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Contents

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* **Sutherland Speaks out on the European Union's Future**
  Peter Sutherland
* **The European Union's Common Foreign and Security Policy and the 1996 Intergovernmental Conference**
  Kostas Koliopoulos
* **Det norske nei!**
  Arild Saether
* **L'Union européenne, un drôle d'animal social**
  Alain Guggenbühl
* **EIPA-Inspired Report to the Club of Rome**
* **Reorganization at INAP**
* **Welcoming Speech for the Members of the EIPA Scientific Council**
  Constantino Méndez Martínez
* **Announcements/Annonces**
* **Recent and Forthcoming Publications**
* **EIPA Provisional Programme of Activities** *(Pull-out)*
* **Supplement – Newsletter of the Regions in the EU**

Sutherland Speaks out on the European Union's Future

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Speaking in his personal capacity, Peter D. Sutherland, Director-General of the World Trade Organization, *delivered the 17th Jean Monnet Lecture at the European University Institute in Florence on 10 February 1995*. In his lecture, entitled The European Union A Stage of Transition', Mr Sutherland set out the external and internal challenges facing the Union in the run up to the 1996 Intergovernmental Conference. His message is that these challenges call for more, not less, European integration, and that this principle should guide the reforms of the Union's institutions which the 1996 Conference would have to address. A confident and outward-looking Europe, in touch with the liberal principles on which it was founded, and credible to its citizens, is vital for the prosperity and stability of the world and of Europe itself.

Introduction

I am honoured and privileged to have been invited to give the 17th Jean Monnet lecture at this time and in this place. I am not speaking in my official capacity as Director-General of the World Trade Organization, and my remarks to you should not be taken as representing the WTO in any way. I am speaking to you as a private citizen, as a long-time believer in European integration, and as someone who is deeply concerned by the problems Europe faces.

Throughout its history this Institute has provided a forum for the development of ideas regarding European integration. However, more than this, it has helped to generate an intellectual framework and conceptual justification for that process and has constantly provided ideas for future development.

Since the earliest days of the Community there has never been a time when the generation of new ideas on the future course of the European integration process has been more urgently required. We face today a crisis of belief which transcends anything that I remember. We also face a crisis by reason of the stark divisions between the Member States on where the Union is going and how it will get there. One feels that even Monnet would be intimidated by the challenges ahead challenges that simply cannot be dealt with by temporizing or lofty rhetoric.

The political and social challenges from the disaster in the former Yugoslavia to the running sore of unemployment, are as immediate as the television news. They give an added urgency to the questions one must answer about Europe's future.

If I emphasize the economic challenges in this lecture it is in no way to make light of these grave and pressing problems. It is rather to recognize, as Jean Monnet did, that economic and trade relations are the cornerstone of European integration and the key to its future development. At this time of transition it is more than ever important to return to the sources of the Union for fresh inspiration to guide its future development. I want to begin by recalling briefly the factors and the insights which provided the post-war push for European integration, before going on to show how Europe's present situation is an imperative for further integration.

The external challenges facing Europe in a shrinking and uncertain world and the questions it must resolve about its own shape and structure are inseparably linked. They must be considered together, as I intend to do; together they lead to the same point. A confident and

outward-looking Europe is vital for the prosperity and stability of the world and of Europe itself. This must be a Europe which is more united, not less; a Europe whose openness to global change and its global partners is made possible by the assurance that comes from making its own policies and institutions more open, more responsive and more credible to its citizens.

The Origins of Integration

There were compelling, obvious but also very specific reasons for the creation of a true community of European states dedicated to democracy in the immediate aftermath of the Second World War. As Duchene has made clear in his excellent biography of Monnet, it was his ability to harness specific and shared policy objectives to the grander objective of European Union that provided the basis for the remarkable achievements which were to follow. As a backdrop to that debate, Europeans then recognized, and could not easily ignore, the visible evidence of the historic failure that surrounded them.

The waging of a horrible war that had followed the earlier one so rapidly presented unambiguous arguments for a new and different beginning. So also did analysis of the events that had preceded it, including the catastrophic economic collapse of 1929-32 and the protectionism of the 1930s. The courage and vision required for a new beginning were more readily forthcoming from a group of inspired individuals who had not only been vital witnesses to the capacity of Europe to destroy itself but who also saw the specific need for new structures supporting economic interdependence.

The appalling excesses of racism and xenophobia which were often rooted in economic causes demonstrated a need to structure economic relationships for the future in a new way. However much of the rhetoric of the Hague Congress in 1948 may evoke a belief that the nobility of the cause created the means to realize it, the reality was probably more prosaic. The building blocks of the Union as we now know it were the result of pragmatic concerns and objectives and each subsequent step has followed the identification of specific policy imperatives for the Member States.

The uncomfortable stability provided by the East-West divide, through the creation of a certain homogeneity and the sense of ever-present threat, cemented the members together. Indeed, the more or less consistent US support for integration was also of course influenced by the belief that a more united and free Europe created a secure bulwark against the advance of communism. Superficially, with the removal of the threat, it might be argued by some that one important reason for developing the Union no longer existed. On the contrary, as I now want to demonstrate, today's external conditions create even more compelling political reasons for integration, even though they may be less obvious.

The External Challenges Facing the European Union

I want to emphasize the need to put Europe in its proper perspective the global one. To see Europe's future more clearly it is necessary to lift our gaze well beyond its borders. There is no possibility of opting out' from the world outside, or from the forces which are shaping it. On the contrary, all Europe's hopes for its future development depend on recognizing and responding positively to the currents of global change and no Member States, not even the more powerful, can by themselves mount an effective response to the unprecedented challenges facing us.

The deepest as well as the broadest change is the integration of the world economy, which also has profound political consequences. This is a central fact of our times, even if it is one more often acknowledged in the private sector than in political life. It stems from the free flow of

capital, technological change, innovations inbusiness organization and the more open and secure trading environment made possible by the multilateral system. Its reality is shown in the fact that the volume of world trade has expanded more rapidly than the volume of world output in nearly every year since the end of the Second World War.

For much of the postwar period, more than three-quarters of the world's people lived in countries whose governments were sceptical of and, in some instances, openly hostile to the advantages of integration into world markets.

That has changed, and the implications for international economic and political relations are enormous. Since 1982, for example, the developing countries have nearly doubled their share of world exports of manufactures, from 11 per cent to more than 20 per cent last year. One-third of the top 25 traders of goods and services are now developing countries.

In short, national frontiers are becoming less and less relevant for private sector decisions concerning investment, production and consumption. But the political effects do not necessarily go the same way. The mirror image of more intense competition on world markets has been the increasingly defensive stance of some import-competing industries, especially noticeable in the developed countries in periods of recession. This is not unrelated to increasing evidence of extreme nationalism and racism with their seductive appeal to some of the less appealing human characteristics. Persistent social problems, such as high rates of unemployment, are wrongly blamed by some industrialized countries on the poor of the world. Already there are disturbing signs of a rise in protectionist sentiments, in various guises, in Europe and in other developed countries.

Accepting the reality of an inter-related world as a promise rather than a threat will help Europe reaffirm its own cohesion. It urgently needs to do so in the face of the array of specific external challenges to which it must respond.

On the European continent, there are particular challenges arising from the momentous changes of 1989. Will a more fluid geopolitical situation in Europe lead inevitably to a return to an inward-looking nationalism raising once again questions that had been firmly and successfully put to rest by post-war Franco-German reconciliation? What can the European Union do to remove sources of nationalist conflict? Can we avoid more Bosnias? If Europe is to eschew nationalist options, how is she to give expression to her security interests? What are the implications for our relations with the United States and for the Union's participation in regional (NATO, WEU, OSCE) and global security systems (UN Security Council)? How far should we enlarge the European Union to the East? What will be the nature of our cooperation with Russia, Ukraine, Belarus and other CIS nations? At times, many of these questions seem to be larger than our means, whether as individual states or at Union level, and there is often a gap between clear needs and external expectations and our own ostensible capabilities. However, we simply have no choice but develop more effective common strategic policies on these questions and ensure that the European Union has the necessary means to implement them in a coherent manner.

To the South, Europe also faces challenges. We need to develop a more active policy with regard to the neighbouring countries of the Mediterranean. The possibilities of peace in the Middle East between Israel and its Arab neighbours have created new hopes for the region. At the same time, we need to understand better the root causes that lead to alienation, including violent expressions of Islamic fundamentalism. Economic developments in the region are closely linked to uropean concerns on migration. Yet, can we truly say that Europe has a sustainable strategic view *vis-à-vis* the Maghreb countries? Will Turkey move from associate status to membership of the Union? What instruments does Europe need to develop to foster peace, stability and economic development among her southern neighbours?

Further yet to the south, Africa, especially sub-Saharan Africa, has been left behind in the economic developments that have spawned dynamic new emerging markets in Asia or Latin America. Yet Europe has traditionally had strong links with Africa. In a post-Cold War world, should Europe not have a more active policy towards Africa and seek to foster an economic climate and discipline in which trade and development can take more vigorous root?

Then there is the challenge of building a full partnership with Asia and with Latin America. This is important in two distinct but related ways. Firstly, Europe needs the markets that these fast-growing economies represent. And secondly, how Europe reacts to their presence in third markets and in its own will be a key determinant of how well Europe can adapt to the new facts of global economic life.

For example, the Prime Minister of Singapore recently referred to Europe's relations with Asia as a missing link'. Yet the World Bank estimates that by the year 2000 half the growth in the global economy will come from East and Southeast Asia alone. East Asia is, since 1993, Europe's largest external trading partner and the fastest-growing market for European exports. Similarly, Latin America has shown the world's highest rate of import growth overall two years in a row.

Clearly the political relationships are not keeping pace with the economic realities. This is dangerous, because there is a risk that the gap can be filled by prejudice and short-sighted policy decisions. Thus one sees agitation in some quarters for sanctions against developing countries on the grounds that their competitiveness is based on disregard for standards of labour rights or environmental protection. Whatever the merits of concern about individual cases and the cultural' clashes they sometimes represent, there are other means and other fora where they should be addressed and resolved. A generalized approach based on retaliatory trade sanctions is fundamentally mistaken. Anyone who believes the way to encourage higher standards in these areas is to block mutually beneficial trade opportunities on which all sides depend for growth has not learnt from Europe's own history.

Lastly let me turn to the challenges in the world's most important bilateral relationship, Europe and the United States. We are the largest trading partners in the world and the largest investors in each other's economies. Trade between us amounts to more than a third of the world's total trade. Each partner accounts for half the foreign direct investment on the other side.

In other words, this relationship remains a central element in the architecture of Europe and of the world in its economic as well as its political and security diversions. Recognition of this fact should be the basis for a renewed commitment to the political partnership. We cannot allow sectoral disputes, whether agriculture or audiovisual, to be the driving force as they too often seem to be. The combined economic power of the two sides means that friction between them can be immensely destructive.

Embedding the bilateral trade relationship firmly in the framework of the multilateral system is the key to keeping it stable and preventing or resolving disputes. It also offers the best basis for the EU and the US to develop a shared and constructive approach to new issues o the world trade agenda. In this context Sir Leon Brittan's recent call for the EU and US to work together to liberalize international investment through the WTO is a timely one.

Implications for Europe's Internal Development

We are now in a position to draw some conclusions about how Europe should respond to these external challenges, and what this means for its own internal priorities.

Firstly, it is clear that structural changes in the world economy compel a response from

Europe. Technologically-induced changes in manufacturing, the growing share of services and knowledge-based industries in our economies, the international free movement of capital and the globalization of enterprise all imply major change in the way in which we organize economic activity. In the United States and in Asia and, more recently, in Latin America, there seems to be a faster capacity to change and adapt to these new trends with the result that Europe risks being left behind.

The European Round Table of Industrialists has drawn attention to a long list of problems inhibiting the competitiveness of European industry. A key symptom is that unemployment in OECD Europe remains stubbornly close to 12 per cent. Europe needs more not less liberalization of markets. Too often our industrial and trade policies seem to be unduly influenced by special pleading often from sectoral producer interests which resist the actions necessary to become competitive. Not enough attention is paid to the need for, and the benefits of, more competition.

A vigorously competitive Internal Market is the best means to ensure the global competitiveness of European enterprises by trimming costs, stimulating innovation and enhancing productivity. Economic and monetary union and a single currency should greatly help to reduce transaction costs within the Internal Market and provide a more stable framework for investment. But it is important too that there is strict respect for the convergence criteria spelled out in the Maastricht Treaty these criteria play an important role in ensuring that scarce resources are not used inefficiently.

Secondly, Europe's place in the world as well as its economic wellbeing depend on it keeping hold of the liberal economic principles on which it was built, and recognizing that these are as valid and as necessary to apply in external as in internal relations.

After all, the European Union was conceived as an open entity from its very inception. The Preamble to the Treaty of Rome pledges it to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade'. And in Article 110 of the EEC Treaty, the Member States affirm their aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers'.

The best way to fulfil these objectives of its founding fathers, while safeguarding Europe's own achievements, is through a strong multilateral trading system the system we now have in the WTO. In making that system work and using it to improve international economic cooperation, Europe must rise to the global responsibilities that g with its economic power. On other occasions, I have drawn attention to the limitations of the G7 and G15 as structures for global economic policy coordination. We need to set up a more representative forum, by including not merely developed but also developing countries reflecting a truly global perspective. A more cohesive Europe can make an important contribution to the solution of this problem.

Thirdly, only an open and outward-looking Europe will be capable of asserting its principles and confident in its internal coherence and *vice versa.*

This is one of the great overlooked lessons of the Uruguay Round negotiations. The Single European Act of 1986 and the Uruguay Round Final Act of 1994 in fact represent two sides of the same coin. The Internal Market programme enabled the Union to play an active part in the Round. If the European Union had not had the internal institutional framework that allowed for the articulation and implementation of a common external economic policy then I believe we could never have concluded the Uruguay Round. If the members of the Union had spoken with individual voices they would no doubt have created a situation where consensus could not

have been achieved globally. And the consequences, in turn, of a collapse in global economic consensus for the internal cohesion of the Union would have been catastrophic. Instead, through this negotiation, the Union improved access conditions for internal and external suppliers alike and, to the surprise of the prophets of Eurosclerosis, gave encouraging evidence of its ability to respond to economic challenges.

The process of European integration may have been motivated originally by a desire to heal the division of a continent that had constantly re-enacted the worst moments of its own history. Now, however, the absolute need for its further development is both external and internal. The core principle of the Union is that it should develop through the sharing of sovereignty rather than by mere cooperation among nation states. If that principle were to be weakened rather than strengthened, the prospects for the implementation of global strategies to influence change for the better in economic, social and political spheres would be significantly damaged.

Looking to the future, and to the need to build on the base for global economic cooperation that now exists, it is more than ever clear that the creation and maintenance of any world order requires the continuing integration of the European Union. More particularly, it requires the deepening of its institutional base.

To sum up, it is clear that the imperatives of global and internal integration reinforce each other. Then why is the process so controversial and so fraught with political difficulty in the Europe of today? I want to consider this question next and, finally, to suggest some answers.

Looking behind the broad popular support for European integration that is still evident from *Eurobarometer* surveys, it is increasingly clear that in many parts of the Union there is confusion about the path we are on and where it may lead. In addition, the political leadership of the Member States is apparently seriously divided. In terms of public perception the European Parliament has not attained legitimacy as a democratic organ representing a collective will. In fact, I believe that such evidence as there is points to a reducing sense of legitimacy for the institutions of the Union generally, for reasons that are only partly internal to those institutions themselves.

The Parliament and the Commission are seen to be too far removed from the people and decisions that affect them. Both also suffer from the unremitting hostility in many countries (and not just the United Kingdom) of significant sectors of opinion. Basking in the luxury of blaming the institutions of the Union for what goes wrong, and denying credit for what goes right, certain national administrations play the age-old game of seeking to retain power by attacking the fledgling institutions of a new order that they believe threatens them. Cries of support for national sovereignty often in reality represent attempts to defend interests in maintaining power, rather than in defending the nation state (except in so far as some national administrations believe that they are synonymous with the state).

That is not to say that the old arguments for a *Europe des Etats*' are not passionately and genuinely advanced by some. They are of course the successors to de Gaulle, and nationalism as a cause for the rejection of the sharing of sovereignty is not the exclusive preserve of any one country. However one suspects that the battle for power itself is at least as powerful a motivator as any perception of national interest.

The Maastricht Treaty, which we are condemned to live with rather than ignore, represents in some respects a dangerous step towards intergovernmentalism. It takes a direction that is in significant respects quite contrary to that taken by the Single European Act. The Single European Act represented a revival in the process of integration based upon supranational principles. The process leading to its preparation was measured and coherent and quite different from that of the Maastricht Treaty. As a result it was reasonably clear in its meaning

and effect.

The extension of majority voting together with other provisions relating to economic and social cohesion and the new cooperation procedure with the European Parliament could not be dismissed as simply providing a mechanism for the realization of a fuller market economy in the Community as it then was. It truly did reflect an agreement to significantly deepen the relationship between the Member States in a manner that starkly contradicted the position of the intergovernmentalists. Thus in the areas covering the voting procedures the United Kingdom was faced with a clear dilemma. Either the Internal Market was to be a reality by 31 December 1992, in which case more majority voting was required, or, alternatively, the retention of unanimity would maintain national sovereignty in the areas concerned but the objective would not be achieved.

At the end of the day it was the pragmatic policy consideration of a need to generate economic growth that pushed the process forward. No matter how the integrationists might applaud the Single European Act, it did not become a reality because of their fundamental belief in increasing supranationalism but rather because of a shared need for an answer to the growing problems of competitiveness and unemployment.

It has been suggested in the past that progress towards integration has been by stealth'. According to this view the constitutional changes that have occurred in the past have been contrived by a secretive group of bureaucrats with a hidden or opaque agenda. Whilst appreciating that public opinion was not always as informed as it might have been about the detailed constitutional implications of sharing sovereignty, I do not believe that there was any secrecy in that process. Constitutional change was debated fully at each stage of institutional development.

The implications of the ongoing journey to European Union were fully explaned for example to the United Kingdom and Irish electorates in very clear and unambiguous terms during the accession and subsequent referenda debates. To deny afterwards for example that there was any acceptance of the overriding jurisdiction of the European Court of Justice or that the objective to strive to an even closer Union' might well require a defence commitment is to distort history.

However, to underline what some deny about this initial understanding of the constitutional undertakings of membership is not to say that the process of adopting ordinary legislation by directive or regulation has been conducted satisfactorily. It has not. The fault here lies squarely with the Council. It is ironic in the extreme that the Council has substantially avoided criticism about the laws that it has passed when it has primary responsibility for their passage.

The Member States, or at least a majority of them, have been intent on not merely maintaining secrecy about their deliberations but have often also sought to blame amorphous Brussels bureaucrats' for their own legislative acts. Any institutional change should focus particularly on the urgent need to increase the accountability of the Council through transparency and should contain a clear political understanding that domestic parliaments will be given the necessary oversight of their own ministers' decisions. It is essential that this debate be advanced rather than fall into the obvious trap of laying the blame for popular discontent with policies on the European Commission, the Parliament or the Court.

The only good thing to come from the Maastricht Treaty was the chapter on economic and monetary union. The realization of monetary union, should it take place, will have an irreversible and utterly profound effect on the European Union. Recent instability within the system following the pressures that we have witnessed underline the risks in the meantime that this process might be derailed. Much though one might wish the goal to be reached in 1997, I

cannot see it happening then. The decisive year is likely to be 1999. Relative price stability combined with continuing low inflation gives me confidence that monetary union will be achieved then for at least a substantial number of the members of the Union.

Issues for the 1996 IGC

Perhaps the most important outcome to be expected from the 1996 Intergovernmental Conference is a vision of the Union's future to which the citizens of Europe can relate. The absence of such a vision apart from the single currency concept was a tragic error in the Maastricht Treaty process. The documents showed every sign indeed of being a cross between a giraffe and a camel put together by a committee of technocrats. It is replete with incomprehensible jargon and thereby lends credibility to the worst caricatures put forward by the Eurosceptics.

We must avoid repeating that mistake. It must be demonstrated that the new tasks to be assigned to the Union do respond to real needs which can be readily perceived by the people, that issues of war and peace are involved, of prosperity and employment, of democratic values and human rights, of Europe's role in the world, and so on. Moreover, the issues and structures that emerge from the IGC should be readily explicable. How elegant and easily grasped is the original concept of the Community, yet how capable of subtlety and how adaptable to a whole range of requirements it remains! Contrast that system and the Community method with the hotch-potch of pillars' and compartmentalized structures in the Maastricht Treaty. The IGC in 1996 is an important opportunity to rationalize the structure of the Union's decision-making and to ensure that the institutions are capable of acting in the common interest of the Union. It would also provide the opportunity to state, in constitutional terms that are simple and clear, the fundamental values and objectives of the Union that would guide its legislation and actions both in internal and external matters.

The tasks to be facilitated by the Intergovernmental Conference in 1996 include completion of certain policies that are essential to underpin the European Internal Market.

Firstly, the achievement of economic and monetary union and a single currency is to the 1990s what the single market legislative programme was to the 1980s. As with the single market it will require political force and vision to bring it about within the timetable envisaged. The psychological benefit for the Union and the real benefits for its people are considerable. Internally, the disciplines it will impose will strengthen Europe's economies. Externally, it will greatly enhance Europe's standing in international economic and monetary affairs and provide a focus for stability in a world which will see even greater capital flows in the future than it has witnessed in the recent past.

Secondly, the common commercial policy of the Union should be developed to become a common external economic policy and explicitly recognized as an area of Union competence. This would be a logical development of the single market and economic and monetary union. As a practical matter, it would recognize the reality that the Commission and Member States already undertake a high degree of coordination on economic issues not strictly covered by the letter of Article 113. Thus, for example, notwithstanding the fact that the Court ruled that services and protection of intellectual property were areas of mixed competence in so far as international agreements are concerned, there was no quarrel that in order to be effective the Commission would act as sole negotiator on behalf of the Union during the Uruguay Round. Squarely placing external economic policy as a Union competence would greatly strengthen the Union's bargaining power internationally.

Thirdly, it seems desirable to recognize more explicitly the linkages that exist between pillar 3 (justice, home affairs and police cooperation) and the unfinished business of the Internal

Market as well as other policy areas of the Union. The slow progress achieved since Maastricht points again to the disadvantages of an intergovernmental mechanism without the driving force of an autonomous institution acting within a clear frame of reference. There is absolutely no logic in opting for an intergovernmental structure in this area and the subsequent failure to make anything worthwhile emerge from this process should point clearly to the need to bring this pillar back ito the Community method with the Commission playing its normal role.

The Maastricht Treaty's efforts to establish an effective common foreign and security policy (CFSP) have bequeathed us some strange hybrids. On the one hand, the very specific nature of foreign and security policy' has tended to keep its structures compartmentalized from other pillars' of the Union. On the other hand, the limitations of intergovernmentalism have seen first the creation of a political secretariat' and then its incorporation into the Council Secretariat and efforts made to expand its capacity for analysis and planning. However, it is evident that these rudimentary and essentially intergovernmental structures are not sufficient to cope with the magnitude of the potential challenges facing Europe. The recent report of the high-level group of experts on the CFSP prepared at the request of Hans Van den Broek is a formidable indictment of the failure to act in response to evident risks and dangers. It is certainly correct in urging an institutional capability to make policy proposals and to propel the process forward. The IGC in 1996 needs to address these defects by focusing on those means that will be adequate to address stability in Central and Eastern Europe, to develop a strategic policy *vis-à-vis* the Mediterranean area, to rejuvenate transatlantic relations and to sort out the structures with responsibilities for European defence.

In order to develop and implement a common strategic approach to these areas, the necessary institutional improvements must be introduced, bearing in mind such issues as the desire to develop embryo European forces such as the Eurocorps, to integrate the WEU as the military arm of the Union, to contribute to a coherent European role in NATO including programmes reaching out to Eastern European nations and the CIS, to engage the US in a broader concept of security relations, encompassing common economic interests in addition to traditional concerns, to give leadership in the OSCE and to contribute to UN security operations.

Whatever the approach eventually decided on various issues, the resolution of post-Cold War dilemmas can no longer be much delayed and, while the wishes of some countries not to participate must surely be respected, it is unrealistic to think that such reluctance could be used to prevent others from doing what they believe is essential for their security.

Institutional Perspectives and Priorities

If one looks at the range of issues identified for necessary consideration at the IGC in 1996, one can be forgiven for believing that the European Union lives in a world of institutional chaos. Yet few would argue that the key tasks of the Union can be effectively accomplished individually by the Member States that constitute the Union. In this sense, the Union acts to strengthen the participation of the Member States in an interdependent world. It creates a commonality of interest that the peoples of Europe can identify with and support. However, the procedures and structures bequeathed to us by Maastricht badly need to be streamlined. Europe needs to rationalize its structures and return once more to the genius of its founding fathers, amongst whom Monnet has a particularly honoured place.

Monnet, in his memoirs, illustrated a great awareness of the sensitivities involved in developing European structures. For him competences and powers of an institution were not ends in themselves, but means to achieve ends and the owers sought were so proportionate to the task that his logic was strongly persuasive. More recently, one has the impression that interinstitutional conflicts on powers are driven less by the needs and tasks of the Union and

more by the tendency of existing bureaucracies to struggle over their own prerogatives of power and influence. The original institutional structure created by the Six was much more than about location of power; it was intimately linked to the integration process itself. Monnet keenly understood the importance both of personalities and institutions when he stated: Nothing is possible without men, nothing is durable without institutions.'

What distinguished the institutional structure of the European Community from anything that preceded it were the provisions for qualified majority voting and the creation of the Commission as an autonomous institution with exclusive powers of legislative initiative and the task of enforcing Community law. Such autonomy was indispensable because it was recognized that intergovernmental organizations would not of their nature devise policies in the interests of the whole Community. Nor would they drive economic integration or act as guardians of the Treaty.

We must reject intergovernmentalism not for any ideological reason but simply because experience (not least in the second and third pillars of the Maastricht Treaty) shows that it cannot be effective. Today, we need instead to reinvent the elegant institutional method of Monnet and adapt it to the new realities faced by the European Union and we must keep it simple and uncomplicated. We must, as Jacques Delors has said, plan for a European Union with as many as 30 Member States.

The composition of the Commission has developed from the rules which applied in an original Community of Six. While the role of the Commission as the initiator of legislation and guardian of the Treaties remains perennially valid, it is seriously open to question whether the Commission should continue to be composed according to the original rules. Already there are indications that the present size of the Commission is not conducive to effectiveness.

More disturbingly, it is sometimes alleged that where delicate decisions exclusively on issues within Commission competence, such as control of state aids, are required, national preoccupations are increasingly brought to bear to the detriment of the Union interest.

It is complained that there are not enough real portfolios to go around a case of finding a job for the person rather than finding the right person for the job! It has been argued that the problem can be resolved by the large countries agreeing to give up one of their two Commissioners or that smaller countries should make do with rotating Commission posts or accept junior Commissioner posts. These suggestions, however, ignore the crucial role of the Commission as an autonomous institution responsible for the common interest and independent of sectional national pressures.

There are strong arguments for the proposition that in the current situation of the Union the number of members of the Commission should be determined on the basis of what is needed for the Commission to constitute an effective executive arm of the Union. It should be recognized from the outset that this number would probably be less than the number of Member States. However, I do not believe that it would be desirable, at least now, to leave the Commission with less members than the number of Member States. In saying this I recognize the contradiction that this suggests. If the Commission does not represent national interests why should there have to be one for each Member State?

On balance however I believe that the credibility of the Commission probably demands membership for all and it is not politically feasible to suggest the contrary. But, the Commission itself must do far more to discipline its members where they pursue a national agenda and so should the parliament. Moreover, the members of the Commission should be nominated, in consultation with Member State governments, by the President of the Commission who should have been already nominated jointly by the European Council and

the Parliament. The Commission thus nominated would have to be voted into office by the Parliament and the Council.

A Commission constituted in this way should have considerable legitimacy in terms of its mandate and autonomy as an institution responsible for the common interest. The corollary is that this autonomy should also assist in achieving more majority voting in the Council. It is often forgotten that the Council too is a Union institution with Union responsibilities and legal obligations. In regard to the democratic deficit' in the Union, much has yet to be accomplished in achieving democratic accountability over the Council. Its proceedings need to be made more transparent. It has a particular responsibility to national parliaments of the Member States, and more could be done to associate representatives of national parliaments with its legislative deliberations. As part of the overall effort to ensure democratic accountability of the Union's institutions, a streamlined co-decision procedure should be more generally applied so legislative development and negotiation are conducted in a trialogue' between Parliament-Council-Commission. Voting procedures within the Council and Parliament on all matters of Union competence should be focused on securing decisions not on creating blockages or inertia.

Apart from enhancing its role through new procedures for the selection of the President and members of the Commission and more generalized application of the co-decision procedure, Parliament should also have a stronger role in ensuring accountability for the common foreign and security policy and justice and home affairs. In the context of enlargement, its composition should be limited by number.

Given the sharply differing perspectives among the Member States on the future of the Union, and the strongly held core view that the Union cannot much longer defer giving itself the instruments adequate to master its destiny, it is not a surprise that the possibility of variable geometry solutions are openly advocated in order to permit those able and willing' to move forward. It is a dangerous terrain because the corollary of progress by the core is the ability to opt-out by the unable' or the unwilling' and the temptation to try out a Europe *à la carte* with all of the legal uncertainties and centrifugal tendencies to which loss of the Community method would give rise. Nonetheless, when one looks beyond the current membership of the Union to the potential wider membership, it is clear that for some time to come the ability to commit to a large range of core policies is unclear. What are the potential rules that could emerge to map out our way through this dangerous terrain?

Firstly, it must be accepted that adherence to the existig legal order is irreversible opting out of already ratified agreements should not be possible.

Secondly, certain policies, for example the convergence criteria for EMU, clearly envisage the possibility that some core States will qualify for participation and others will not do so in the immediate future. In the case of other policies, such as security and defence, more political and less technical criteria may be at stake. If the core States decide that a common defence policy or that EMU and a single currency are essential to safeguard their interests it must be clear that entry is available to all others once they have met the conditions; there can be no discrimination. And, in the meantime, there should be intensive dialogue, consultations and practical action to help those who may be left behind to catch up.

The most compelling reason why substantive progress in the integration process must be the indispensable objective of the Intergovernmental Conference is the imperative need for an adequate response and for a positive contribution to the rapidly changing, and indeed dangerously unstable, external world. One reason why such a prospect is widely viewed as desirable outside Europe is that others can see what some of us apparently cannot.

A more united Europe would be a positive contributor to peace and progress in our time. By following the Community method, through institutional development based on shared sovereignty, decisions that need to be taken in the future inevitably would be both measured and principled. The balance provided by the shared vision of a large group of countries rich in diversity and historical experience gives an assurance today of moderation.

The sharing of sovereignty in external policy would not be a recipe for inaction. A comparison between the successful contribution of the European Union to the conclusion of the Uruguay Round by reason of its having a single negotiating position and the confusion surrounding the Union's response to recent international political events eloquently demonstrates a different reality.

Europe needs to present a united front if it is to have an effective role in international affairs. Its continued internal cohesion demands no less. Even more importantly, global issues which are fundamental for the future of mankind issues like environment, ethnic conflict and the incipient divisions between civilizations, poverty and nuclear proliferation require a positive and coherent European contribution.

The European Union's Common Foreign and Security Policy and the 1996 Intergovernmental Conference

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The Common Foreign and Security Policy (CFSP) was established by the Maastricht Treaty to form the Second Pillar of the European Union (EU).[1] It is an upgraded version of European Political Cooperation (EPC), which developed gradually in the 1970s and 1980s. Despite receiving a treaty basis by way of the 1986 Single European Act, EPC remained a loose form of cooperation between Member States in the field of foreign policy. Political integration has proved to be slower and harder to achieve; foreign, security and defence policies are very sensitive sectors and Member States are reluctant to surrender their sovereign rights to the European level. The creation of a common foreign and security policy was therefore seen as a step forward, in line with integration in the economic fields.

The shortcomings of EPC were one of the factors behind the development of CFSP; the major catalysts in the launching of the foreign and security policy debate among the Member States were the world events taking place prior to and during the Maastricht Trety negotiations: the end of the Cold War and the resulting security vacuum in Central and Eastern Europe, the reunification of Germany and the break-up of the Soviet Union. The Gulf crisis and the war in Yugoslavia added urgency to the whole process. The need, therefore, emerged to present a coherent, *common* foreign policy among the EU countries to the outside world. Another important factor is the position of the United States towards European defence and security. With the disappearance of the Soviet threat, it was feared that the US might reduce its commitment to European defence; the first signs of such a shift in policy became evident during the Bush administration, when the US considerably reduced the number of its troops in Europe.

The debate on the future form of a common foreign and security policy centred on two key issues: the decision-making procedure, and the gradual development of a European defence policy. As regards decision-making, two groups emerged: while some countries were in favour of an intergovernmental approach, continuing the style of cooperation existing under EPC (France, the United Kingdom, Denmark, Portugal and Ireland), others advocated introducing a more supranational Community method (Belgium, The Netherlands, Luxembourg, Greece, Spain, Italy and Germany). Also, in the defence debate, two opposing points of view emerged: on the one hand, the Atlanticists (the United Kingdom, The Netherlands, Portugal and Denmark), which favoured maintaining the dominance of NATO in European defence, while the Europeanists (France, Greece, Belgium, Spain, Italy and, to some extent, Germany) wanted to move towards less dependence on NATO and the increasing commitment of Europeans to their own defence.

CFSP, as it now exists, is therefore a result of a compromise between the above positions. The decision-making procedure contains a mixture of intergovernmental and supranational elements: on the one hand, the general rule is for the Council of Ministers to take decisions unanimously, although Member States *share* the right of initiative with the European Commission and, in certain very limited cases, it is possible to use qualified majority voting. As regards defence, the upgraded dual role of the Western European Union (WEU) is also a compromise: on the one hand, it represents the defence component of the EU while, on the other hand, it is seen as the European pillar of NATO. In no way does the WEU challenge the authority of the Alliance; on the contrary, it is intended to complement it.

Operational since November 1993, CFSP will arguably be one of the most important and controversial items on the agenda of the 1996 Intergovernmental Conference (IGC). Two years of operation is a very short history on which to base an evaluation and review of CFSP.

However, several developments have already taken place in these past two years, and considerable criticism has been directed at the CFSP. Expectations were high and, in many cases, the results have been disappointing. This is a widely recognized fact, featuring in the working papers of Member States but also of Community institutions. The handling of the Yugoslav crisis has shown that it is not easy to achieve a common policy. CFSP has had to take part of the blame for the EU's inability to act decisively in former Yugoslavia. The therefore required review at the 1996 IGC has been provided for in Articles J.4.2 and J.10 of Title V of the Maastricht Treaty.

In anticipation of the 1996 IGC, EU Member States are preparing their positions as regards the future CFSP with the creation of expert groups. The start of the debate has been marked by numerous working papers, interviews with politicians and seminars. Germany, the United Kingdom, Spain and The Netherlands have already submitted their preliminary suggestions as to what CFSP could become in the future. One of the first contributions to spark off the debate is the document of the German CDU/CSU Parliamentary Group of the *Bundestag* on the future of European unification.[2] The strengthening of the EU's hard core of countries oriented to greater integration and closer cooperation forms the central proposal of the document. Membership of such a core would include Germay, France and the Benelux, and would be open to countries willing to join and meeting the requirements. The main task of the core is to counteract the centrifugal forces generated by constant enlargement and, thereby, to prevent a South-West grouping, more inclined to protectionism and headed in a certain sense by France, drifting apart from a North-East grouping, more in favour of free world trade and headed in a certain sense by Germany'.[3] The proposal prompted reactions by the other Member States, especially the United Kingdom and Italy, which felt offended by being left out of the core'. As regards CFSP, it proposes that the hard core would provide the main thrust of initiating joint actions, and of launching common initiatives, while the other countries would then decide whether to follow or not. This clearly implies a multi-speed' CFSP, which in turn renders the denomination common' misleading. However, in conjunction with majority voting, it can provide more flexibility in the decision-making process.

The debate in the 1996 IGC is therefore likely to centre on the following major issues:

Evaluation and review of the decision-making process and the role of the different institutions

The role of the Commission, sharing the right of initiative with the Member States, is likely to remain unchanged. However, its role in assisting the Presidency in representing the EU in international organizations and meetings could be enhanced, as this would ensure continuity of policies. The Commission's sole right of initiative in the First Pillar (EC) should be used to benefit CFSP decisions. The Commission could exploit further its role of liaison between the EC and CFSP so that political decisions under CFSP will be supported by the economic weight of the EC, by means of trade agreements, technical assistance and embargoes. The role of the Political Committee and COREPER have to be evaluated and reviewed. There is a clear need for decisions of the Council to be based on common analysis. In a report drawn up at the request of the Commission,[4] the creation of an independent, permanent, central body to analyze and evaluate the political, economic and military developments around the world was seen as a way of contributing in this direction, while it would relieve the Political Committee and COREPER of some of their workload. The role of the Presidency in CFSP will need to be clearly defined, with the central aim to ensure cohesion and continuity.

The increasing use of majority voting at the expense of unanimity is likely to be a critical debate. As the EU has enlarged to the present 15 members, and is expected to enlarge further in the near future, taking decisions by unanimity will become increasingly difficult. Although Article J.3.2 of the Maastricht Treaty states that: The Council shall, when adopting the joint

action and at any stage during its development, define those matters on which decisions are to be taken by a qualified majority' so far this procedure has not been used. Although some countries would favour an increased use of majority voting, nationally sensitive and strategic decisions can continue to be taken unanimously.

The role of the European Parliament (EP) and the associated question of CFSP accountability are also expected to feature in the debate. In order to increase CFSP accountability and reduce the democratic deficit, the role of the EP in the decision-making procedure may be enhanced.

Common defence and the role of the WEU

Article J.4.1 of the Maastricht Treaty refers to the gradual creation of a European common defence policy, while Article J.4.2 recognizes the WEU as an integral part of the development of the Union, entrusted to elaborate and implement decisions with defence implications. A great deal of debate has already taken place on this issue, and is expected to continue during the 1996 IGC. This will be closely linked with the role of the WEU. The Brussels Treaty of 1948 which created the WEU expires in 1998, and discussions will have to be take place on whether to renew the Treaty or to incorporate the WEU into the EU. The relationship between the WEU and the EU and NATO will have to be further clarified; at the sae time, the desirability of increasing the WEU's military capabilities to support CFSP decisions will also have to be examined. The Yugoslav crisis has illustrated that the military capacity of the WEU is still very limited; primary reliance on NATO resources would still be required, and is likely to continue in at least the near future. The Combined Joint Task Forces scheme is a move towards enhancing the WEU's capability to act, and is considered a move in the right direction.

Preparation for the effects of enlargement

One of the primary aims of the 1996 IGC will be to prepare the EU institutionally for further enlargement around the turn of the century. The new members will be Central and Eastern European countries and CFSP has to be flexible enough to accommodate the interests of the new members. Different historical and cultural traditions mean that there will be a greater range of interests to take into consideration.

Furthermore, as the EU now includes four neutral countries, the issue of neutrality and obligations under CFSP and the WEU, is another which will have to be addressed. With a potential membership of over 20 countries, agreement on joint actions will be hard to achieve unless the decision-making process is reviewed. One solution to this potential problem is the hard-core' proposal suggested by the German declaration, mentioned previously.

These are some of the key issues with respect to CFSP which will be discussed in the 1996 IGC. Throughout the history of the EU, foreign, security and defence issues have been very sensitive matters and Member States have been reluctant to surrender their sovereign rights. The main aim of the 1996 IGC as regards CFSP is to evaluate and propose changes which will improve its functioning, in view not only of past experiences but also of the future enlargement of the Union. Constructive contributions to this debate by the Member States and the EU institutions and their willingness to move ahead are therefore of utmost importance. n

1. Following the Maastricht Treaty, the Temple' approach was adopted whereby the European Union rests on three pillars: the First Pillar containing the three constitutive Treaties of the three European Communities (EC, ECSC, Euratom); CFSP forming the Second Pillar; and Justice and Home Affairs as the Third.

2. Europe Documents, No. 1895/96, 7 September 1994.

3. Ibid.

4. European security policy towards 2000: ways and means to establish genuine credibility', First Report by the high-level group of experts on CFSP, Brussels, 19 December 1994.

Det norske nei!

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In the referendum on 28 November 1994, the Norwegian people turned down accession to the European Union for the second time. Taking the country as a whole, 52.2% of the voters said No' and 47.8% said Yes'. Of the 3.3 million with the right to vote, 89% used their right. The No' and Yes' votes were not evenly distributed around the country. In the three northernmost counties more than 70% said No'. In the four counties north of Trondheim there was not a majority of Yes' votes in one single municipality; many of these municipalities had more than 80% No' votes. Only in five counties in the central areas around the capital Oslo and around the Oslofjord did a majority of the voters say Yes'. In Oslo and the two largest neighbouring municipalities more than 65% of the voters said Yes'. There was also a clear but not very large majority of Yes' votes in the larger cities in the southern part of the country. Therefore, a clear urban/rural pattern can be found in the distribution of votes with few exceptions, the rural areas voted No' and the urban areas said Yes'.

This general picture of a centre/periphery clash in the distribution of No' and Yes' votes was the same in the referendum in Finland and Sweden. It was the urban areas mainly concentrated around the capitals and the majorcities that voted Yes', and the rest voted No'. The only difference was that in the two other Nordic countries the majority of the voters said Yes'.

It is not known for certain yet which social groups voted Yes' and which voted No'. From the many polls that were published before the referendum and the distribution of votes among municipalities classified according to their industrial structure it is clear that a majority of the people working in the primary industries voted No'. In the fishery communities along the coast there were more than 80% No' votes. There was also a large majority of No' votes in the typical farming communities all around the country, with a few exceptions in the central areas around the capital. However this does not explain why the Norwegians voted No' because, out of the total economical active population, less than 6% is to be found in the primary sector, that is fishing, farming and forestry.

The same polls indicated that it was a clear but small majority of the men who voted Yes' and a clear majority among the women who voted No'.

So far no definite analysis have been made of why the Norwegian people as a whole said No', while their Swedish and Finnish brothers and sisters said Yes'. Therefore, attention will only be drawn to three points that might shed some light on this question.

The first point is that a very strong national feeling exists among Norwegians. Norway, as a modern independent nation, is very young; it dates from 1905 when it broke from the union with Sweden, a union which was forced upon it in 1814 as a consequence of the peace after the Napoleonic wars. Before the union with Sweden, Norway had been part of the Kingdom of Denmark-Norway for about 400 years. Modern historical research has shown that Norway was not a repressed partner in the Kingdom of Denmark-Norway but, at the end of the last century, politicians talked about the four-hundred-year night' in their effort to create a national and nationalistic feeling among Norwegians. In the union with Sweden, Norway had its own parliament and its own constitution. In the campaign before the referendum some zealous campaigners effectively exploited what they called our bad experience with three unions; the union with Denmark, the union with Sweden, and the union with Nazi-Germany during the occupation unions from which Norway had to struggle to free itself. Therefore, playing on national feelings, why should Norway voluntarily join a fourth union, giving up its sovereignty and democracy, and leave itself open to a new bad experience. The fear that important decisions would be taken in Brussels and not at the national and local level was of importance

to many people in their considerations before they cast their votes. The national, some will say nationalistic, feeling among Norwegians was also boosted by the successful organization of the Lillehammer Winter Olympics. It convinced many people that, despite being a small nation, Norway could accomplish anything and could do it on its own.

The second point to which attention should be drawn is the open hostility towards a market economy which can be found among people belonging to a ide range of socio-economic groups. The open declarations in favour of a market economy in the Treaty of Rome was a red flag for many people. Contrary to their Social-Democratic sister organizations in other Nordic countries, the Labour movement in Norway has had a revolutionary history dating back to the 1920s. It therefore took a long time for the Norwegian Labour Party to change to the modern Social-Democratic views it holds today in which the market economy can be used as an instrument to reach the objective of a fair and just society. Many Labour leaders and supporters see the market economy of the European Community as a capitalistic objective and not as an instrument to create peace and prosperity among the Member States. In their campaign, the agrarian Centre Party argued that the subjection to Community rules would imply an increase in unemployment because market forces would be let loose. This market scepticism among politicians has been strengthened by the fact that there has been and, even today, there is a high degree of scepticism towards free trade and a market economy among Norwegian economists. Both Ragnar Frisch and Trygve Haavelmoe, winners of the Nobel Prize in economics, were declared market sceptics. This has strongly influenced the present generation of Norwegian economists and social scientists.

Farmers were traditionally in favour of a market economy but are today heavily dependent on direct grant subsidies, price subsidies and market regulations. They therefore have a vested interest in the present system and, through their strong organizations, will fight all changes, whether they be changes in the GATT and OECD agreements or the EU Common Agricultural Policy.

The last point to which attention should be drawn relates to Norway's enormous natural resources. Traditionally, it was a country whose economy was based on agriculture, forestry and fishing. A great number of our manufacturing industries today are still based on processing raw materials from these sectors. From the turn of the century manufacturing industries have been established based on our vast resources of hydroelectric power. In the late 1960s oil was found on the Norwegian continental shelf and, from then on, the oil sector has developed into being very important for the Norwegian economy. Today, for example, Norway accounts for about 15% of the European Union's imports of oil and gas, meaning that interdependence on the EU is far from being a one-way street.

Although Norway is dependent on the EU for the export of oil and, in particular, gas, this new sector has also given the country a freedom of action that most other countries can only dream of. It can therefore be said that the income and state revenue from this sector gave the Norwegians the freedom to say No' in the referendum. The importance of retaining control of natural resources also played an significant role in the campaign and many Norwegians were not convinced that Norway would retain such control in the EU.

Our fisheries are dependent on the EU for the export of their products. However, the fishing industry world wide faces a crisis of resources. The Norwegian fishermen and the voters in the areas where the fisheries sector plays an important role did not believe that the fisheries policy of the European Union put enough emphasis on the preservation of the fish resources; they therefore voted No'.

The question has been asked of what the chances are that Norway will join the European Union in the future? It is probably a more interesting question to ask whether the EU would

want to have as a new member a country that has negotiated membership three times and has turned accession down twice in referendums.

The Norwegian economy is an integral part of the European economy. Roughly 80% of the country's trade is with the European Union. Norway is, except for agriculture and fishing, also part of the EU Internal Market through the EEA Agreement. The No' to accesion does not change this basic fact. In spite of the No' votes, the broad consensus is that Norway should continue to participate actively in European cooperation. More than two thirds of the Parliament support the government's policy of making the most of the EEA Agreement. This means, for example, that Norway has accepted the Schengen Agreement and in this way *de facto* agrees to be an outer border of the European Union. Norway has also accepted the Commission's Oil Directive. It is therefore fair to say that Norway, in reality, is an economic member of the European Union. In spite of this fact, I believe that only a fundamental change in public opinion and obvious negative consequences of not being a member will bring a Norwegian government back to the negotiation table before the end of this century.

L'Union européenne, un drôle d'animal social

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Le processus d'intégration européenne a enfanté un étrange animal caractérisé par les deux attributs apparents d'un pachyderme animal robuste mais à la vitesse de déplacement lente . Le premier attribut symbolise le fort degré d'intégration atteint par des États ayant décidé de transférer certaines compétences à une autorité commune appelée à légiférer à leur place, à la majorité simple ou qualifiée, en coopération ou codécision avec les représentants européens de leurs citoyens. Dans d'autres domaines, les États membres de l'Union n'ont pas abandonné leur souveraineté ni, en conséquence, leur capacité de veto. En préservant la prise de décision à l'unanimité ou dans les limites d'une coopération intergouvernementale, les États ont contribué à l'immobilisme de l'animal européen dans ces domaines. Bien qu'il faille aujourd'hui regretter la dissonance entre la robustesse et la capacité de réponse de l'Union sur le plan commercial ou éconoique et son faible ou léthargique caractère social, de modestes approfondissements et accélérations du caractère social de l'intégration européenne ont pu être observés depuis 1958. Nous tâcherons de montrer ici jusqu'à quel point l'Union européenne en tant qu'animal social s'est endurcie et comment s'est adaptée sa vitesse de mobilité.

La naissance et la difficile enfance

A sa naissance en 1958, les compétences sociales de la Communauté paraissent plutôt faibles malgré l'objectif ambitieux qui lui est assigné dans le traité de Rome d'oeuvrer pour l'amélioration constante des conditions de vie et d'emploi. A l'exception de la mise en oeuvre de la libre circulation des travailleurs salariés et indépendants devant s'opérer à l'unanimité (art.48-59 CE), les dispositions à caractère social sont en effet peu contraignantes. Elles invitent les États membres à reconnaître la nécessité d'améliorer les conditions de vie et de travail (art.117 CE), chargent la Commission d'assurer la collaboration étroite entre les États membres dans le domaine social (art.118 CE) et prévoient la mise en place du Fonds social européen (art.123 CE et s.). Signalons toutefois la présence de l'article 119 CE qui établit avec force mais malheureusement imprécision l'égalité de rémunération entre travailleurs masculins et féminins. Afin de dissiper le flou de la notion de rémunération dans cette disposition directement applicable, la Communauté a profité de l'action prolifique de sa Cour de justice et eu recours à des actes de législation dérivée basés sur les articles généraux 100 CE et 235 CE,[1] aucun instrument spécifique de légifération sociale n'étant prévu dans le traité de Rome. Des directives ont ainsi étendu la non-discrimination aux conditions d'accès à l'emploi et la formation, à la sécurité sociale et à l'exercice d'une activité indépendante. Ces deux instruments palliatifs ont servi également à légiférer la protection des droits des travailleurs lors de licenciements collectifs et de transferts d'entreprises ainsi que des éléments relatifs à la santé et la sécurité des travailleurs à leurs postes de travail. L'oeuvre de la Cour de justice a encore été particulièrement précieuse pour asseoir la coordination des régimes de sécurité sociale programmée à l'article 51 et mise en oeuvre par les règlements (CEE) n° 1408/71 et n° 57472. Des principes obligatoires de coordination protègent aujourd'hui les droits de sécurité sociale acquis par un travailleur migrant dans un autre État membre. Ces principes sont la totalisation des périodes de travail et de résidence, l'application de la législation d'un seul État membre au travailleur, le maintien de droits acquis par le travailleur et l'égalité de traitement dans l'État de migration.

Hormone d'une croissance sous contrôle.

L'Acte unique européen introduit dans le traité de Rome le premier instrument de légifération spécifiquement sociale, qui plus est à la majorité qualifiée; la sécurité et la santé des travailleurs sur leurs lieux de travail devient compétence sociale de la Communauté à l'article 118A. L'acquis social communautaire en la matière protège aujourd'hui les travailleurs dans

plus de 50 situations, notamment le bruit, la maternité, les transports par route, l'exposition à l'amiante, aux agents chimiques et biologiques, aux radiations, aux écrans de visualisation, etc. La libre circulation des travailleurs se voit elle aussi accorder le vote à la majorité qualifiée. A l'heure actuelle, l'acquis social communautaire en la matière (y compris l'action de la Cour) établit la reconnaissance mutuelle des diplômes et des qualifications professionnelles, le libre établissement et la libre prestation de services dans plus de 30 activités professionnelles, notamment les avocats, les médecins, les restaurateurs, les artisans, les coiffeurs, les administrateurs de camping, les sages-femmes, etc. Par ailleurs, la Communauté se démocratise doublement par la coopération du Parlement européen dans ces deux domaines et le dialogue social entre la Commission et les partenaires sociaux inscrit au nouvel article 118B. Deux ans après l'entrée en vigueur de l'Acte unique, les États membres, excepté la Grande-Bretagne, s'engagent dans une Charte juridiquement non contraignante à respecter une douzaine de droits sociaux fondamentaux. Cette Charte[2] est l'annonce de la mutation à venir de notre animal: pour certains États leurs engagements couvrent des domaines que devrait pouvoir légiférer rapidement la Communauté; d'autres souhaitent conserver leur droit de veto en soumettant les nouvelles compétences de la Communauté à l'unanimité; un autre enfin, la Grande-Bretagne, s'oppose à toute métamorphose.

Le mutant de Maastricht

Le protocole social adopté par 11 États membres (14 depuis le 1er janvier 1995), et annexé au traité sur l'Union européenne,[3] transforme la Communauté selon le scénario annoncé en un mutant à la fois robuste et rapide mais simultanément difficile à mouvoir et ayant perdu un de ses membres. La Communauté sans la Grande-Bretagne est tout d'abord plus robuste car elle peut désormais explicitement légiférer dans une série de nouvelles compétences à la majorité qualifiée; cela concerne *la protection de la santé et de la sécurité par l'amélioration du milieu du travail, les conditions de travail, l'information et la consultation des travailleurs, l'égalité entre les hommes et les femmes pour l'accès à l'emploi et le traitement sur les lieux de travail, l'intégration des personnes exclues du marché du travail.* Un seul acte législatif obligatoire a jusqu'à présent été adopté par la Communauté des 14: la directive qui prévoit la création d'un comité d'entreprise pour l'information et la consultation des travailleurs dans les entreprises de dimension communautaire.[4] La capacité d'accélération de l'animal est à l'évidence sensiblement améliorée par l'usage de la majorité qualifiée à 14 au lieu d'une unanimité à 15 qui avait dans ce cas bloqué pendant de très longues années la proposition de la Commission. D'autres compétences nouvelles et explicites renforcent la Communauté mais font craindre son immobilisme, car l'unanimité toujours difficile à atteindre des 14 États membres y est requise. Les domaines couverts par l'unanimité des 14 sont *la sécurité sociale et la protection sociale des travailleurs, la protection des travailleurs en cas de résiliation du contrat de travail, la défense collective des intérêts des travailleurs et des employeurs, les conditions d'emploi des ressortissants des pays tiers, les contributions financières visant la promotion de l'emploi et la création d'emplois.* Enfin, la Communauté des 14 est condamnée à l'impuissance et l'inactivité dans d'autres domaines formellement exclus du protocole et dès lors soustraits à toute action communautaire à 14; il s'agit *des rémunérations, du droit d'association, du droit de grève et des lock-out* (droit de l'employeur d'interdire temporairement l'accès de son entreprise aux travailleurs en cas de conflit avec eux).

La schizophrénie de l'animal social: être ou ne pas être une Communauté?

Il est naturel que naissent des interrogations existentielles à l'égard de ce mutant à plusieurs vitesses et double personnalité la législation étant opérée soit à 15, soit à 14 . La première interrogation concerne l'étrange procédure de prise de décision prévue dans le protocole social à 14 pour l'adoption des mesures à la majorité qualifiée avec la coopération du Parement européen. Alors que le vote au Conseil tient compte de la présence de 14 États membres et non 15 avec une majorité qualifiée fixée à 52, le vote au Parlement n'est pas adapté; en

conséquence, les députés britanniques siégeant au Parlement européen prennent part à l'adoption d'une législation qui ne sera pas applicable aux citoyens qu'ils représentent! Une deuxième interrogation se préoccupe du citoyen de l'Union, soucieux de ne pas ignorer la législation communautaire qui lui est applicable, qui risque d'être décontenancé par la portée géographique d'un acte législatif communautaire adopté à 14 et non pas à 15. L'opérateur économique, le travailleur ou le citoyen dont les activités à caractère social le portent sur le continent britannique, doit en effet attentivement contrôler la base juridique de l'acte législatif communautaire pour vérifier s'il peut en bénéficier ou non en Grande-Bretagne selon que cet acte a été adopté par la Communauté européenne des 15 ou des 14. En outre, l'affaire se complique pour deux raisons supplémentaires. Tout d'abord, des compétences ont été transférées à la Communauté des 14 dont était déjà dotée la Communauté des 15; c'est le cas pour la santé et la sécurité des travailleurs introduite par l'Acte unique à l'article 118A du traité de Rome. Ensuite, d'autres compétences ont été accordées à la Communauté des 14 qui avaient déjà donné lieu à une légifération à 15. Citons notamment l'égalité de traitement entre hommes et femmes, la sécurité sociale des travailleurs, les conditions de travail, l'information et la consultation des travailleurs. Il n'est pas impossible que dans les domaines précédemment légiférés à 15, le Royaume-Uni exprime le souhait de continuer à prendre part à la légifération à l'aide des articles 100, 100A, 118A ou 235 du traité de Rome. La lecture de tout acte législatif social de la Communauté doit dès lors à l'évidence porter en priorité sur sa base juridique: s'agit-il du protocole social du traité de l'Union ou non, d'une Communauté des 15 ou des 14? En conclusion, il découle de toutes ces interrogations existentielles la forte probabilité que nous rencontrions tous un jour des problèmes pour retrouver les petits de ce complexe animal social schizophrénique par la double personnalité qu'il possède.

Demain, à la diète!

L'avenir de la politique sociale de l'Union européenne est incertain pour plusieurs raisons. Tout d'abord, l'animal fait peur à certains qui craignent sa rage législatoire. Dans un Livre vert sur les options de la politique sociale de l'Union,[5] la Commission a formulé une série de questions pour tenter de recueillir les préférences de chacun États membres, opérateurs, citoyens, etc. . La Communauté devrait-elle jouer un plus grand rôle dans la convergence des politiques sociales et économiques des États (notamment en ce qui concerne le partage du temps de travail et les systèmes de production fondés sur la qualité), doit-elle légiférer le droit de chacun à la formation permanente et rendre obligatoire l'intégration des personnes handicapées, doit-elle enfin adopter davantage de législation pour assurer l'égalité de rémunération entre hommes et femmes ou la consultation des partenaires sociaux? 500 réponses[6] environ sont parvenues à la Commission qui les a utilisées pour la rédaction d'un Livre blanc sur la politique sociale à suivre par l'Union.[7] Le message de la base à la Commission est selon nous très clair: *"Non à la convergence obligatoire et à de nouvelles législations,*[8] oui à la diversité de l'Europe et oui à l'assistance financière de l'Union européenne". L'Europe' ne devrait plus légiférer mais bien débourser des Écus pour soutenir les politiques sociales nationales qui s'engagent sur les voies tracées dans le Livre blanc sur la croissance, la compétitivité et l'emploi, pour consolider les programmes d'éducation et, enfin, pour soutenir les organisations bénévoles et la consultation des partenaires sociaux. Dans ce scénario, l'animal social serait non seulement soumis à une diète l'empêchant d'acquérir de nouvelles forces ou compétences législatives, mais il serait également confiné au rôle d'une vulgaire' vache à lait. Si par contre la révision du traité de l'Union en 1996 élimine du protocole social l'unanimité et les domaines soustraits à l'action communautaire, la vache à lait perdra de sa lourdeur. Il est cependant à craindre que les États membres partisans d'une telle accélération de l'intégration ne soient plus au nombre de 14;[9] les troubles de la personnalité de notre vache à lait risquent dès lors de s'affirmer et de la rendre complètement folle si les législations sociales communautaires sont adoptées à 15, 14 et (14-x). n

1. L'article 100 est utilisé pour le rapprochement des législations des États membres. L'article 235 est la base juridique autorisant la Communauté à prendre une action législative dans le but d'atteindre un de ses objectifs même si elle n'en a pas reçu explicitement l'autorisation dans ses traités constitutifs sous forme d'une compétence formelle. Ces deux articles requièrent l'unanimité.

2. Charte communautaire des droits sociaux fondamentaux, COM(89) 568 final.

3. Protocole n° 14 sur la politique sociale.

4. JO L 254 du 30/9/1994, p.64.

5. Livre vert sur sur la politique sociale, COM(93) 551.

6. Europe Sociale, "Contributions à la préparation du Livre blanc sur la politique sociale européenne", CCE, n° 2/94.

7. Livre blanc sur la politique sociale européenne, COM(94) 333.

8. Il est révélateur de cette tendance que ce soit une simple résolution du Conseil basée sur le protocole social qui aborde la nécessaire convergence économique. JOC n° 368 du 23/12/1994.

9. Notamment en raison du résultat de la dernière élection présidentielle française et des doutes qu'elle engendre déjà sur la future contribution du couple franco-allemand à l'accélération de l'intégration.