currency, the ECU?"[5]

The responses in favor of the establishment of a single European currency fall below 50% in three countries; Denmark (27%), United Kingdom (28%) and Germany (%46).

d) "Are you for or against a single common policy for relationship with the countries outside the European Community?"[6]

To this question, more than 50% of the respondents of all countries except Denmark and united Kingdom gave positive replies. Only 33% of the respondents of Denmark (with 45% against) and 41% of the British respondents (with 39% against) replied in favor of a common policy, and 59% of all the respondents support such a policy.

e) "Are you for or against a European Government responsible to the European Parliament?"[7]

This question was replied in favor in all the Community countries by a

majority which exceeded 50%, except 4 of them. The countries in which support is below 50% are: Denmark (15%), Germany (49%), Luxembourg (48%) and United Kingdom (33%). Yet, 53% of all respondents are in favor of a European Government all over the Community. It must be noted that in comparison with the previous two surveys, supporters of the idea of establishing a European Government have slightly increased.[8]

f) "Should the European parliament to be elected in 1989 have the job of preparing the draft of a European Constitution?"[9]

The respondents of all countries except Denmark and United Kingdom responded this question with a positive reply by a majority above 50% and the overall support for the draft of a European Constitution is 60% in the whole Community. There is also a slight increase in the last survey in comparison to the previous two surveys.

g) "Should a referendum be held on the European Union?"[10]

All the respondents, by a majority above 70%, are supporting such a referendum. And the overall support is 77% throughout the Community.

h) "Supposing a few countries were against a European Union, what should the others do?"[11]

In all the countries except Denmark and United Kingdom, the number of respondents who say that the Community should still create a European Union is more than that of the respondents who say that the project should be abandoned, and 51% of all respondents all over the Community are

willing to take the risk of splitting the Community in order to establish a European Union.

This survey, if we take it for granted that it indicates reliable data, shows us a few points:

a) The European voter is well conscions of the democratic gap in the Community and wants it to be filled.

b) The image of Community with its advantages is much more concrete in the voters' minds than some politicians thought it could be.

c) Britain and Denmark, at the time being, are the black dogs of the Community.

d) If a European Union were to be established, It would gain the support of the peoples of Europe.

e) Community citizens have confidence in the European Parliament and want to see it as a real legislative body who may be entitled to prepare a draft constitution.

f) If Member States take further steps in the process of European integration they will be supported by the citizens of the Community.

To say it shortly, the inclinations and expectations of the peoples of Europe are completely in line with the trend in which European Parliament gains new powers. We shall discuss the trend and its legal bases in the next chapter.

TABLEAU 1/TABLE 1

DES POLITIQUES EUROPEENNES COMMUNES/COMMON EUROPEAN POLICIES

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	CE12
	%	%	%	%	%	%	%	%	%	%	%	%	%
Une organisation commune de sécurité et de défense/A collective organisation for defence													
Pour/For	77	36	66	62	63	80	60	84	80	74	68	71	72
Contre/Against	12	42	20	14	14	10	19	8	12	13	4	18	14
?	11	22	14	24	23	10	21	8	8	13	28	11	14
	100	100	100	100	100	100	100	100	100	100	100	100	100
Une politique économique et sociale commune, notamment dans le domaine de l'emploi/ A collective economic and social policy, particularly in the area of employment													
Pour/For	81	41	77	69	78	85	85	92	83	78	70	70	79
Contre/Against	10	36	13	9	4	7	3	1	7	8	3	10	9
?	9	23	10	22	18	8	12	7	10	14	27	13	12
	100	100	100	100	100	100	100	100	100	100	100	100	100

TABLEAU 1 (SUITE) / TABLE 1 (CONTINUED)

DES POLITIQUES EUROPEENNES COMMUNES/COMMON EUROPEAN POLICIES

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	CE12
	%	%	%	%	%	%	%	%	%	%	%	%	%
Une monnaie européenne commune : l'écu/ A single European currency, the ecu													
Pour/For	72	27	46	52	61	74	64	77	67	61	52	28	56
Contre/Against	15	49	40	14	12	14	17	8	21	23	13	58	27
?	13	24	14	34	27	12	19	15	12	16	35	14	17
	100	100	100	100	100	100	100	100	100	100	100	100	100
Une politique extérieure commune pour les relations avec les pays qui ne font pas partie de la Communauté/A single common foreign policy for relationship with the countries outside the European Community													
Pour/For	69	33	65	52	61	63	54	72	68	52	59	41	59
Contre/Against	16	45	20	18	9	19	19	10	15	24	8	39	20
?	15	22	15	30	30	18	27	18	17	24	33	20	21
	100	100	100	100	100	100	100	100	100	100	100	100	100

TABLEAU 2 / TABLE 2

LA FORMATION D'UN GOUVERNEMENT EUROPEEN RESPONSABLE DEVANT LE PARLEMENT EUROPEEN/
FOR OR AGAINST A EUROPEAN GOVERNMENT RESPONSIBLE TO THE EUROPEAN PARLIAMENT

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	CE12
	%	%	%	%	%	%	%	%	%	%	%	%	%
Octobre-novembre 1987/October-November 1987													
. Pour / For	55	13	41	38	50	60	39	70	52	45	42	31	48
. Contre / Against	12	64	28	21	10	19	23	11	20	25	14	45	24
. ?	33	23	31	41	40	21	38	19	28	30	44	24	28
	100	100	100	100	100	100	100	100	100	100	100	100	100
Mars-avril 1988/March-April 1988													
. Pour / For	56	11	43	43	52	62	44	68	46	45	42	31	49
. Contre / Against	25	67	29	18	14	16	18	10	32	30	9	43	24
. ?	19	22	28	39	34	22	38	22	22	25	49	26	27
	100	100	100	100	100	100	100	100	100	100	100	100	100
Octobre-novembre 1988/October-November 1988													
. Pour / For	64	15	49	51	53	58	55	75	48	53	59	33	53
. Contre / Against	12	63	24	14	12	16	16	7	28	23	7	37	20
. ?	24	22	27	35	35	26	29	18	24	24	34	30	37
	100	100	100	100	100	100	100	100	100	100	100	100	100

TABLEAU 3 / TABLE 3

ATTITUDES A PRENDRE SI CERTAINS PAYS ETAIENT OPPOSES A L'UNION EUROPEENNE/
SUPPOSING A FEW COUNTRIES WERE AGAINST A EUROPEAN UNION, WHAT SHOULD THE OTHERS DO ?

	B %	DK %	D %	GR %	E %	F %	IRL %	I %	L %	NL %	P %	UK %	CE12 %
Octobre-novembre 1987/October-November 1987													
Créer l'Union européenne/Create a European Union	54	20	49	37	48	63	34	75	63	48	59	33	52
Renoncer au projet/Abandon the project	20	64	31	24	14	22	34	13	23	30	13	49	27
?	26	16	20	39	38	15	32	12	14	22	28	18	21
	100	100	100	100	100	100	100	100	100	100	100	100	100
Mars-avril 1988/March-April 1988													
Créer l'Union européenne/Create a European Union	56	19	45	50	57	65	41	77	50	54	46	36	54
Renoncer au projet/Abandon the project	14	64	32	26	14	23	29	13	23	31	12	45	27
?	30	17	23	24	29	12	30	10	27	15	42	19	19
	100	100	100	100	100	100	100	100	100	100	100	100	100
Octobre-novembre 1988/October-November 1988													
Créer l'Union européenne/Create a European Union	63	19	48	52	48	53	49	72	54	51	53	33	51
Renoncer au projet/Abandon the project	20	66	31	21	16	30	35	15	30	31	15	47	29
?	17	15	21	27	36	17	16	13	16	18	32	20	20
	100	100	100	100	100	100	100	100	100	100	100,	100	100

TABLEAU 4 / TABLE 4

UN MANDAT DONNE AU PARLEMENT EUROPEEN DE 1989 POUR QU'IL PREPARE LE PROJET DE CONSTITUTION EUROPEENNE / THE EUROPEAN PARLIAMENT TO BE ELECTED IN 1989 SHOULD HAVE THE JOB OF PREPARING THE DRAFT OF A EUROPEAN CONSTITUTION

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	CE12
	%	%	%	%	%	%	%	%	%	%	%	%	%
Octobre-novembre 1987/October-November 1987													
D'accord/Agree	61	20	58	38	51	69	41	76	67	56	50	45	58
Pas d'accord/Disagree	6	52	19	15	7	6	15	4	6	13	5	26	14
?	33	28	23	47	42	25	44	20	27	31	45	29	28
	100	100	100	100	100	100	100	100	100	100	100	100	100
Mars-avril 1988/March-April 1988													
D'accord/Agree	63	21	51	49	52	68	48	76	54	56	47	43	57
Pas d'accord/Disagree	7	49	22	16	10	7	13	4	15	21	5	28	15
?	30	30	27	35	38	25	39	20	31	23	48	29	28
	100	100	100	100	100	100	100	100	100	100	100	100	100
Octobre-novembre 1988/October-November 1988													
D'accord/Agree	73	29	59	49	57	72	56	78	59	59	54	38	60
Pas d'accord/Disagree	9	45	17	13	6	7	14	3	13	14	7	27	13
?	18	25	24	38	37	21	30	19	28	27	39	35	27
	100	100	100	100	100	100	100	100	100	100	100	100	100

TABLEAU 5 / TABLE 5

REFERENDUM SUR L'UNION EUROPEENNE A REFERENDUM ON THE EUROPEAN UNION

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK	CE12
	%	%	%	%	%	%	%	%	%	%	%	%	%
Mars-avril 1988/March-April 1988													
D'accord/Agree	65	82	65	81	77	80	76	84	71	73	61	77	76
Pas d'accord/Disagree	10	6	16	5	5	5	6	9	10	14	3	9	9
?	25	12	19	14	18	15	18	7	19	13	36	14	15
	100	100	100	100	100	100	100	100	100	100	100	100	100
Octobre-novembre 1988/October-November 1988													
D'accord/Agree	74	83	73	81	78	73	81	87	79	78	74	76	77
Pas d'accord/Disagree	12	8	10	5	3	14	5	7	11	10	3	9	9
?	14	9	17	14	19	13	14	6	10	12	23	15	14
	100	100	100	100	100	100	100	100	100	100	100	100	100

b) PARLIAMENT AND DEMOCRATIC LEGITIMACY

We have seen in the previous chapters that the European Parliament is still the weakest of the four Community Institutions despite the new powers it has been granted by the Luxembourg and Brussels Treaties and the Single European Act. These are then main reasons creating this weakness.

a) The opinions of the European Parliament are not binding. The Council has to ask for the opinion of the European Parliament whenever the Treaties oblige it to do so. The infringement of this obligation contitutes a reason or a ground for annulament of the legislation in concern. But the Council is quite free not to legislate in compliance with the view of the European Parliament.

b) The European Parliament, acting by a majority of two-thirds of the votes cast, may dismiss the Commission. But the Commission is not the real legislature in the framework of Community law.[12] So the Parliament can not sanction the Council in any way. The Parliament has some exceptional powers in the budgetary area and in the scope of the cooperation procedure. In a very large area, its powers are still advisory and the council still has the right to say the last word in all areas except the budgetary area only concerning the non-compulsory expenditures. Certainly being the only institution which is directly elected the Parliament has more weight than what its powers provide it with.

It is a fact that the parliaments of democratic states have declined vis-a-vis executive organs due to several reasons: "the increase of bureaucratic involvement in the initiation and implementation of public

policy; the increased size and ever-expanding role of central government; the increasing importance of international organisations, agencies and bodies and the implications these have had for national sovereignty, the growth of multinational corporations and the problems of controlling their activities and ensuring their responsibility the tendency of goverments to consult with pressure groups and interested organisations before a measure is drafted and introduced into the legislature; and so on. By far the most important of these events lies in the fact that governments have over the years, taken on an ever-expanding array of tasks: this point is typically illustrated by reference to increase in phenomena such as the level of government expenditure, the quality and quantity of enacted legislation and delegated legislation, the number of local and national civil servants, etc."[13]

The functions of parliament in a liberal state is set out by Donald Chapman as follows:

"1- The power to decide over the duration of government.

2- Providing members of the government and determining government membership.

3- The power to make rules binding on the government-legislative power, power over the budget, power to receive and approve the general and detailed policy of the government.

4- Confrontation between government and opposition, focussing political choice for the electorate, through the party system.

5- The focal point also for interest groups and expression of grievances, acting as a point of communication between citizen and government."[14]

It is obvious that the European Parliament enjoys none of the powers cited above fully.

1- Even though it has the right to dismiss the Commission by accepting a motion of censure, it has never been able to use it so far. So it has never enjoyed this power up to now. Even if it did the new Commission would have been set up by the member governments without consulting the Parliament.

2- It actually does not enjoy the power of providing members of the government and determining goverment membership. The Commission which is comparable to a national government because it is one of the two Institutions carrying out the executive functions, is set up by the Member States.

3- The European Parliament paritcipates in the legislative process only in an advisory status except in the budgetary area and within the scope of cooperation and assent procedures .

4- In the European Parliament there is no distinction between government and opposition first of all, there is no government responsible to the European Parliament (The motion of censure did not prove to be effective) Since the political groups may take different positions on different matters there is no constant opposition. But the European Parliament has a pluralistic structure.

5- The more serious the European Parliament's powers become the more it will constitute a focus of interest for the voters, interest groups and a more effective bridge between citizens and the other Institutions.

The European Parliament has the following functions:

"1- The information function.
2- The communication function.
3- The education function.
4- The legitimation function.
5- The representation function."[15]

Of these, we will study the legitimation function Unless the European Parliament is given powers which are equal to those of the Council, it will not be able to fulfil its legitimation function. The Community legislation which is completely in accordance with the opinions of the European Parliament will be legitimized only. As long as the Council remains as the primary legislator, the link between the peoples of European Community members and the legislative acts will remain broken. To maintain legitimacy for all legislation, the assent procedure must be extended to all fields of community activities. The Council must not be able to adopt any legislation unless the Parliament gives it assent. The draft Treaty for European Union designates such a procedure. It must be recalled that the peoples of the Member States are willing to give this task to the European Parliament. By direct elections, the Community has become a separate entity from the Member States.

Roy Pryce describes the community as "invisible". He says: "The Community is invisible to the great mass of its citizens "[16] The direct elections may have changed this situation, but not much. Because the European Parliament still lacks the proper powers of a real parliament and the outcome of the election does not affect the daily lives of the voters. This is why the rate of participation in the elections is so low and the

voters vote with national concerns in mind.

"In a report based on the work of a Federal Trust. Group examining the institutional structure of the Community, Stanley Henig (the Group's rapporteur) analysed the capabilities and weaknesses of the existing institutions.[16] He advanced two 'general yardsticks' by which the performance of the institutions could be measured-efficiency and legitimacy:

Europe's Institutions will be legitimate inso far as individual citizens are prepared to accept decisions by them even when their own lives and livelihoods are affected and insofar as there is (consequently) a transfer of loyalties and expectations to those institutions without this acceptance of the institutions and some associated transfer of loyalty, integration will be unable to proceed beyond a certain point. It is desirable, of course, that the European institutions receive the accolade of legitimacy only if they are organised in accordance with certain democratic principles, but the critical operating condition for integration is legitimacy rather than democracy. One might posit three criteria for legitimation-tradition, democracy and success in performance. It is arguable that at least two of these criteria will be needed for the community to receive the accolade of legitimacy. In the absence of any tradition and lacking any very credible democratic structure, the Community has usually been forced to rely on performance for its own legitimation. Ultimately, though, [the European] Parliament must have legislative and budgetary powers and be directly elected if the European institutions as a whole are going to acquire the degree of legitimacy necessary for the transfer of loyalties and expectations."[17]

According to Allott "Two critical psychological factors which undermine the legitimacy of the European Parliament are, firstly, the secretive nature of EC decision - making, and secondly, the remoteness of the decision - making process from the peoples of Europe. These two factors take on special importance with regard to sovereignty and taxation on the subject of sovereignty, Allott writes:

...Beyond the question of the actual influence of Parliament is the underlying conviction that there should be some place where the ultimate power to make the law of the land is exercised openly and in front of the representatives of the people ... At the end of the day, the law as adopted in parliament becomes a legal order and a legal authority to those whose role is to enforce that law, and so far as the people are concerned, it is the law behind which, they know and (in all normal circumstances) accept, lies the sanction of public force. In short, it is the cornerstone of the system because if the authority of law made in parliament is accepted, then all else in the system follows, all other legal authority is then tolerated on the understanding that it could be revoked or modified at any time by means of a law made in Parliament. On the subject of taxation, a similar argument is advanced: And yet, once again, it must be said that the idea that Parliament, and particularly the House of Commons is the place where taxation is imposed remains an idea of great political importance one of the familiar psychological pillars on which public loyalty to our system of government rests."[18]

Since the European Parliament dos not enjoy the budgetary and legislative powers fully, like a democratic national parliament, it lacks legitimacy and representation. Certainly, the European Parliament is elected in a democratic way, and represents the peoples of Europe, but because its

legislative powers are rudimentary, the will of the peoples does not reflect on Community legislation.

Therefore the European Parliament can not fulfil its legitimation function fully. To do that it must have equal legislative powers with the council.

CONCLUSION

WHY SHOULD THE EUROPEAN PARLIAMENT HAVE POWERS PROPER FOR A REAL PARLIAMENT?

a) The Council lacks representation and legitimacy "It does not have to formulate a common policy and justify that policy to an electorate. Thus the Community's decision-making process violates one of the central elements in the liberal-democratic political creed to which all line (twelve) of the Community's Governments pay lip service ... for all practical purposes their (the Ministers') constituents have been powerless either to reward or to punish them for their actions at the European level."[19]

b) The fact that voters vote with national concerns in national elections and not with concerns related to Communities prevents the conscience of being European citizen from developing. Voters do not and can not take into account in national elections Community affairs.

c) The voters do not have a fair idea whilst voting in national elections, about who will represent their State in the Council. Certainly, the Ministers are usually elected persons, they are accountable to their parliaments, but the procedure which ends with the designation of Ministers is too indirect to let the will of the electorate reflect to legislation on European level. So there is a democratic gap in the way Community Institutions carry out their tasks.

d) Letting an executive organ issue a legislative act which is not subject

to the instant approval of a parliament is quite contrary to democratic tradition.

e) The small parties of Europe are not represented in the Council unless they contribute to the establishment of a government. So, the Council is not pluralistic enough to claim to be able to represent all the different views on European level.

f) Each member of the Council has the power to veto decisions taken by the Council. When the European Community consisted of six Members States, there were only six members who could veto decisions. Now, there are twelve members and twelve potential vetoes. It is much more difficult to attain unanimity. If the Community enlarges in the future, it will be even more difficult and the decision-taking process is going to grow less and less efficient. This is why the Single European Act has replaced the rule of unanimity with the process of decision - taking by qualified majority in certain fields.

g) The replacement of unanimity with qualified majority is a big hole in the walls of national sovereignty which is generally invoked against developments which consolidate the supranational character of the Communities. In one case, the Ministers of other Member States take a decision which binds a Member State despite its objections. In another case, a common Institution takes decisions which bind the Member States. Certainly, the first possibility is more embarassing. So, by replacing the rule of unanimity by qualified majority, the Member States have let a hole be opened in the walls of national sovereignty. This development is completely in line with the trend in

which the European Parliament gains new powers and the supranationality of the community gains emphasis against national sovereignty.

h) The peoples of the Community are in favor of the further development of common policies within the framework of the European community. They also support the idea of establishing a European union. Considering that these peoples have a rich background of democracy, a European government based on the principles of parliamentary democracy is quite compatible with the way they conceive democracy. This is why they support the idea of a European government responsible to the European Parliament and the Council without any initiative from Member States. In a group of developed democracies this sign is very important.

NOTES OF THE FOURTH PART

(1) Europe Documents, Agence Internationale d'Information pour la Presse, No.1537, 16 Dec.1988, p.1.

(2) Ibid, p.2.

(3) Ibid, Table 1.

(4) Ibid, Table 1.

(5) Ibid, Table 1. (Continued)

(6) Ibid, Table 1. (Continued)

(7) Ibid, Table 2.

(8) Ibid, Table 2.

(9) Ibid, Table 4.

(10) Ibid, Table 5.

(11) Ibid, Table 3.

(12) Dagtoglou,P.D., European Communities and Constitutional Law, Cambridge Law Journal, 32(2), November 1973, London, p.263.

(13) Herman,V. and Lodge,J., op.cit., p.13, 14.

(14) Ibid, p.16.

(15) Ibid, p.21-22.

(16) Ibid, p.80.

(17) Ibid, p.80 and 81.

(18) Ibid, p.81.

(19) Marguand,D., Parliament for Europe, London, 1972, Chantam House, p.20.

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