Chapter IV

The Single European Act and the Institutional Reforms

Introduction

During the early 1970s, the functioning of the European Community (EC) was affected adversely since the process of integration had considerably slowed down because of the frequent use of the rule of unanimity in the Council which itself was the result of the "Luxembourg Compromise".\(^1\) Also there was a marked loss of interest in the Community among the scholars, leaders and people at large.

Not that there were no attempts to analyze the problems facing the EC, or that the Euro-ethusiastics gave up their attempts to hasten integration during this period, but their venue shifted to the newly created European Council. For example, the final communique of the Paris Summit (October, 1972)\(^2\) declared its intention to complete the economic and monetary union and to establish a European Union by 1980. The present chapter is a study of these attempts culminating in the drafting and signing of the Single European Act (SEA).

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\(^1\) For the text of Luxembourg Accord, see 9 BULL. EUR. COMM. (No.3), 1966, p.9.


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The chapter is divided into two parts: Section I deals with the history of the SEA and Section II analyzes the provisions of the Act in the field of institutional reforms.

Section I

The European Council, as referred above, remained the forum of study and attempts to reform the institutions of the EC for a long time. After Paris Summit, the Copenhagen report of 1973 talked about the political cooperation among the Member States. The decision taken in the Paris Summit of the European Council in 1974 to institutionalize the Summit meetings of the head of governments can also be seen in the same light.

Then, the same Summit asked the Tindemans Commission to examine the need for European Union and the Tindemans Report of 1975 talked about establishing the European Union by different rates of integration: creating a two tire Europe by an ambitious plan of the EEC Treaty revision. The Report of the Three Wise Men emphasized the European Council as the only source

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3 See, Political Cooperation between the Nine, 6 BULL. EUR. COMM (No.9) 1973, p.9.


of political leadership and sought to strengthen the power and prestige of the Presidency as the major reform.

The European Parliament (EP) was the other venue where attempts to enact institutional reforms were made by enlarging some of its powers. Thus, the amendments of 1971 and 1975 of the Rome Treaty extended its budgetary powers.\footnote{See, Treaty Amending Certain Budgetary Provisions, 140. O.J. EUR. COMM. (No. L 2) 1971, p.1 and Treaty Amending Certain Financial Provisions, 20 O.J. EUR. COMM. (No. L 359), 1977, p.1.} In 1976 the Council decided upon direct election to it by universal suffrage.

None of these attempts, however, could alter the basic decision-making process of the community significantly and the unanimity in the Council remains the norm; consensus was an unwritten rule, not the vote. The integration process came to a halt and the institutional framework of the EC remained static.

The attitude of British government under Mrs. Thatcher was not helpful either. During 1979 Dublin Summit, the United Kingdom demanded that its contribution to the Community's budget should be reduced and the Common Agriculture Policy be revised. A related issue was the question of the membership of Spain and Portugal. Then the failure of March 1984 meeting of the European Council in Brussels was really a blow to the aspirants of the...
integration.\textsuperscript{8} Paul Taylor had noted, "The French initially spoke of excluding the British from various meetings of EC states set up to discuss new initiative while the British cabinet actively discussed ways of unilaterally, and probably illegally, holding back payments to the EC."\textsuperscript{9}

Although, "the Fountainebleau meeting of the European Council in June 1984 rescued for a time a Community on the brink of failure,"\textsuperscript{10} the results achieved were not markedly different from the Brussels meeting. The agreement to resolve British contribution to the EC budget could not be reached and the meeting witnessed much acrimony between Britain and the rest, particularly France and Britain.\textsuperscript{11} It however, made an advance on the institutional reform front and established an ad-hoc committee on institutional affairs,\textsuperscript{12} known by its Irish Chairman, as the Dooge Committee. It itself was the result of the initiative taken by the EP which had earlier established the Spinelli Committee to formulate major amendments to the Rome Treaty.

\textsuperscript{8} See, BULL. EUR. COM. No.3, Vol.17 (1984); (Office for Official Publication of the European Communities, Luxembourg;) p.7-9.


\textsuperscript{11} See, BULL.EUR. COM. No.6, No.17 (1984); point 1.1.1; p.7.

\textsuperscript{12} \textit{Ibid.}, p.11.
Spinelli Committee at the end drafted a Treaty of European Union which was approved overwhelmingly by the Parliament in February 1984.\textsuperscript{13} Now the ball was firmly put into the Member States courts.

The Draft Treaty was significant in a number of ways. First of all, to put it into the force, the consent of all the Members was not necessary. If the governments of a majority of the Member States whose population was two-thirds of the Community’s total population give their consent, it would come into the force.\textsuperscript{14} Secondly, it conceived the creation of a European Union where the citizens of the Member states were citizens of the Union too.\textsuperscript{15} Thirdly, the Union’s laws would also embrace the European monetary and political cooperation, excluded hitherto.

As far as institutional changes are concerned, the Draft Treaty considerably altered the power sharing patterns of the EC. The Parliament was entrusted with legislative powers with the Council of the Union (successor to the Council of Ministers) and its co-legislative process was extended to the budgetary matter and in the conclusion of international agreements. The President of the Commission was to be appointed by the European Council after the European elections and the Parliament was to confirm nominations

\begin{footnotesize}
\begin{enumerate}
\item \textit{Ibid.}, Art.82.
\item \textit{Ibid.}
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to the Commission. Its approval was necessary for Commission's programmes before its members could take office.

Now, a few Member States decided upon a plan: Genscher/Colombo Plan which was on more or less similar lines as the Draft Treaty had followed. But the "Solemn Declaration on European Union" which emerged out of it expressed its intention as, "determined to achieve a comprehensive and coherent common political approach and reaffirming their will to transform the whole complex of relations between their states into a European Union." 17

Quite obviously, it was just a general statement and not a concrete proposal, and was quite an inadequate response to the Spinelli’s initiative.

Naturally, the Member States were not yet ready for such the sweeping reforms which the Draft Treaty had proposed. Still, the Draft Treaty had set a precedence and the call for a closer European Union could no longer be ignored. Hence, the Dooge Committee, as already noted, was set up to examine the general state of European Political Cooperation and Union which submitted its report to the European Council in Milan in June 1985. 18

Dooge Report was more or less a political declaration. It declared:

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We must now make a qualitative leap and present the various proposals in a global manner, thus demonstrating the common political will of the Member State. At the end of the day that will must be expressed by the formulation of a genuine political entity among European States i.e., a European Union.\textsuperscript{19}

But the Report cannot be termed a blue-print of European integration as the Spinelli Report could. Though it called for a homogeneous internal economic area to promote the common value of civilization and called upon to search for an external identity,\textsuperscript{20} the institutional means to achieve these ends were not very ambitious.

It sought to make the decision-making process in the Council easier where the decision should increasingly be taken by qualified or simple majority vote,\textsuperscript{21} though unanimity still be required in 'certain exceptional cases'. The Commission would be entrusted with greater executional responsibilities and be treated as the main organ to take initiatives.\textsuperscript{22} The Parliament would first discuss the Commission's proposal before the Council could deliberate on the text adopted by it. In case of disagreement a conciliatory procedure would be adopted.\textsuperscript{23}

\begin{itemize}
\item \textsuperscript{19} See, Part II "Priority Objectives" of \textit{Ibid.}, pp.106-7.
\item \textsuperscript{20} \textit{Ibid.}, Part III, "The Means", p.108.
\item \textsuperscript{21} \textit{Ibid.}.
\item \textsuperscript{22} \textit{Ibid.}, p.109.
\item \textsuperscript{23} \textit{Ibid.}.
\end{itemize}
The institutional reform as proposed in the Report were not wholesale but only piecemeal. When the European Council met in Milan to consider the Report as envisaged in the Report itself, the Commission had already submitted a white report known as Cockfield Report, advocating a Common Market by 1992. This report was a vision of an economically integrated Europe without any physical, technical and fiscal barriers. Specific legislative measures were required to meet that end.

The Dooge Report "inevitably emphasized major national interests of the governments with respect to the EC. Thus, the creation of a homogeneous internal economic area was the Committee's chief priority," and the same goal was sought to be achieved by the Cockfield Report which reflected the view of the Community (since it was the Commission's report). At Milan the stage was all set to call an Inter-Governmental Conference (IGC).

The EC discussed in detail the convening of such an IGC and the Italian Prime Minister Mr Bettino Craxi took the initiative when he declared,

Today's decision was a difficult and contested one, but it was actually carried because of the logic of political will and what is

25 See, Completing the Internal Market: Commission White Paper to the European Council, COM (85) 310 Final (June 14, 1985).
27 See, BULL. EUR. COM. No.6, Vol.18, Point 1.2.2., p.14.
possible under the Treaty. We would have preferred a general consensus and unanimity, but these were not to be had....

Clearly, he was talking about Art 236 of the Treaty of Rome, according to which, unanimity is not required to convene an IGC. Britain considered an IGC unnecessary and ultimately it along with Greece and Denmark dissented.

Accordingly, as the procedure laid down in Art 246 of the Rome Treaty, the Luxembourg Government submitted a proposal for the revision of EEC Treaty on 2 July, 1985, and the Parliament delivered an opinion in favour of convening of an IGC on 9 July 1985 (192 favoured, 71 opposed, 21 abstentions). When the Council consulted the Commission at its 22 and 23 July meetings, the Commission too delivered a favourable opinion and the Council agreed to convene the IGC, "at Foreign Ministers' level with a Commission representative present, two working groups were subsequently set up; the Dondelinger group on the revision of the EEC Treaty, and the group of Political Directors, on EPC."

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31 EUR. COM. (85), 455 Final, 1985.
32 BULL. EUR. COM. No.7/8, Vol.18, 1985, Point 1.1.13, p.10.
Juliet Lodge has discussed the other agreements which influenced the IGC. They were: Commission's report on technological cooperation and French EUREKA project, an agreement of people's Europe, the future of the EMS and the role of the ECU.

The IGC opened at Luxembourg on 9 September 1985 with the Commission's Chairman, Mr. Delors' speech highlighting the importance and purpose of the Conference.

It was evident since the Milan meeting when the UK, Denmark and Greece had opposed the very convening of the IGC that these three had to be effectively involved in the negotiation in order to amend the Rome Treaty meaningfully.

Hence, the IGC asked the Commission to present a set of wholesale proposals in order to modify/amend the treaty in six sectors: internal market, economic and social cohesion, technological research and development, environment, culture, monetary questions along with changes in the decision-making process to implement these proposals. Then, this approach effectively combined the interests of two groups of states: for example the UK and Denmark were keen to see the establishment of the internal market

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34 For the text of Mr. Delors' speech See, BULL. EUR. COM. No.9, Vol. 18, 1985, p.8.

without any major institutional change whereas Benelux Countries along with Italy and Spain wanted to realize institutional changes.

The first part of the IGC was marked by intense negotiations and bargaining processes to involve these three countries so that the minimalist approach which could hardly yield any tangible result, was avoided. Subsequently, the UK delegation took full part in the negotiation and the Danish and Greek delegations also agreed to take part.

Taking advantage of these developments, the Commission initially proposed the following in relation to the revision of the EEC treaty:

i) the creation of an efficient economic entity; and

ii) efficient and democratic decision-making machinery.³⁶

Since the Chapter aimed to discuss the institutional changes and the corresponding changes in the decision-making process of the Community, it would focus its attention on the second proposal.

To improve decision-making in the Council, it proposed a similar approach to that of the Dooge Committee's Report, namely, qualified-majority voting becomes the rule, unanimity remains the exception and the list of unamnity instances (which then was 33) must be reduced.³⁷

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³⁶ BULL. EUR. COM. No.9., Vol.18, 1985, Point 1.1.2., p.10.
³⁷ Ibid., Point 1.1.8, p.10.
IGC's main emphasis was to involve Parliament more closely. It stated an "obligation to consult EP before the Council clauses of the Treaty to which it does not currently apply." However, it was not yet ready to grant co-legislative powers to the EP. Instead it proposed a 'new cooperation procedure' which gave the EP the right to introduce amendments. If it introduces any amendment when the Council submits a proposal which was adopted by majority vote, the Council must go for a second reading. Moreover, if the Commission endorses these amendment, a unamity shall be required in case the Council wishes to override these amendments.

In order to make the Commission more responsible and powerful, it took note of the existing system where the Commission enjoys management powers only where they are conferred on it by the Council, and it opined that conferring of management powers on the Commission must be the rule with exceptions.

By the time the second session of the IGC started on 22 October 1985, considerable differences had emerged between the states on EUT and institutional reforms. The states such as Greece, Denmark, Britain were labeled as anti-communautaire. Even among the more helpful states there were considerable differences on minor details.

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38 Ibid., Point 1.1.11, p.12
39 Ibid., Point 1.1.13., p.13.
40 Ibid., Point 1.9.16, p.14.
Soon, differences emerged between the Conference and the Parliament too. The EP was not satisfied the way with the Conference was being conducted. Consequently, a delegation led by the Parliament's president Mr. Pflimlin and assisted by Mr. Spinelli visited the Conference and demanded Parliament's involvement in the final draft. It also wanted the Conference to make a political commitment to initiate a procedure enabling Parliament to give its opinion and both parties to reach an agreement before the final text was initiated. The Conference pleaded for the impossibility of any second reading and it could not commit itself at this stage to the mandatory procedure the EP was demanding.

On the subsequent day, in an extensive debate in the EP, almost every speaker raised the issue of the Conference's failure to use Parliament's draft treaty as a basic working paper, or even to include it among the proposals tabled. When it passed its resolution, it insisted that the worth of the IGC and the resulting text be based on the EUT. It also resented merely submitting its opinion on the resulting text and 'claimed the right to examine and if necessary, amend and finally vote in the Conference draft'.

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41 See, BULL. EUR. COM. No.10, Vol.18, 1985, Point 1.1.3; p.9.
42 Ibid.
44 BULL. EUR. COM. No.18, Vol.18, 1985, Point 1.1.16, p.13.
Subsequently, the Presidency with the active help of the Commission's President Mr. Delors, was involved in a deft manoeuvre in reaching the working solution between the Commission's proposals and the ones submitted by the Member States. Although, the difficulties remained on the matter of internal market and on increasing the power of the Parliament, the set of proposals initially submitted by the Conference were very close to the contents of the Single Act.

Now it was left to the Luxembourg European Council of December 1985 to agree on the text as well as to reach the solution to those points which had proved elusive in the IGC.

When the Luxembourg meeting of the European Council began on 2 December 1985, its works were divided into two spheres: stabilizing the process of European political cooperation and agreeing on the specific amendments to the EEC Treaty, both in institutional and programmatic arenas. The meeting agreed in principle for a reform of the Community's institutions designed to improve its efficiency and extend its powers and responsibilities.\textsuperscript{45} It agreed on several texts which are related to: internal market, monetary capacity, cohesion, European Parliament, the Commission's Management and implementing powers, research and technological development, environment and social policy.

\textsuperscript{45} \textit{Ibid}, No. 11. Point 1.1.1., p.7.
On most of these agreements, several reservations were inserted by the Member States. Italy expressed its reservations on the monetary policy and was not satisfied with proposals related to the European Parliament. Germany was also willing to see more powers granted to the EP. Britain was not happy with social policy and the Commission's executive powers. France was sceptical of European Political Cooperation and Denmark opposed almost all the proposals. The EP was also not satisfied with the outcome of the Luxembourg meeting as figured out by Mr. Pierre Pflimlin, President of the EP, on his official visit to the Dutch Government on 4 December 1985.

Now the agreed texts were incorporated into the document called the Single European Act (SEA) which has two major sections: non-domestic matters related to the EC; and on European Political Cooperation on foreign policy. It should be mentioned that the 'endorsement of the Treaty on political cooperation did not raise any specific problems' in the Luxembourg Summit.

The SEA was to be finally endorsed by the seventh meeting of the IGC at foreign ministers level to be held in Brussels on 16 and 17 December 1985.

The Conference finalized all the texts emerging from the Luxembourg European Council and as SEA was to be submitted to the Member States for signature at the end of January 1986. At the end, the UK had reservations

46 Ibid., Point 1.1.3., p.19-20.
48 Ibid., Point 1.1.4, p.21.
about accepting qualified majority voting for the adoption of minimum standards for the working environment. Both Denmark and Italy made the SEA subject to a debate (an opinion in case of Italy) in their national parliaments.\textsuperscript{49}

The SEA was sent for signature on February 17, 1986 to the Member States who promptly signed the Treaty except Denmark. Greece and Italy signed only after a special Danish referendum had approved it. All the Member States ratified the Act by the end of 1986 and it came into force on July 1, 1987.\textsuperscript{50}

\textbf{Section II}

The Single European Act (SEA) is an amendment to Rome Treaty with the central purpose of facilitating the completion of the Single Common Market. Thus,

"The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on December 31, 1992... The internal market shall comprise an area without internal frontiers in which the free movements of goods, persons, services and capital is

\textsuperscript{49} See, BULL. EUR. COM. No.12, Vol.15, 1985, Point 1.1.3; p.11.

\textsuperscript{50} It was supposed to come into force since January 1, 1987, but was delayed because of a challenge in Irish Supreme Court which decided on the necessity of a referendum to ratify it. See, "Crotty Vs. An Taoiseach and Others", \textit{Common Market Law Review}, Vol.24, No.709 (1987). Later in May, the referendum resulted in a constitutional amendment permitting the ratification.
The immediate call of the SEA was the creation of a homogeneous internal economic area through the amendments incorporated into the Rome Treaty. This was sought to be achieved by means of establishing a genuine internal market; by increasing the competitiveness of the European economy vis-à-vis the American and the Japanese; and by the promotion of economic convergence. The long-term goals of the Act were the promotion of the common values of civilization and the search for an external identity that would combine defence and security matters with foreign affairs.

The means to achieve this goal is the modification of all the four institutions of the Community, thus affecting the over-all decision-making process. The present section shall elaborate the changes the SEA sought to bring in to the institutions and will analyze the consequently changed decision-making process.

The Institutional Reforms

The institutional reforms proposed by the SEA are the culmination of a series of attempts and studies in the matter, already discussed in Section I. These proposals such as the Tindemans Report, the Report of the Three Wise

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Men and the Draft Treaty of European Union, reflected the supranational approach of Pan-Europeanists who wanted to see the Commission as a parliamentary government, the European Parliament as a true legislative body and the Community a true European federation.

The SEA does not stand to these expectations and the compromise which it tried to achieve between the national interests of the Member States and supranational forces have brought only modest reforms to the four institutions of the Community. These proposals are discussed below:

THE COMMISSION

The Intergovermental Conference was interested in restoring the management and implementing powers to the Commission as authorized by the original EEC Treaty.\textsuperscript{52} Hence, it extended the scope of Art. 145 of the Rome Treaty, favouring a Dutch proposal over the Commission's proposal in which it sought to amend Act 155(4) itself. The Council may:

- Confer on the Commission, in the acts it adopts, powers for implementing the rules it lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself.\textsuperscript{53}

The SEA does not propose any significant change in the Commission's implementing power and expressly allows the Council to reserve all executive

\textsuperscript{52} See, Art. 155 of the Treaty of Rome.

\textsuperscript{53} See, Art. 10 of the SEA, amending Art. 145 of the Treaty of Rome.
powers in a Council Act.

The effects of this provision were diluted when the Council took a decision on 13 July, 1987, known as "comitology decision,"\textsuperscript{54} according to which the Commission's executive powers were subjected to the purview of committees consisting of national officials.\textsuperscript{55} The Parliament promptly challenged this decision in the Court of Justice\textsuperscript{56} which was rejected subsequently on the basis of Parliament's lack of standing under Art. 173 of the Rome Treaty to challenge Community acts in the Court.

Hence, the SEA's attempts to increase the Commission's executive powers can be described at best as 'half-hearted', and the Commission's desire to acquire executive autonomy could not be achieved.

THE EUROPEAN PARLIAMENT

As already discussed in Chapter II and Section I of the present chapter, the European Parliament's (EP's) relentless quest for power culminated in the Draft on European Union. Juliet Lodge has noted, "without the EUT and the constant pressure from the EP it is doubtful that the SEA would have seen

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\textsuperscript{55} These are advisory, regulatory and management committees, whose roles have already been discussed in Ch.II.

daylight."\(^{57}\)

However, the proposals the SEA offers, fall short of EP's expectations. They do not follow the "maximalist approach" advocated by Member States such as Italy and Benelux Countries, but offers modest changes in the legislative powers of the EP, formulated largely on a German proposal submitted to the IGC.

First of all, the EP is now official: Member States have recognized that it should be referred to as the European Parliament\(^{58}\) in all legislative acts rather than as the "Assembly", as it had been described in the Treaties. Although it seems like a cosmetic gain only, it nevertheless, enhances the prestige of the EP by officially calling it 'Parliament'.

Secondly, the SEA increases the number of subjects, the EP must be consulted on after the Commission has submitted its proposal. It expressly brings subjects such as decisions concerning the Court of Justice (Acts 4, 11 and 26); Commission's implementation practices (AA.10); decisions on research and technological development (Art. 24); and decisions on environmental protection (Art. 25) under EP's purview.

Thirdly, the EP has gained some influence by the virtue of what is


\(^{58}\) Title I, Art. 3(1) along with Title II. Section I, Art. 6(1) of the SEA.
known as 'assent procedure'. Now the Parliament's assent is necessary with respect to two matters: the accession of new Member States\(^{59}\) and the conclusion of association agreement with third countries, international organizations and unions of states.\(^{60}\)

Parliament's noticeable increase in power is by the virtue of the principal innovation of the SEA in the field of institutional reform: the cooperation procedure.\(^{61}\) It enhances the role of Parliament in the overall legislative process of the Community essentially in those fields which need the qualified majority to be adopted. It applies to ten articles of the Rome Treaty,\(^{62}\) and two-thirds of the proposals required for the completion of the Single Common Market fall under this procedure.

The cooperation procedure gives the Parliament the chance of a 'second reading' with a system of innovative deadlines. Under the original Rome Treaty, the Council could take a decisive position on a Commission proposal after having the Parliament's opinion but now the amended Art. 149 introduces the cooperation procedure:

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

\(^{59}\) Art.237 of Treaty of Rome, as amended by Art. 8 of SEA.

\(^{60}\) Art.238 of Treaty of Rome, as amended by Art. 9 of SEA.

\(^{61}\) Art.149 of Treaty of Rome, as amended by Art. 7 of SEA.

\(^{62}\) There are: Art(s) 7; 49; 54(2); 56(2); 57; 100(A) and 200(B); 118(A), 130(E), and 130(Q).
The Council, acting by a qualified majority under the condition of paragraph 1, on a proposal from the Commission and after obtaining the opinion of the European Parliament, shall adopt a common position.\(^{63}\)

Now within three months, the EP may approve the common-position, or take no view so that the Council adopts the act. But if it rejects the common position by an absolute majority, the Council can overrule it only by unanimity.\(^{64}\)

Amendments introduced by the EP to the common position must be considered by the Commission within one month.\(^{65}\) If it endorses them, they may be rejected by the Council only by a unanimity, and may be adopted by the Council by a qualified majority.\(^{66}\) However, if these amendments are not endorsed by the Commission, the Council can adopt them only by a unanimous vote.\(^{67}\) If it fails to act, the proposal lapses. For all these actions, the Council has a deadline of three months and with Parliament's approval, it may extend this deadline for one more month for further consideration.\(^{68}\)

\(^{63}\) Art. 149(q) of the Treaty of Rome, an amended by Art. 7 of the SEA it also amended the Art. 149(1), by virtue of which the council can amend the Original Commission's proposal only by a unanimous vote.

\(^{64}\) Ibid., amending Art. 149(2) (c) of the Treaty of Rome.

\(^{65}\) Ibid., amending Art. 149(2) (d) of the Treaty of Rome.

\(^{66}\) Ibid.

\(^{67}\) Ibid., Amending Art. 149(2)(e).

\(^{68}\) Ibid., Amending Art. 149(2)(l).
There is a lot of ambiguity in the wordings of the SEA in the cooperation procedure. For example, regarding amendment of the common position, it is not clear whether the Commission can amend the proposal in ways other than Parliament has suggested. Again, regarding the Council's action during the second reading, the SEA is ambiguous. The expressed provision of the SEA allows the Council to adopt by unanimity those parliamentary amendments that are rejected by the Commission, as noted above, but again the provision, which also requires unanimity if the Council wishes to amend the Commission's new proposal, means that the Council may consider other amendments too.69

This cooperation process, though it enhances the role of Parliament in the overall legislative process of the Community, does not make the EP a co-legislator, hence it is limited in its scope and function. However, it demands significant inter-insititutional cooperation and has noticeable implications for inter-institutional relations, to be examined later.

The Council: Extension of Majority Voting

The most talked about change introduced by the SEA in the decision-making process of the Community is extension of majority voting to most of the issues involved in the completion of the single common market which hitherto required unanimity. A new clause was added to Art. 100 of the

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69 See, the difference in wordings of Art. 149(2)(d) and para (e).
Treaty of Rome which reads as follows:

The Council shall, acting by a qualified majority on a proposal from the Commission in cooperation with the European Parliament and the Economic and Social Committee, adopt measures for the approximation of the provision laid down by law, regulating or administrative action in Member States which have as their object the establishment and functioning of the internal market.\textsuperscript{70}

The SEA, however, does not make qualified majority voting a general rule and in one very important area needed to realize the common market, namely the fiscal provisions,\textsuperscript{71} it does not apply. So also unanimity needed in the realm of environmental protection.\textsuperscript{72}

However, the scope of the majority voting is not exhausted by the issues needed for realization of the internal market. Issues such as those related to the Community's Common Agricultural Policy and external trade policy also now require majority voting.

As far as "Luxembourg Compromise" is concerned, the SEA has taken a very curious stand. It is completely silent over the "compromise" and the SEA does not even acknowledge its existence. So unanimity or reaching a consensus, avoiding voting altogether, rather than majority vote, remains the

\textsuperscript{70} Art. 100 A(1) of the SEA, as added to Art. 100 of the Treaty of Rome.

\textsuperscript{71} Ibid., Art. 100 A(2). Along with fiscal provisions, unanimity is required to the issues related to the free movements of persons and to the rights and interests of the employees.

\textsuperscript{72} Ibid., Art. 130S, as added to the Part Three of the EEC Treaty.
rule if any Member State's "vital national interest" is involved under the so-called "gentlemen's agreement" of 1966.

The "Luxembourg Compromise" must be viewed along with the amendment made by the Council in its internal rule of procedures when the Commission and the Parliament expected the pressure to do so in 1986. This amendment compels the President of the Council to call a vote whenever any Member State or the Commission requests a vote which is supported by a majority in the Council. It gives some more power to the Commission and improves the chances of qualified majority vote because, earlier, only the Council President could call for a vote.

Even so, the Luxembourg Compromise remains at least a theoretical possibility in future decision-making process, although evoking the compromise may no longer remain politically desirable. Moreover, under the cooperative procedure, if the Commission, majority of the Parliament and a qualified majority of the Council are agreed on a proposal, the casting of a national veto shall be politically vulnerable.

The Court of Justice

There are some substantial changes introduced by the Single Act to the

73 Council Amendment 87/508, 30 O.J. Eur. Comm. (No.L.291) 27(1987). Consequently the President of the Council filed the 12th Declaration in the Final Act. See Final Act at page no.25 ("Declaration by the Presidency on the time limit within which the Council will give its opinion following a first reading (Art. 149(2) of the EEC Treaty").

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structure and function of the Court of Justice (ECJ) but the fundamental judicial arrangements of the Community remain the same. The SEA supplements the ECSC Treaty by the following provision:

At the request of the Court of Justice and after consulting the Commission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a Court with jurisdiction to hear and determine at first instance... 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 Article 41. 74

The main purpose of establishing the Court of First Instance was to ease the ECJ's burden in competition cases and for expediting the judicial process of the Community. The decisions of this new court on issues of law remained subject to a right of appeal to the ECJ. 75 The Council was authorized to determined the composition of this court and adopt the necessary adjustments and additional provisions to the statute of the Court of Justice. 76

In October 1988, the Council decided to establish this court, following receiving the request from the Court of Justice and by mid-1989, the Court of First Instance started functioning. It is still to be seen upto what extent it has been successful in easing the burden of the ECJ which is full of pending cases.


75 Ibid.

76 Ibid., amending ECSC Treaty. Art. 32(d)(2).
The European Council

The Single Act has institutionalized the European Council: The European Council shall bring together the Heads of states and/or of governments of the Member States and the President of the Commission of the European Community. They shall be assisted by the Ministers of Foreign Affairs and by a Member of the Commission.\(^77\)

Claus-Dieter Ehlermann, the Director General of the European Commission, opines, "The SEA gave the European Council legal legitimization. Neither its self-image nor its reactions have changed, however."\(^78\)

However, the European Council has ceased to be a superimposed decision-making institution of the Community, and is no longer the final institution to make decisions, if the Council of Ministers is unable to reach a decision. As Ehlermann himself wrote, "it has returned to the role for which it was created 15 years ago: naming priorities, giving impulses, setting goals and opening paths previously blocked."\(^79\)

The European Council remains the highest forum of the Community which sets the agenda for change in the Community. The Milan meeting of 1990 set a path for adopting majority voting as the effective mean to reach a

\(^{77}\) SEA, Title I (Common Provisions), Art. 2; p.7. It also provides that, "The European Council shall meet at least twice a year."


\(^{79}\) Ibid.
decision. This institutionalized Summit of the EC is entrusted with the task of finding the common interests and values and setting up common goals to reach.

The Decision-making Process: After the Single Act

The modifications introduced by the SEA to all the four institutions of the Community have substantially affected the overall decision making process by making it speedier and smoother; although it makes the inter-institutional interaction more complex because of the introduction of the 'second reading'.

Since the two most important changes introduced by the SEA in the decision-making process are: extension of the qualified majority voting in the Council and the new, innovative cooperation procedure, providing the second reading to the Parliament, the effects brought upon by them shall be analyzed in the subsequent paragraphs.

Extension of Qualified Majority

The extension of qualified majority voting in the Council to a number of issues has affected the overall decision-making process by affecting all the institutions of the Community. It has made the European Council again the Summit of the EC, setting priorities and goals, rather than taking decisions. The Commission’s position is also strengthened indirectly since it can more effectively exploit the differences among the Council members and can get its
proposal approved. It has led to an increase in the influence and prestige of the Parliament vis-a-vis Council because of the same reasons; it can successfully delay or block the decision-making process if it can get a minority in the Council to go along with it.

The success of the Commission in utilizing the SEA's qualified majority voting procedure depends upon the Council actually voting on its proposals. Prior to the Single Act, voting per se was avoided and consensus building was the usual practice, save the budget where voting was a regular feature.

Now, such a consensus-building is highly improbable. Although the Commission could not force a vote in the Council if a Member State's vital interests are involved, under the Council's amendment to its internal rules of procedure, voting is a more likely scenario in this case too even if the threat of veto by that state looms large.

The amendments introduced by the Inter Governmental Conference of 1986 to the EEC Treaty also helped increase the majority voting. Subsequently, these amendments were incorporated in the SEA. There are: derogation provisions (Art 8C); safeguard clauses (Art 100(A)(5)); and unilateral Member State self-help measures (Art. 100(A)(4)).

Under Art 8C of the EEC Treaty, the Commission, while working to

\footnote{See, Arts, 8C, 100A(4) and 100 A(S) of the Treaty of Rome, added by SEA, Arts, 15 and 18.}
achieve the Common internal market, must take into account the less
developed economies and should seek the ways to sustain them. It may include
derogation provisions for this end, which should be temporary and must not
cause any major disruption to the functioning of the common market.81

The Art. 199(A)(5) of the EEC Treaty82 provides that the
harmonization measures as specified in Art. 100 (A) may include a safeguard
clause authorizing a Member State to take provisional measures for one of the
non-economic reasons specified in Art. 36 of the Rome Treaty.83 These
provisions must be subjected to the Community control procedure.

Art. 100(A)(4) allows a Member State to apply national provisions on
grounds of major needs referred to in Art. 36, or relating to the protection of
the environment or working environment. While doing so, it should notify the
Commission of these provisions, which in turn, confirms that they are not a
means of arbitrary discrimination or a disguised restriction on trade between
Member States. If the Commission refuses to grant confirmation, the

81 EEC Treaty, Art. 8C, added by SEA, Art.15.
82 Art. 100(A)(5) of the Treaty of Rome, added by SEA, Art.19
83 Art. 36 of the Treaty of Rome reads inter-alia: The provisions of articles
30 to 34 [Elimination of Quantitative Trade Restrictions Between
Member States] shall not preclude prohibitions or restrictions on
imports, exports or goods in transit justified on grounds of public
morality, public policy or public security; the protection of health life of
humans, animals or plants; the protection of national treasures
possessing artistic, historic or archaeological values or the protection of
industrial and commercial property. Such prohibitions or restrictions
shall not, however, constitute a means of arbitrary discrimination or a
disguised restriction on trade between Member States.
provisions must be withdrawn. It also provides that any Member States or the Commission can bring the matter to the Court to challenge the improper use of any unilateral self-help measures.84

These three articles reduce the instances and number of issues in which a Member State can invoke a vital national interest and give more power in the hands of the Commission. Hence, the return to the pre-SEA period's whole sale consensus building practice in the Council is indeed unlikely.

The Commission had drafted the provision of the extension of the qualified majority in the Council in order to speed up the decision-making process of the Community. Also, the aim was to give more political leverage to the Commission than what it enjoyed before. Both these aims have been achieved, at least partially.

While it can be shown that the Council is increasingly taking majority decisions more frequently, the voting patterns do not reveal the real conduct of negotiations which might have helped avoiding objections raised by the minority before consensus was reached. Secondly, the decision-making process has certainly speeded up and the average time elapsed between the transition to the Council of a directive and its adoption has decreased considerably after

84 See, Art. 100(A)(4) of the Treaty of Rome added by SEA, Art.18.
the SEA came into force.\textsuperscript{85}

The Commission's political leverage has also improved markedly which is reflected in the increased instances of majority votes, rather than consensus being built up in the Council,

Wherever necessary admissions were taken by qualified majority, either by means of a formal vote or by establishing that a majority existed without resorting to a formal vote. The possibility of majority voting has introduced an element of flexibility in the position of the Member States, which are forced to reach a consensus.\textsuperscript{86}

But the best reflection of the Commission becoming more powerful is the power and prestige its president, Mr. Jacques Delors wields today. He was not just behind the SEA and "Project 1992", but with the adoption of the Delors Plan in February 1988 his position became even stronger. No doubt, the Commission's political weight has increased which finds its expression in the exercise of its implementing control powers more often and more decisively than before.

\textsuperscript{85} See, Ehlermann, "The Institutional Development of the EC under the Single European Act", n.77 the accompanying chart on p.139.

Cooperation Procedure

Cooperation procedure which gives the power to the Parliament to influence the legislative process without giving any real power of co-decision, applies only to the adoption of measures specifically incorporated in the SEA. In other matters, whether to be adopted by the qualified majority\(^87\) or unanimity, the Parliament's role has not been altered; like the pre-SEA period it has just a consultative role. No logical rationale could be found in putting these two issues separately and this difference can give rise to institutional conflict leading to legal disputes in future.\(^88\)

The limited extent of issues to which the new co-operation procedure applies, affects the inter-institutional relations and puts new limitations on both the Commission and the Council. Hence, in the following heads the changed EP-Commission relation on the one hand and EP-Council on the other, shall be discussed.

EP-Commission Relationship

\(^87\) The matters which need qualified majority voting, but are not subjected to cooperation procedure are: Art.55 (measures concerning public service exception to the freedom of establishment); Art.59 (as amended) and 63 (free movement of services); Arts. 69 & 70(1) (as amended) (free movement of capital); Art.28 (as amended) (modification or suspension of tariffs); Art.43 (agricultural policy); Art. 35(1) & 84 (as amended) (transport policy). EEC Treaty, an amended by SEA Art. 16.

First of all, the Commission now has the primary obligation to incorporate Parliament's amendments in its re-examined proposal, else if it does not wish to incorporate these amendments (because of chances of having a qualified majority in the Council), it runs a risk of being censured by the Parliament under Art. 144.\textsuperscript{89}

Secondly, as the text of article 149(2)(d) provides, the Commission has just one month's time to reexamine the proposal on which the Council has taken the common-position after receiving the Parliament's amendments.\textsuperscript{90}

Now, the Commission can either accept these amendments or reject them in its entirety. It no longer enjoys the power to alter its initial proposal freely. But if the provisions of Art. 149(2)(d) are read along with those of Art 149(3), there appears an inconsistency, because the Commission can alter its re- examined proposal, even after submitting it to the Council, provided the Council has not taken any action.

But, as it appears now, under more intensified triangular dialogue between the institutions, the unfettered amending power of the Commission is gone. It can not overrule the amendments of the Parliament and introduce

\textsuperscript{89} See, Art.144 of the EEC Treaty Parliament till date has never censured the Commission. In 1972 a motion was tabled but withdrawn later.

\textsuperscript{90} Art.149(3) of the EEC Treaty provides: as long the Council has not acted, the Commission may alter its proposal at any time during the procedure mentioned in paragraph 182 (means cooperation procedure itself), as amended by SEA, Art.7.
its own, without having an intense negotiation with the Parliament and the Council. Then, because of the time-bound schedule of the cooperation procedure, the Commission's manoeuvring power has been curtailed, since it cannot wait to see Parliament's threat being over and becoming assured of a qualified majority in the Council during the second-reading.

**EP-Council Relations**

Can the Council adopt its own amendments, if it is unanimous, or like the Commission, can it only reject or accept the Parliamentary amendments? If the overall text of cooperation procedure along with the SEA purpose of institutional reforms are taken into consideration, the second alternative is a definite answer.

While Art. 149(1)\(^{91}\) authorizes the Council to adopt its own amendments to the Commission's proposals by unanimous vote, Arts. 142(2)(d) and 149(2)(e)\(^{92}\) give it the powers of amendment during the second reading. The Council can adopt those amendments of the Parliament which are not incorporated by the Commission in its reexamined proposal only by unanimity while it can accept that proposal as it is by a qualified majority, and if it

\(^{91}\) See, Art.1149(1) of the Treaty of Rome, as amended by SEA, Art.7.

\(^{92}\) See, Arts. 149(2)(d) and 142(2)(e) of the Treaty of Rome, as amended by SEA, Art.7.
wishes to amend this proposal, again the unanimity is required. Now Art 149(2)(e) gives the Council the power of amending the Commission's reexamined proposal by unanimity which can be interpreted as the independent power of the Council to introduce amendments other than those proposed by the Parliament. But this interpretation makes Art. 149(2)(d) meaningless and the whole cooperation procedure also becomes meaningless. Hence, the rational interpretation of Art. 149(2)(e) should be empowering the Council to remove Parliament's undesirable amendments, rather than introducing its own.

In practice, the Council has developed manoeuvering methods to slow down the cooperation procedure simply by not informing the EP in detail about its common position. Hence the Parliament needs close cooperation with the Commission to overcome its persuasive, rather than decision-making powers. But the Parliament's freedom of action and extent of power has not yielded the results as desired by the Euro-enthusiasts. The 25th General Reports of the EC notes;

Since the Single Act entered into force, 216 proposals have been adopted. More than 60% of the amendments requested by Parliament at first reading were accepted by the Commission and more than 46% by the Council. On second-reading, 46.49% of the amendments requested were accepted by the Commission and 27.37% by the Council.  

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93 XXVth General Report of Activities of the EC no. 85, point 1147, p.364.
This shows that EP amendments do not have a very high chance of survival even at the first reading and even slimmer at the second.

But the purpose of the SEA was certainly not to make the EP a co-legislator and the expectations of the cooperation procedure were modest. Hence, it would be correct to say that while it has made the EP an important actor in the decision-making process, it has not put it on equal footing with the Commission and the Council what as Juliet Lodge says", the growing role of the EP and the altered state of inter-institutional relations has repercussions for changing policy network and for other actors in the policy-making process". 94 is true.

Conclusion

The Single European Act (SEA) is the most comprehensive revision of the Treaty establishing the European Communities but it cannot be termed as a revolutionary change. It left the institutional foundation of the EC intact, and brought about the well planned, cautious and politically pragmatic changes in its decision-making process. No wonder, one scholar has commented, "the 'Single European Act' as the art of possible amounted to no more than a mini-reform". 95

94 Lodge, "The European Parliament...", n. 56, p.77.

The Act is essentially a compromise between the supranationalist forces aiming to establish a United States of Europe and nationalists committed to preserve national identities. The difference of the SEA from the European Draft Treaty is striking. The former is a package deal aiming to balance the national interests of the twelve Member States while the latter is a bold attempt to integrate Europe economically, politically and socially.

The institutional modifications introduced by the SEA are indeed modest. The Act is not firmly committed to empower the Commission with implementing and management powers; it has got unwelcomed committees instead. The most innovative feature of the Act, namely, the cooperation procedure is limited both in its extent and functions, it certainly does not give any co-legislative power to the Parliament. And the extension of qualified majority in the Council does not go far enough, it does not address the "Luxembourg Compromise" at all.

This does not mean, however, that these changes are insignificant. On the contrary, they represent one more step forward to the goal of political integration of Europe. The changes in decision-making processes make it more dynamic and fulfill the supranational interests. Cooperation procedure enhances the political role of the Parliament and the Commission has got more leverage than before while negotiating with the Council owing to the extension of the qualified majority voting. Helen Wallace has commented,
The extension of voting in the Council by qualified majority implied an acceptance that Member States' interests could on occasions be sacrificed for the sake of maintaining momentum and provided those who could rally a majority with the means to override the reluctance of those who had isolated idiosyncratic reasons for their dissent. The Commission's scope for influencing the outcomes and for being adventurous was increased by the knowledge that it no longer had to carry all member states along with its proposal.\textsuperscript{96}

The chief aim of the SEA, as already noted was the creation of the single internal market, thus integrating Europe economically, though it had left the question of single currency etc. for the future. But as the European Monetary system became the constitutional part of the Community as per the provision of the SEA, the monetary integration was the next logical step. Hence, some kind of 'spill-over' was advanced by the SEA, claimed its supporters, although scholars like Robert Koehane and Stanley Hoffmann disagree.\textsuperscript{97}

Whatever view one might take, the SEA does not just have important implications for inter-institutional relations and consequently for the decision-making process, but also for the future political integration of Europe. The EC was founded on the basis of pragmatic vision of integration Europe incrementally which is reflected in a balance between the national and supranational forces and the SEA is an important link in the process, not a


\textsuperscript{97} Robert O.Keohane and Stanley Hoffmann, "Conclusion: Community, politics and institutional change" in \textit{ibid}, pp.285-89.
break.

Upto this stage, the focus of study has primarily been the insitutional development of the European Community along with a detailed analysis of its decision-making process as it has developed since its establishment. We have seen how the Community developed its institutions and evolved the decision-making process continuously by tuning and fine-tuning it. In order to substantiate our findings, it is necessary to study a few cases involving the actual legislation. Hence, the next chapter will study and analyse four such cases, two belonging to the pre-SEA era, one dealing with post-SEA period, and one after the Maastrict Treaty coming into the force.