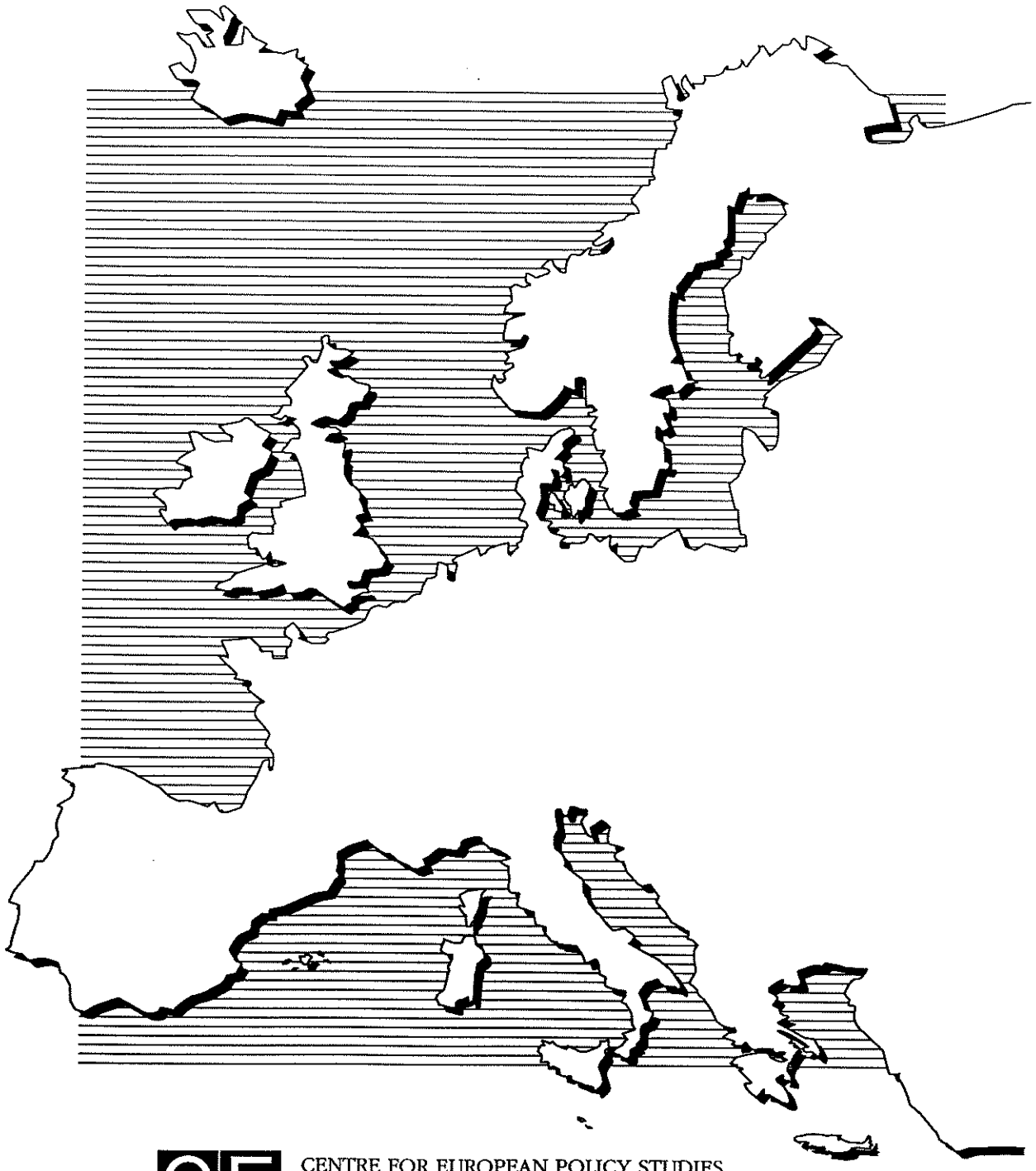
THE TREATY OF MAASTRICHT AND THE FUTURE OF EUROPE

CEPS Working Document No.68

Peter Ludlow



CENTRE FOR EUROPEAN POLICY STUDIES
Rue Ducale 33
B-1000 Brussels
Tel.: (32.2) 513.40.88
Fax : (32.2) 511.59.60

CENTRE FOR EUROPEAN POLICY STUDIES

THE TREATY OF MAASTRICHT AND THE FUTURE OF EUROPE

CEPS Working Document No.68

May 1992

Peter Ludlow
Director of CEPS

CEPS Working Documents are published to give an early indication of the work in progress within CEPS research groups and to stimulate reactions from other experts in those fields. Unless otherwise indicated, the views expressed are attributable only to the author in a personal capacity and not to any institution.

ISBN 92-9079-140-3

Table of Contents

Introduction

The present working document incorporates the text of a lecture given in Stockholm to mark the 42nd anniversary of the Schuman plan. The subject matter will be dealt with at greater length in two CEPS publications to appear later in 1992. The first is a direct response to the no vote in the Danish referendum. Instead of a full length commentary on the treaty, it seems most appropriate in the present circumstances to publish a short and readable explanation of why the Community exists, how its political system works, in what sense the Maastricht treaty improves the situation and where our Union is ultimately heading. Many of the ideas in the present lecture will be rehearsed more systematically and in less concentrated form. The provisional publication date for this book is September 15th. We are also hoping to issue translations more or less simultaneously. The second publication is CEPS Annual Review of EC Affairs which will appear in mid October. It will contain a Part IV devoted entirely to an account of the making of the Maastricht treaty in 1991. It seemed useful, however, in the meantime to put this paper out as a working document, together with a ***special appendix on the Danish referendum.***

I am grateful to Mr Ivo Dubois, Head of the EC Delegation in Stockholm, for making the occasion both possible and very pleasant. I should, however, stress that the fact that the event was sponsored by the European Commission did not in any way inhibit my own independence. On the contrary, as readers of the text will doubtless find for themselves, there are passages which may please everybody, but some that will certainly not please all.

Peter Ludlow

June 9th 1992

Summary

The lecture is about the treaty of Maastricht. It begins, however, with a few observations on the character of the EC political system in general which are indispensable if the significance of the Maastricht Treaty is to be properly appreciated. Three points receive particular attention:

- The fact that the Community is a process rather than a finished entity.
- The political character of the basic, constitutional documents of the Community, including the Maastricht Treaty.
- The essential differences between the Community system and classic federalism on the one hand and intergovernmentalism on the other.

The Maastricht Treaty needs to be assessed in relation to the Community as it has developed, sui generis and in relation to its goal, a Union, which though possessing most if not all the attributes of a federal state, seems bound to be distinctive and different.

After this introduction, the paper discusses ***the Treaty of Maastricht and the EC political system*** under three headings: the functions of the Union, the authority and efficiency of the central institutions and the responsibility of these latter towards the people. The general conclusion under each heading is positive. The Union is considerably stronger in every respect as a result of the Maastricht Treaty.

In the case of the functions of the Union, the discussion of which was at the heart of the intergovernmental conference, it is enough simply to list the most important matters which,

after the Maastricht Treaty, become in one way or another the responsibility of the Union. They include the creation and management of a single currency, the enforcement of sound economic policies, particularly in budgetary matters, the establishment and safeguarding of the single market, the maintenance of equity between regions, the preservation of law and order, the protection of basic rights associated with citizenship of the Union, and the management of a common foreign and security policy including defence. These functions are at the heart of any discussion of sovereignty in relation to 'normal' states.

The manner in which the Union exercises them is of course conditioned by the distinctive institutional structure of the Community. Debate on these matters during the intergovernmental conferences themselves was complicated by a dispute over the structure of the treaty and in particular over the question of 'three pillars' versus 'one pillar'. The paper maintains that this dispute is much less relevant to an assessment of the importance of Maastricht in institutional terms than a number of other provisions of the treaty. The first is the assertion in Article C of the single institutional framework. In contrast to the Single European Act, where there were in reality two pillars, this treaty maintains that whatever the nature of the business in hand, responsibility will always lie with the same institutions. This general principle is considerably reinforced by a number of specific provisions. Five are looked at in some detail: those concerning the European Council, the decision to create a European Central Bank, which is bound to have an impact on the political system as a whole, the measures concerning the Council, which seem certain to enhance both its autonomy vis–à–vis the member states and its efficiency, treatment of the Commission, which despite the rather gloomy assessments of some insiders emerges stronger in many respects, and the strengthening of the Community's capacity to ensure that its common policies are effectively

and properly implemented, particularly as a result of the enhanced roles of the Court of Justice and the Court of Auditors.

Has this strengthening of the central institutions been achieved only at the cost of a further exacerbation of the democratic deficit? The paper argues that although the system post-Maastricht is far from perfect, the responsibility of the central institutions towards those over whom they exercise authority has in fact been enhanced. The argument is advanced under five headings, concerning Parliament itself, the role of the Council as a brake on central power, the principle of subsidiarity, the introduction of a strong regional element into Community politics and, finally, the establishment of European citizenship. In a complex political system such as that of the European Union, in which legitimacy is based both on the vote of the people and approval of the member states, the solution to the problem of responsible government is almost bound to be untidy. It need not, however, be ineffective.

Having demonstrated the principal ways in which the Maastricht Treaty strengthens the European Community's political system, the author turns to questions of implementation. Given the character of the treaties as declarations of intent as much if not more than legally binding texts, the issue of implementation is of critical importance. In discussing it, the paper focuses first on obstacles which might thwart the intentions of the treaty makers. Four questions are examined at some length:

- Non-ratification by one or more member states.
- Failure to grapple with many significant political and administrative problems which will have to be resolved if the new system is to operate effectively.

- The current political malaise of the Community, including in particular the crisis of leadership in several countries that have played a crucial role in the development of Community affairs in the last decade, the special problems of Germany post-unification, and a more general phenomenon best described at post-Maastricht tristese.
- Enlargement, seen not as an opportunity but as a problem, and as such likely to become one.

The author admits the seriousness of these obstacles. Facile optimism is not therefore appropriate. There are, however, strong grounds for believing that despite the major problems that the Community will have to overcome in the next few months and years, it will act upon the promises contained in the Maastricht Treaty and advance significantly towards European Union.

The grounds for optimism include the continuing relevance of the considerations that made the Maastricht Treaty necessary in the first place. These issues will not simply go away. No Union is sustainable without sentiment. The most comforting feature of the emerging European Union is, however, that it is based more on interest and reason than on romanticism.

The second principal ground for optimism is that the treaty has itself certain built in operational provisions. The most important by far are those concerning Monetary Union, which, in general terms, incorporate the best features of previous EC treaties which established firm objectives, with timetables attached and in doing so made the achievement of these targets that much more likely. The author examines the feasibility of both the 1999 'binding commitment' and the first option of 1997 for Monetary Union. He comes to the

conclusion that there is little reason to doubt the ability of a minority of states to create a Monetary Union by 1999, and that there is a high probability that the 1997 goal will actually be the operational one. Three states, France, Denmark and Luxembourg already qualify. Germany and the Netherlands seem certain to do so. Of the others, only Greece seems certain not to make either the 1997 or 1999 target, and it would be highly improbable if less than two met the 1997 option. Even if that were the case, however, the European Community will almost certainly not be EC 12 in 1997 but EC 15, 16 or 17 with as new members, EFTA states who in every case either already meet or seem certain to meet the criteria which had been fixed. If this 1997 goal is indeed the probable one, the achievement of Monetary Union in that year will have major systemic implications for the Community/Union as a whole. As in addition, the Maastricht Treaty equips the Community with operational concepts in the sphere of the common foreign and security policy, and a 1996 deadline for another intergovernmental conference, there is solid ground for believing that the momentum which the Maastricht Treaty was obviously intended to maintain can be sustained over the newt five to ten years.

The paper, which was originally designed for a Swedish audience, concludes with a brief discussion of Enlargement. Incorrectly handled, the widening of Community membership could indeed pose problems. If, however, it is seen as an opportunity, it can indeed become one. It should result in a strengthening rather than a weakening of the Institutions. During the first phase, involving the EFTA countries, it will also significantly enhance the coffers of the Community as all the prospective EFTA members will be net contributors. Finally, and by no means least, it will hasten the day on which Monetary Union is achieved. The first round of Enlargement negotiations should, however, only be seen as a prelude to the next

phase, which will involve eastern Europe as well. The European Union needs to anchor the new democracies of Central and Eastern Europe firmly in the Community, in much the same way as it did Greece, Portugal and Spain. As a result of Maastricht, and of an Enlargement to include most if not all the member states of EFTA, the Union should be well placed towards the end of this decade to give an altogether new sense to Robert Schuman's vision of 'an organised and vital Europe'.

An appendix has been added on the Danish referendum. The basic thesis, already stated on page 28 of the main paper, that a No by the Danes constitutes a nuisance rather than a disaster is reaffirmed. Properly handled, furthermore, it could become a salutary learning experience for both the Danes and their partners. A precondition of this happening is that the Eleven proceed to ratify. They and the Danish government should not, however, confine themselves to damage limitation. The Danish protest vote has highlighted the singular inability of those responsible for governing Europe through the Community institutions to explain and justify what they are doing to European voters. The Danish debate in the referendum demonstrated the dangers of a senseless slanging match between those who wanted to pretend that nothing very much had happened and therefore that the Danes could safely support the treaty and those who, for their own purposes, implied that still more centralisation was only a matter of time.

The Danish story has in fact confirmed what the opening paragraphs of this lecture suggest, namely that the battle between the so-called federalists and intergovernmentalists is one of the most misleading and dangerous over simplifications imaginable. The European Community must be explained in terms of itself: its purposes, as they have emerged in

response to real rather than imagined challenges, and its institutions which have been moulded according to the realities of a European political system based on mature member states. If the Danes force the elites of western Europe to engage in a major educational campaign of this character, the Union as a whole will be the winner. The Eleven could then with authority return to the Danish government later this year and encourage them to hold a further referendum on the basis of information rather than cant.

If after all the Danes still persisted in their rejection, a political solution would have to be found which allowed the Danes – and possibly other states which are not yet members – to have privileged relations with the emerging European Union without being party to its single institutional framework, which, in Article C, the Maastricht treaty does so much to affirm. The recently agreed EEA treaty becomes in this light more relevant than ever, even though its provisions would have to be extended to accommodate the new reality. A continuing Danish no should furthermore do nothing to halt rapid progress towards Enlargement which, as the final passages of this lecture suggest, must be considered a matter of the highest priority. The Community's deepening will be greatly accelerated through its widening.

The Treaty of Maastricht and The Future of Europe

The Robert Schuman Lecture in Stockholm

8th May 1992

Introduction

This lecture is about the Treaty of Maastricht. Before discussing the treaty itself, however, it is important to make three preliminary points about the European Community in general.

The first is that the Community is and always has been a process rather than a finished entity. The founding fathers did not in 1950 assemble a constitutional convention of the kind that was convened in Philadelphia in 1787. They initiated a process which, it was hoped, would eventually lead to a Federal Europe. Their work required supplementary contributions by others if their long term objective was to be achieved. Hence the succession of treaties that we now have. Even Maastricht is not the end of the road.

The second point is a corollary of the first. The basic documents of the Community are much bulkier than their counterparts in established federal systems. They are also from a legal standpoint much messier. From the 1950's onwards constitutional lawyers have frequently despaired at the untidiness of the texts . In the last few weeks this chorus of complaints has been renewed in relation to the Maastricht Treaty. These criticisms are in many respects justified. In a fundamental sense, however, they miss the point. The EC treaties are of course legal texts and the Community that they have created is a Community of law. They are, however, first and foremost political documents designed to enable the institutions to work out the general objectives that they define in the form of legislation and political decisions, which take account of changes in economic and political realities. We

need and indeed we have outstanding legal commentaries. The explanations and comments of lawyers must, however, constantly be checked against and complemented by political analysis. This lecture is just such an exercise.

The third point concerns the institutions of the European Community. Given what has just been said about the character of the treaties, the importance of the institutions which have been at the centre of developments from 1951 onwards requires little emphasis. Precisely for this reason, however, we need constantly to remind ourselves of the peculiarities of the system, which distinguish it radically from the classic federal systems of the United States, Germany or Switzerland, and from intergovernmental organisations.

To begin with federalism first. As Judge Pescatore emphasised in a notable article published fifteen years ago, the Community's quadripartite system differs fundamentally from the federal system of the United States in at least two respects. In the first place, instead of a clear separation of the executive, the legislature and the judiciary, the Community system links the institutions, and in particular the Commission and the Council, in a partnership that is crucial to the effectiveness of both of them. Secondly, whereas in the US constitution, the federal authorities and the states are clearly differentiated, in Europe they are inextricably intertwined.

The two points are of course closely related. The European Commission has never been and is unlikely to become an autonomous branch of government responsible to a bicameral legislature composed of the Council and the Parliament. Whether we look at policy formulation, or decision or implementation, the European Community system is characterised by a partnership between the Commission and the governments of the member states. When, for example, the Commission prepares policy proposals it pays for representatives of the member states to come to Brussels to work with it. All legislative and major political

decisions are matters for the Council, but the Commission is present and engaged in all the vital discussions that precede the moment of adoption or action. As for implementation, there is no one model. The Commission undoubtedly has some of the attributes of an executive. In many areas, however, the Commission's executive function consists of supervising the administration of Community policies and laws by the member states in what is a radically decentralised system.

The system of government in the EC is thus very complex. It is also, however, rational since it acknowledges and uses the considerable resources of member states for the benefit of the Community as a whole. France is not Pennsylvania, nor the United Kingdom Massachusetts. Federalists who hanker after a purer and more transparent alternative would be well advised to bear in mind the fundamental realities that underlie the present system.

The champions of intergovernmentalism are, however, equally, remote from the system that we have. In a strictly formal sense, of course, the Council is an intergovernmental institution, in that it is made up of ministers of the member states. Juridically, however, and on more and more occasions politically, the Council is as much an autonomous, supranational institution vis–à–vis the member states as the Commission, the Parliament and the Court. The laws of the Community which are acts of the Council have primacy over the laws of every individual member state. Similarly in a surprising number of cases in recent years, the **political** decisions of the Council have not only been much more than the lowest common denominator of agreement amongst those present, but have to an uncomfortable degree bound those who were least happy about them. It is enough to recall only two illustrations: the handling of German unification, in which the Council acting collectively was decidedly more magnanimous and effective than its parts, and the travails of Mrs Thatcher who from 1985 onwards found herself dragged along from one European Council to another in a process in

which she participated but which she decidedly did not control. This last case is also important because it reminds us that the autonomy of the Council is not simply a consequence of the wider use of majority voting. The latter was undoubtedly an important result of the Single European Act. The European Council, however, in which Mrs Thatcher's European career was played out does not, except in very special circumstances resort to voting. Its Conclusions have nevertheless acquired a binding, quasi-legal status which it is very hard for EC politicians to evade or ignore.

So much by way of introduction. For many, perhaps for all in this room, the points that I have made are obvious. As discussion both before and after Maastricht has demonstrated all too well, however, they are easily ignored. The treaty of Maastricht should be judged not in relation to federal models created out of quite different materials in quite different circumstances, still less in relation to intergovernmental associations or organisations however prestigious they may be. It should instead be assessed in relation first to the Community system as it has developed, sui generis, and secondly to the goal, a Union, which, on its own terms and operating in ways appropriate to a Community of diverse, proud and mature nation states presents to its citizens and to the world a political reality comparable in terms of effectiveness if not structure to the great federal states of the western world. If we judge the Maastricht Treaty in these perspectives we can, I would submit, conclude that it represents a major advance towards European Union. We must, however, add a caveat. As with all the EC treaties, whether or not the EC will actually make the progress that the Maastricht Treaty allows for depends not just on the treaty itself but on the political will and environment of those who over the next months and years seek to implement it. The treaties enable, they do not guarantee.

In the rest of the lecture I will look at both points. In the first and longer part I want

to discuss how the Maastricht Treaty consolidates and extends the EC system. In the second section I weigh the probabilities of success.

1. The Treaty of Maastricht and the EC Political System

The argument is best developed under three headings: the functions of the Union, the authority and efficiency of the central institutions and the responsibility of these latter towards those on whose behalf they exercise authority.

1.1. The Functions of the Union

The issue of the ***functions*** of Union was at the heart of the intergovernmental conference. Measured simply in quantative terms, the results are impressive. The old Article 3 of the Treaty of Rome defined the activities of the Community in a series of sub–headings that ran from a to k. The revised article extends from a to t. A qualitative judgement is, however, both more useful and still more impressive. The Maastricht Treaty confers on the Union important responsibilities in relation to all the major functions of a modern sovereign state. Consider the following list:

- The creation and management of a single currency.
- The coordination, supervision and where appropriate enforcement of sound economic policies, particularly in budgetary matters.
- The establishment and safe guarding of a single market based on principles of free and fair competition.

- The maintenance of equity and where necessary the redistribution of wealth between richer and poorer regions.
- The preservation of law and order.
- The acknowledgement and development of the fundamental rights of individual citizens.
- The management of a common external policy covering all areas of foreign and security policy including the framing of a common defence policy which might in time lead to a common defence.

It is true that the nature of the responsibilities of the Union varies from heading to heading. If, however, we compare this list with the agendas set out in the Treaty of Paris, the Treaty of Rome or even the Single European Act, we are obliged to conclude, I believe, that the rather vague objective of an ever close Union, stated in the preamble to the Treaty of Rome, has been transformed by Maastricht into a catalogue of functions worthy of and necessary to a sovereign state.

1.2 The Institutions of the Union

As with all EC treaties, the responsibility for turning aspiration into reality is entrusted to the **institutions**. The provisions regarding them are therefore of critical importance in assessing the treaty's importance. During the intergovernmental conferences themselves, the debate about the institutions was dominated – and obscured – by a dog fight between some of the more prominent custodians of the Community's higher ambitions on the one side and champions of intergovernmentalism on the other. The dispute was focused on the question

of whether the Union should be based on one pillar or three. It was a conflict which in its intensity and abstractness can only be compared with some of the obscurer theological controversies of the early Christian era. The feelings that it aroused still reverberate in the speeches of the principal protagonists. The most regrettable result of this prolonged fight is, however, that it has distracted attention from what is in institutional terms the most important overall achievement of the Maastricht Treaty, namely the assertion in Article C that the Union shall be served by a single institutional framework. The Community has always adopted different procedures to deal with different types of business. Even variable speeds have been common form – witness the EMS, not to mention the transitional regimes agreed with every new member state. The Maastricht Treaty has extended procedural diversity quite significantly. In complete contrast to the Single European Act, however, this treaty maintains that whatever the nature of the business, be it general economic policy, or foreign policy or law and order, and however varied the procedures, responsibility will always lie with the same institutions.

The impact of this general principle is considerably reinforced by a large number of specific provisions. Five categories are worth looking at in some detail.

The first, which covers the European Council, is more a matter of note than anything else, since article D does not in any real sense do more than affirm what has any way been the case for the past fifteen years. It is important, however, for understanding the system as a whole that the special status of this thirteen member body, consisting of heads of state or government and the president of the Commission, is more fully acknowledged. The European Council is the keystone of the Union. As such it has already had and will increasingly have an impact on the way in which member state governments organise themselves at home. Ministers of finance and even foreign ministers may propose: it is only the heads of

government and state, acting collectively, who in an increasing range of business dispose.

The second point involves a much more radical innovation: the decision to create a European Central Bank. The historical significance of this measure can be appreciated if we recall the difficulty which the United States had in bringing itself to take such a step. For Alexander Hamilton a Central Bank was vital to 'cement the Union'. For Thomas Jefferson, it was undesirable precisely because it would constitute a major reinforcement of central authority in the Union. A European Central Bank, which is independent and committed by its constitution to the maintenance of price stability can only be a centralising force in our Union, however important the role of national central bank governors in its General Council may be. As a strong new player in a game that has hitherto been played between four institutions, it is bound furthermore to have an important influence on the system as a whole.

The third point concerns the Council. The Treaty of Maastricht reaffirms and reinforces the role of the Council at the heart of the Community's unique institutional structure. It extends its authority and it enhances both its autonomy and its efficiency. The first point is of course implicit in the extension of the competencies of the Union that has already been commented on. The detailed provisions concerning the Councils role are, however, also worth highlighting, since they provide concrete evidence of the theory and practice of government in the emerging European Union.

The articles concerning economic and monetary policy are predictably the most developed. We have after all passed through at least twenty years of training and reflection in the course of which the appropriate roles of the central institutions and member state governments have been clarified in principle and practice. The system which the Maastricht Treaty sets out is fundamentally different from the scheme foreshadowed in the Community's first major report on economic and monetary union prepared by the Werner Committee over

twenty years ago. In those days, the assumption was still that a functioning Economic and Monetary Union would require not only a powerful and independent central bank, but a well developed European economic government as well. Subsequent studies in the 1970's seemed to confirm this thesis. Thus the McDougall Report of 1977, on the role of public expenditure in European integration, assumed that the central institutions in a functioning federal system would have to dispose of a budget equivalent to at least 7½ if not 10% of GDP. In the course of the last fifteen years, both theory and practice have gone through a Copernican revolution. The Maastricht Treaty bears witness to it. The powerful independent central bank has survived. General economic management is, however, now defined in terms of the establishment of guidelines, coordination, supervision, discretionary redistribution or assistance and, where appropriate, discipline. This means that member state governments have considerable latitude – as long as they observe a number of clearly defined rules of which the most important concern public finance. If they do not, the new treaty confers on the central authority an impressive range of instruments, stretching from peer pressure through public exposure to financial sanctions. There is therefore a considerable concentration of power at the centre but it does not require a 'super executive' to administer it. The functions can be effectively fulfilled by the Council working in partnership with the Commission. As to the redistributive function, the Maastricht Treaty, has not only confirmed the need for it, but has also spelled out in the protocol on Economic and Social Cohesion some novel principles and provisions. As the current Delors II exercise demonstrates, however, we are even so only concerned with 1.35% if GDP by 1997, which is much less than the MacDougall figure for a Federation, and little over half of his lowest 'pre–Federal' figure. Administrative responsibility will lie primarily with the Commission, but this is not 'big government' by any stretch of the imagination.

The provisions regarding the common foreign and security policy point in the same direction. Authority is concentrated once again in the Council, which has considerable flexibility in its choice of instruments to implement joint actions. The system will doubtless 'harden' as common actions become more routine. Neither the words of the treaty nor common sense suggest, however, that the Commission will as a matter of course become the sole executant of foreign policy. With so many talents and so much experience on which to draw in the member states it would be the height of folly to restrict choice to an institution which until recently has had virtually no experience of high policy.

But is this not, it might be asked, confirmation of the thesis that the Treaty of Maastricht has in fact consolidated the intergovernmental method? Experience of how the Council has worked hitherto should suffice to suggest that this is a facile conclusion. Fortunately, however, there are other aspects of the Maastricht Treaty itself which suggest that in the future the unique Community process, which is neither classically federal nor intergovernmental, will be still more effective. Arguably the most important achievement of the Single European Act was its liberation of the Council machinery from excessive control by individual member states. The principal method by which it did this was the extension of majority voting to key areas of Community decision making. The Maastricht treaty continues the reform process by three methods: further extension of majority voting, an explicit emphasis on the autonomous and binding character of Council decisions and, most important of all, the centralisation of decision making in all areas of Community business in the Brussels-based machinery.

There are those who have expressed disappointment that the Maastricht Treaty did not go still further in the extension of majority voting. This regret is understandable. In due course, particularly in an enlarged Community', majority voting will have to be used across

the board and unanimity reserved for exceptional decisions relating to questions of a constitutional character. The new treaty has even so widened the scope of majority voting perceptibly. Council decisions on economic policy, for example will be on the basis of qualified majorities. So too will decisions on visas, transport policy, large areas of social policy and, if the Council itself so decides, the implementation of common decisions on foreign policy and judicial affairs. These changes are important in themselves. They are also important systemically, because experience since 1987 suggests that the behavioural changes which are necessary in areas of Community business subject to majority voting spill over into other areas as well. A further extension of majority voting of the kind that we have in this treaty will therefore affect the operation of the system as a whole.

Majority voting is not, however, the only way in which the autonomy and efficiency of the Council machinery can be enhanced. The necessary changes in the self understanding of those engaged in Council decision making can be induced and reinforced by other methods too. The Maastricht Treaty envisages at least two other approaches. The first, contained in a little noticed amendment to Article 146, is a clear political signal to those who come to Brussels as representatives of national governments that what they do collectively will bind the states that they represent. The old Article 146 read: 'The Council shall consist of representatives of the member states. Each government shall delegate to it one of its members'. The new article reads: 'The Council shall consist of a representative of each member state at ministerial level, **authorised to commit the government of that member state'.**

The other approach to Council reform is also hidden in a small phrase: 'without prejudice to Article 151'. It turns up at three key points in the treaty in which the subjects under discussion are respectively the management of Economic and Monetary Union, foreign

policy and justice and home affairs. It sounds innocent enough, but it has explosive potential. Its importance was underlined in January of this year when the Council decided to reconvene the Personal Representatives who had negotiated the IGC to prepare detailed proposals spelling out its implications. That paper is now virtually ready and assuming it is implemented, it should have a major influence on both the behaviour of the Council and its relations with the member states. What is basically intended by the addition of this phrase is the centralisation of all the preparatory work required to enable the Council to decide in the Committee of Permanent Representatives and in a considerably enlarged and reorganised Council Secretariat. Bodies such as the Political Committee, the Coordination Committee in Judicial Affairs and the Monetary Committee will remain important but will only be able to fulfill their advisory roles if they work with and report effectively to COREPER and the Secretariat. As powerful bureaucratic interests in member state governments are at stake, there may well be some major rearguard actions by the groups most affected. It is, however, encouraging that the efforts of the British, supported briefly by the Portuguese presidency, to force through a much more tepid interpretation of the meaning of these provisions have been thwarted and there is therefore every chance that the new system will be effectively set up over the next nine to twelve months. If it is, and if it works as well as it should, the government of the Union should be endowed with a central instrument of coordination, command and control as effective at Community level as, for example, the Cabinet Office in the UK government system. And that means very effective indeed.

So much for the Council. What of the Commission? The question is an important one because if the tone of some Commission comment on Maastricht is taken seriously, one might be tempted to conclude that the Commission had 'lost'. If, of course, there were those in it who seriously believed that the Commission should in due course inherit the role of the

executive in a classic federal system and that the Maastricht Treaty should have moved them significantly further towards this destiny, the language of defeat may be appropriate. As, however, victory on these terms was never remotely feasible, the supposed defeat is purely imaginary. The fact is that the Commission has emerged with still greater influence and power firstly, because, in general terms, a stronger Council needs a stronger Commission, and secondly, because there are numerous specific provisions which enlarge the role of the Commission.

The first point should by now be obvious enough. The Community is governed by a partnership between member states and the Commission. As the thirteenth, very special member of this government structure, the Commission is indispensable to its efficiency and authority. This general point is reinforced, however, by numerous specific provisions in the new treaty which strengthen the Commission's role. Two examples alone must suffice. The first is the explicit association of the Commission with the Community's growing responsibilities in the fields of justice and home affairs. In the perspective of recent history, this is a distinct step forward. Although the Commission has managed to insert itself in most of the existing work already done in these areas, its presence has been barely tolerated, particularly at the official level, where the serried ranks of permanent officials from national departments of justice or the interior have tended to view Commission representatives as unwelcome and dangerous predators. It will now be there as of right with the power to propose policy in all but criminal matters and customs cooperation.

The other example is even more important. The chapters dealing with economic and monetary policy assign to the Commission a key role in the economic government of the Union. It is the Commission which will be responsible for preparing the broad guidelines of the economic policies of the member states. It will also be a central player in the multilateral

surveillance of member states economic performance. In the area of public finance, it is the Commission which will monitor the development of the budgetary situation and of the stock of government debt in the member states with a view to identifying gross errors. It is the Commission that will have to report on deviant behaviour and recommend appropriate action to deal with it. In the graduated application of Community sanctions against miscreant member states, the recommendations of the Commission should determine the pace and intensity of the disciplinary measures that are applied.

These are only two examples. The Commission has more than enough to busy itself with. Indeed one of the most serious questions that will have to be addressed over the coming months is whether the Commission is capable with its present organisation of performing the tasks that have been or are being heaped upon it.

One final institutional point merits attention. It concerns the strengthening of the Community's capacity to ensure that its common policies are effectively and properly implemented. The institutions most concerned are the Court of Justice in Luxembourg and the Court of Auditors. One example, Article 171, will suffice. In the Treaty of Rome the article reads:

> 'If the Court of Justice finds that a member state has failed to fulfill an obligation under this treaty, the state shall be required to take the necessary measures to comply with the judgement of the Court of Justice'.

But no sanctions were envisaged to ensure that the state concerned did comply. In the new version of Article 171, this defect is repaired: the Court is allowed to impose sanctions in the form of a lump sum or penalty payment.

1.3. Responsibility and Accountability

The Treaty of Maastricht has thus considerably strengthened the central institutions of the Community. Such an assertion is bound, however, to invite a rejoinder that, in doing so, the Community has yet again exacerbated the **democratic deficit**. The argument must be taken seriously. It is, however, much more difficult to answer simply than many of those who make it seem to imply. There are structural features of the quadripartite system which make a straight equation between the strengthening of the European Parliament and the reduction of the democratic deficit facile and superficial. Efforts to make the central institutions more accountable and responsible to those whom they govern must involve several different lines of approach. Fortunately, the treaty of Maastricht develops most if not all of them in some degree. A few observations are all that there is time for.

The first concerns Parliament itself. In discussing Parliament, it is useful to distinguish broadly between two roles: its function in the legislative process and its political responsibilities, which include or ought to include a constant effort to call the executive to account on a day to day basis and, where appropriate, to demand the resignation or dismissal of key actors.

The Community's legislative processes are already far from simple. There are, however, two basic systems, according to the nature of the business under discussion. Under the original procedure, Parliament was consulted, but the Commission and Council were not obliged to incorporate its amendments. Under the cooperation procedure introduced by the Single European Act, the process was extended to include a second reading, and the role of Parliament at both stages significantly enhanced. As a result, over the last few years Parliament has had a higher success rate in ensuring that its amendments are incorporated

than many national legislatures . The new treaty enlarges the role of the Parliament in the legislative process still further, firstly by increasing the types of business that can be taken under the cooperation rather than consultative procedures, and secondly by introducing a codecision procedure which gives Parliament a right of veto on Commission–Council draft legislation in a number of areas of which 1992 related business is by far the most important. Parliament and some of its supporters wanted more. In due course the system probably will and should be tilted still further in Parliament's favour. If one looks at the dynamics of the process of the last few years, however, it is probable that the Maastricht Treaty does enough to maintain the momentum in Parliament's expanding role.

Politically, the story is very different. Parliament has not been an effective watch dog in relation to every day government, particularly in the increasingly important areas of economic policy and foreign policy. Much of the responsibility for this state of affairs rests, however, not in defects in the existing treaties but in Parliament itself. It is a matter of both men and measures. If its committees were more effectively organised, its exploitation of outside advice and internal research more systematic and, by no means least, its endemic absenteeism firmly stamped upon, Parliament could without any more treaty based powers make life a great deal more uncomfortable both for the Commission and, through the presidency, for member state governments. Politically, Parliament's primary problem is Parliament. The Maastricht Treaty, by enhancing the role of the central institutions will highlight the problem and, it is to be hoped, provoke the remedies. These must include, through the party organisations, still more than at institutional level, much closer coordination and cooperation between the European Parliament and national parliaments.

Given the nature of the Community system, however, parliamentary controls over the central government institutions must be reinforced with other checks and balances. One is

already to be found in the quadripartite system itself. The treaty of Maastricht may have enhanced the autonomy of the Council vis-à-vis the member states: it has certainly not excluded the member states from the Community process. On the contrary, by consolidating the position of the Council, it has ensured that Europe's central government will remain sensitive to problems and discontents in the electorate. In a European Union which is based on such a diverse mix of nations, the democratically elected governments of the member states constitute an indispensable brake on an over-mighty centre. A Council that is merely an aggregate of individual member states is highly undesirable: a Council that is unresponsive to member state problems is an impossibility.

To the controls exercised by Parliament and the member states themselves, the new treaty now adds three other checks on the growth of irresponsible power. The first is contained in Article 3B which incorporates, at the express insistence of Chancellor Kohl under strong pressure from the German Länder, a very strong formulation of the principle of subsidiarity. Lawyers may speculate about how this principle can be or will be interpreted in the Court of Justice under procedures outlined in the revised Article 173. The principal significance of the inclusion of subsidiarity in the treaty is, however, political. It gives the clearest possible signal to those responsible for developing and managing the Community that from now on any extension of Community powers must be justified both in terms of general reasonableness and, still more important, in terms of the explicit provisions of the treaty. The contrast between the third sub-paragraph in Article 3B and Article 235 could hardly be more eloquent. Article 235 allows the Council to take appropriate additional measures if it believes that these are necessary to attain one of the objectives of the Community and the treaty has not provided it with the necessary powers to do so. It was under this article that the EMS was introduced in 1978. Article 3B gives a quite different impression. 'Any action by the

Community shall not go beyond what is necessary to achieve the objectives of the treaty'.

The treaty of Maastricht also introduces into the Community polity a new set of players: the regions. Representatives of the regional authorities and more particularly of the German Länder have in recent years been an increasingly conspicuous part of the Brussels scene. Their role is now, under Article 198, acknowledged and extended. A committee of the regions is to be created and the Council or the Commission are obliged to consult it in a number of specific policy areas, including in particular, education, cultural policy, trans–European networks, economic and social cohesion and public health. The committee may also submit views on other matters. Once again, it remains to be seen how the system will actually work out. If, however, one looks at developments in the Community even before Maastricht, and still more at the role played by the German Länder in the intergovernmental conference itself, it seems highly likely that the regional authorities will act as a further check on the growth of excessive power at the centre.

One final point on the enhanced responsibility of the central institutions after Maastricht. It concerns the introduction of European citizenship. The precise provisions are still modest, but they are by no means negligible. They concern rights of residence, voting rights in local and European elections, consular and diplomatic protection outside the Community and the establishment of a Community ombudsman. More important, however, than these useful innovations is the potential for development implicit in the concept itself and explicit in Article F of the treaty which allows the Council 'to strengthen or to add to the rights' currently envisaged. European citizenship is, it need hardly be said, not a substitute for the citizenship of member states, but a complement to it. We will from now on have dual citizenship. As the notion takes root, however, it could and it should enhance and deepen a sense of Community solidarity, and awareness at the level of individual citizens of the

importance of the Community institutions.

I mentioned as I embarked on this first section that it would be much longer than the second part of the lecture. I must apologise if it has been excessively long. It is important, however, to bring out in some detail both how comprehensive the Maastricht Treaty is and how far it promises to consolidate and strengthen the EC system as a whole.. Maastricht may not be the end of the road in our journey towards European Union but it is an important landmark. As with all EC treaties, however, the pace at which we proceed in the direction that it points will depend not just on its provisions, but on political circumstances both inside and outside the Community. It is to these that we must now turn.

2. *Implementing The Treaty: Problems and Prospects*

When congratulated on his White Paper setting out the 1992 programme, Lord Cockfield, the Commissioner responsible, frequently observed that it was all in the Treaty of Rome any way. It had simply not been implemented. Will a similar fate befall the treaty of Maastricht? It is a very large question which if it were to be answered at all adequately would require a separate lecture in itself. I believe that over the next few years the intentions of the new treaty will become reality. It would be quite wrong, however, to ignore a number of very important down side risks.

2.1. *Obstacles on the Way to Union*

I will confine myself to four. The first but probably the least serious risk is that the ratification process will go awry in one or more of the member states. It is possible, but still,

I believe, highly unlikely. Furthermore, even if it happened, the accident would have to occur in a large country for it to have a significant long term effect on the development of the Union. A no by the Danes or the Irish would be regrettable and would cause a considerable nuisance. A no from the Germans or the French would create problems of quite a different order. Fortunately for the Community, the risks seem greater in the first group than the second and even amongst the smaller states the outcome will almost certainly be positive.

The second risk is much more serious. Having willed the ends we may still fail to provide ourselves with the means to achieve them. The new treaty is wide ranging. It still, however, leaves an enormous amount of practical administrative reorganisation to be done if we are to work the new system effectively. Consider the following, rather brief list of matters that will have to be tackled sooner rather than later:

- Practical planning at both European and member state level for the inauguration of a Monetary Union, including a single currency within, quite probably, four and a half years.

- Reorganisation of the Council machinery to ensure that the primacy of COREPER is effective and to enable the all important Council Secretariat to become in new Community business as well as old the hub of a machine that conciliates, coordinates, commands and controls.

- Radical reorganisation of the Commission. The Commission has long required a major overhaul. This is now even more urgent, however, as it has to be equipped to cope with challenges, notably in macroeconomic and monetary affairs, foreign policy

and defence, and judicial and home affairs with which it has hitherto had comparatively little to do.

- The resolution of Parliaments own problems to which I alluded earlier.

- The accommodation of WEU in Brussels and the development of links between it and the European Union, not to mention NATO which is itself bound to face still further pressure for reorganisation.

- The redesigning of the Community's finances not only to meet the immediate challenges of internal cohesion, but also to provide it with a reasonable pool of resources on which to draw in the face of external challenge. One of the most extraordinary features of the whole Delors II debate so far has been that virtually nobody would appear to have questioned the Commission's assumptions on the external side. Do we really believe that by 1997 the Community will be spending 29bn ecu on its own poorer regions, and in particular on Spain, Portugal, Greece and Ireland and only 6bn on the rest of the world including Central and Eastern Europe, the Commonwealth of Independent States, the Middle East and Africa?

The fact that this last point has not attracted more attention only underlines the third major set of problems that could put the implementation of the Maastricht treaty in jeopardy. I refer to the Community's multilayered and very serious political crisis. There are so many sides to this particular phenomenon that it seems arbitrary to concentrate on three. It is however given constraints of times, necessary to do so. The first is the passing of a generation of

political leaders. The circumstances in which they have gone or may go vary greatly from country to country. The fact is, however, that at the all important level of the European Council, a number of European political leaders who worked together on the relaunching of the EC in 1984/85, the achievement of the Single European Act in 1985/86, the successful packaging and marketing of the 1992 programme, the management of a changing relationship with the United States, the integration of a united Germany, the partial pacification of Central and Eastern Europe, the negotiation of the EEA and, by no means least, the launching and completion of the process which produced the Maastricht treaty itself, have already left or soon will leave the political stage. The continuity in political leadership at the highest level in Western Europe during the last ten years has been quite extraordinary. It could not last forever. The management of change will nevertheless not be problem free.

The second element in the political crisis that must be stressed in any post–Maastricht analysis is the situation in Germany. Germany has been at the heart of the Community since the beginning. Its role has never been more important, however, than in the last fifteen years when first under Helmut Schmidt in the launching of the EMS and then under Helmut Kohl it has again and again assumed the leadership of the Community directly or given unstinting support to others ready to do so. Jacques Delors' presidency can never be adequately explained unless the very special relationship between Brussels and Bonn and more particularly between the President and the Chancellor is underlined. In the post–Maastricht era Germany's position seems bound to be still more important. EMU without Germany is virtually inconceivable – yet, the Federal Republic does not at the present juncture qualify. The Community budget too depends heavily on Germany's contributions – but the Germans are understandably and rightly reluctant to add still more to their overburdened public finances. The one encouraging feature is that no major German political leader on any side

of the political spectrum has called into question the basic axiom of German foreign policy since the war, namely that in weakness as in strength Germany's problems and ambitions must be worked out within rather than outside a European framework. The political fundamentals are therefore probably sound. Economically too the situation seems bound to improve over the next year or two. Until, however, it does, Germany's uncharacteristic weakness is undoubtedly going to complicate the management of the European Community's transition towards European Union.

These problems in and with Germany are compounded by the emergence of a phenomenon that is probably best described as post-Maastricht tristesse amongst some of the key personalities in institutions which in the absence of a strong push from Bonn could and should be taking the lead. The phenomenon is not new. A wise French observer, whose European credentials are beyond reproach observed recently that the Community has always had as much to fear from the frustrated ambitions of its idealists as the more overt hostility of the intergovernmentalists. The first three months of the Dutch presidency in the second half of last year provided a colourful confirmation of this thesis. So too, more pertinently perhaps in the present situation, did the behaviour of some EC leaders immediately after the signature of the Single European Act in 1986. It was only when the President of the Commission and his colleagues started to really work the new system that its merits and potential became apparent. The present mood of dejection will probably pass in 1992 as it did in 1986. It is nevertheless a worrisome source of weakness as long as it lasts.

Not the least disturbing aspect of the malaise at the centre of the Community institutions is that it could turn what, as I shall argue at the end of this lecture, should be seen as a major opportunity for the Community, into a further source of trouble and disillusionment. I refer of course to Enlargement. There is no objective reason why the

perfectly legitimate and understandable wishes of EFTA countries and the more advanced Central and Eastern European ex communist states to join the Community should constitute a threat. It goes without saying that as with every enlargement process, changes will have to be made to the institutions. The task is not, however, an impossible one if the Community displays the will and the imagination that is required. The problem is that at the moment we give every indication of preparing almost wilfully to mishandle the question. If we do, it will be our fault. It will also, however, exacerbate the post–Maastricht adjustment process.

2.2 Grounds for Optimism

It would be foolish to underrate the importance of these risks individually or cumulatively. It would also, however, be inappropriate in a Robert Schuman lecture to conclude on a note of gloom. Nor do we need to do so. There are still good reasons for thinking that in spite of everything the Community will move forward on the Maastricht agenda.

Of the objective grounds for confidence two alone can be discussed at any length here: the continuing relevance of the considerations that made the Maastricht Treaty necessary in the first place and, secondly, elements in the treaty itself which have considerable operational force. The first point need not be laboured. We would not have embarked on the Maastricht exercise at all had there not been a remarkably wide consensus within the Community that treaty reform was necessary to cope with problems posed by our own new momentum and external challenge. In this respect, the Maastricht Treaty is quite different from the Treaty of Paris with which Robert Schumans name will always be associated. On May 9th 1950, when Schuman launched his plan he was defying conventional wisdom. A legal commentator described the treaty that emerged as 'contre nature' – contrary to nature. The unnaturalness

of the exercise – and the boldness of Schuman and Monnet in launching it – was only confirmed by the collapse of the two other initiatives that followed shortly afterwards, the European Political Community and the European Defence Community. Forty years on both the Community and the world are very different. The need for a fresh round of intergovernmental negotiations to strengthen the treaties still further was predictable and indeed was predicted well before the events of 1989 in Germany and further East convinced most if not all the Community's political leaders that it was imperative. We may not perform our post–Maastricht tasks as efficiently, elegantly or rapidly as we could or should. The problems with which the Maastricht treaty was intended to cope will not, however, go away and the deficiencies in our efforts will therefore doubtless be exposed. No Union is sustainable without sentiment. The most comforting feature of our emerging Union is, however, that it is based more on interest and reason than on romanticism.

The second point, requires more discussion. There are three features of the Maastricht Treaty which merit attention: the provisions regarding Monetary Union, the articles dealing with a common foreign and security policy and the article which looks forward to another intergovernmental conference in 1996.

Of the three, by far the most important is the first. Sceptics have already likened the commitment to proceed to Monetary Union by 1999 at the latest to the grandiloquent goal of Economic and Monetary Union by 1980 adopted by the European Community twenty years ago. The collapse of the Bretton Woods system, exacerbated by the first oil shock quickly put paid to that particular scheme and, so the argument runs, other, as yet unidentified external shocks may well do the same for the Maastricht pledge. The scepticism is, however, almost certainly misplaced for at least three reasons. In the first place, the commitment in the 1990's is treaty based: the commitment of the 1970's was purely political. Secondly,

between then and now we have had almost twenty years experience of patient and at times painful work together in the Snake and the European Monetary System. Dramatic gestures without adequate planning and practical experience are one thing: legally based undertakings founded on years of ever closer coordination, convergence and integration quite another. Finally, and by no means least, this treaty as distinct from the declaration of intent twenty years ago offers a practical solution to the difficulties that might otherwise arise if a number of member states have not made sufficient progress towards convergence in the economic fundamentals. The solution is simple. In 1997, the Community may proceed if only a simple majority of members are ready. In 1999 it may do so if only a minority are able to go ahead.

If we look at both the criteria for entry and the present condition and probable prospects of member state economies against this background, the 1999 deadline seems certain and, the 1997 option highly probable. The conditions that have to be fulfilled before full Monetary Union can be inaugurated are set out in Article 109J and described in more detail in a protocol attached to the treaty. There are four principal criteria:

- The achievement of a high degree of price stability. The protocol attached to the treaty amplifies this point by laying down that a member state should have a price performance 'that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1.5 percentage points that of, at most, the three best performing members states in terms of price stability'.

- A sustainable government financial position. This is defined both in terms of current budgetary policies and accumulated debt. As far as current deficits are concerned,

they should not exceed three percent of GDP at market prices. Accumulated debt as a proportion of GDP is fixed at sixty percent.

- The observance of the normal fluctuation margins provided for by the ERM for at least two years, without devaluation against any other member state currency.

- Durability of convergence as reflected principally in long term interest rate levels.

If we look at the actual performance and prospects of member states in relation to these criteria, it is already clear that three member states qualify and, barring totally unforeseen circumstances, are likely to do so still in 1996 or 1998: Denmark, France and Luxembourg. The Federal Republic of Germany does not presently satisfy the entry conditions. It seems barely conceivable, however, that it will not do so in 1996 let alone 1998. Theoretically, these four states could in 1999 go ahead on their own. Together they would constitute a Monetary Union of sufficient stability and strength to materially change the balance of power in the international monetary system as a whole. In reality, however, it seems highly unlikely that they will be alone or that either they or the Community will have to wait until 1999. This point can be substantiated if we look first at other members of EC 12 and then at prospective members of EC 15, 16 or 17.

Of the remaining eight members of EC 12, it would be surprising if the Dutch, like the Germans, did not bring their house into order before 1996. They already meet three of the criteria and, under the spur of the challenge constituted by EMU, the government and parliament, which have traditionally been so committed to European unification can be expected to clean up the governments financial position. The prospects of the UK being a

founding member of the new Monetary Union are also high. In economic terms, it is close to satisfying most of the conditions, and the political reservations which prompted the Maastricht 'opt out' protocol are unlikely to survive the threat of a fait accompli by a group of member states however small or large. London's prospects of remaining the leading financial centre in the European time zone would hardly be enhanced if they do.

Of the remaining six members of EC 12, four are relatively well placed, one should never be ruled out and one must be deemed to all intents and purposes a lost cause. The group of four consists of Belgium, Ireland, Portugal and Spain. It would be surprising if all four made the starting line by the end of 1996: it would be even more surprising, however, if one or two did not. In the case of Belgium, the pressures to conform to Community standards are even more urgent than elsewhere. If they do not, the 'Capital of Europe' may be one of the few major cities in Europe in which the ecu is not legal tender.

Italy is in a special category. It has very serious public finance problems. In the case of any other country in the Community, the magnitude of the task facing policy makers would almost certainly prompt the conclusion that the target date cannot be met. Italy is, however, a law unto itself. At every stage in the development of the European Community, external sceptics and internal commentators have expressed serious doubts about Italian ability to keep up with the northern members of the EC club. They did so in relation to the Treaty of Rome. They did so again, even more raucously, when the EMS was launched. Somehow or other, Italian political society has always managed, however, to use the European challenge to bring Italy up to the mark. It is not inconceivable that Italy will surprise everybody once again. The elections of 1992 have given a very clear message. They have furthermore done enough, in practical terms, to plant new faces and new forces in Rome to concentrate the minds of a political establishment bent above all else on self–preservation. 1997 may be a very tough

schedule. 1999 should not, however, in any way be written off as a possibility in Italy's case.

The same alas cannot be said for Greece. Short of a political purge and an economic adjustment process which separately would be highly uncomfortable and together could be devastating, it must be assumed that Greece will have to be treated in the future as in practice it is already as a very special case.

The analysis in the previous paragraphs suggests that even if the Community were to remain a group of twelve, there is a rather strong case for believing that the 1997 date is likelier than the 1999 fall–back position. The prospects for Monetary Union will, however, almost certainly be transformed sometime before 1997 by the first of several enlargements. Austria, Finland and Sweden are already candidates. Norway and Switzerland may well become so in the course of 1992. As all five can be expected to fulfil the EMU criteria, the reason for being relatively confident that Monetary Union will begin in 1997 rather than 1999 is obvious enough. With five or six members of EC 12 already either qualifying or very close to qualification, the addition of the EFTA group will create a comfortable majority in the new club.

The conclusion that Monetary Union is certain by 1999 and highly probable by 1997 is important in itself. It also has important implications for the post–Maastricht prospects of the Community as a whole. A central feature of previous, successful exercises in treaty making has been the injection into the treaties of binding timetables which oblige policy makers to accomplish certain tasks by fixed targets and in doing so pull the Community as a whole along. The 1992 programme in the Single European Act is only the most recent example. With its timetable for Monetary Union, the treaty of Maastricht has now done the same.

The articles dealing with a common foreign and security policy are important for a

number of reasons, not the least being the comprehensiveness of the definition of the policy and in particular the inclusion of defence. Although, however, the ambitions are large, a further virtue of these articles is the emphasis on a gradualist strategy built around the concept of joint actions. Some governments urged a more global approach in the negotiations. The provisions of Maastricht are much more operational. The final objective remains the same, but progress will be made via the selection of specific issues or regional concerns on which all the members of the Community agree they have vital common interests and with regard to which they accept the binding disciplines of joint action. The peculiar virtues of the concept of joint action are essentially three: the target is limited, the instruments are comprehensive, ranging from economic levers to military measures, and, finally, the discipline is binding. Once a joint action is agreed, member states accept that collective decisions commit them all. There is still a great deal of work to be done on the practical implementation of the concept, and in the context of the political malaise which I referred to earlier, we cannot be confident that we shall immediately strike the right formula. Given the world in which we live, however, it would be surprising if the Community did not use this new instrument in the relatively near future. It may not immediately do so successfully but experience will be the best teacher in this sphere as previously within the EMS.

The final point, concerning the 1996 IGC is obvious and can be quickly dealt with. The article in question constitutes in the first instance an admission of the fact that the new treaty still leaves tasks to be completed. It is also, however, a deadline which, in the manner of diplomatic timetables will increasingly concentrate the minds of Community policy makers as it draws nearer, thereby accelerating the completion of the unfinished business of Maastricht itself.

There are therefore good grounds for believing that the Maastricht Treaty will not

remain unimplemented. I want to conclude with a suggestion which to my mind could strengthen these probabilities still further. It concerns enlargement. Enlargement is currently perceived by some near the heart of the Community institutions as an undesirable nuisance. If that is the way it is seen, that is what it may become. There is no need, however, to accept this pessimistic analysis. On the contrary, enlargement can and should be seized as a major opportunity. It goes without saying that there will have to be further changes to our institutions, including in particular new and more flexible voting rules on the Council. It is difficult, however, to understand why precisely those who want the central institutions strengthened should be so fearful in this regard. The last enlargement reinforced the argument in favour of more majority voting: the next one will do the same. It will also help us in more practical ways still. The EFTA countries at the head of the list of candidates are not weak and impoverished but robust and wealthy democracies. They will enrich the club in every sense. I have already mentioned previously that EMU in 1997 is all the more probable if the EFTA countries are already members. There is a public finance angle too. Ideally, enlargement negotiations should be used as an excuse and an occasion to carry out a fundamental review of the basis of Community finance with the aim of spreading the burden of contributions more equably. Even if this highly desirable reform is not carried through, however, the EFTA candidates as potential net contributors to the EC budget can provide an important new source of revenue for an EC budget which, given the challenges in the East, must surely by 1997 be significantly larger than the hotly disputed but rather unambitious figures contained in Delors II.

My argument should of course please those in this country who want to join the Community sooner rather than later. It should be stressed, however, that there is in it a strong link between widening and deepening. It would be fatal for you and for us if the two

concepts were to become separated. Those whom you must convince are those to whom we too must continue to listen most – the deepeners and not the wideners. We need new members to consolidate our own deepening. We need them still more, however, so that together, as a Union composed in the main of very rich member states, we can adapt and extend Robert Schuman's vision of 'an organised and vital Europe, ' built on ' institutions which will give direction to a destiny hence forward shared' to include those on our eastern frontiers who look to us not just for help, but as prospective partners in a European Union which can and should include us all.

Appendix: The Danish Referendum and the Future of the Maastricht Treaty

Since the Stockholm lecture was delivered, the Danes have said no to the Maastricht treaty through a referendum held on June 2nd. As the discussion on page 28 of the main text indicates, the result was not ruled out when I wrote the lecture, though it still seemed at that stage improbable. Now that it has happened, it is legitimate to ask whether it is, as I suggested at the beginning of May it would be, simply a 'nuisance' or a more fundamental blow to the treaty and the prospects of European Union.

The Danish vote is certainly a nuisance. Solving it will require ingenuity and time. As a result, the challenges facing the European Community, particularly in Central and Eastern Europe and the former Soviet Union are likely to be given less priority than they deserve and, in consequence, to become still more difficult to resolve. We needed to deepen in order to widen. We certainly do not need to engage in a self indulgent constitutional wrangle when the world around us calls for constructive help in solving serious and in certain cases desperate problems. The principal losers from a delay in the timetable for European Union will undoubtedly be our neighbours and partners.

Is the Danish vote, however, more than simply a nuisance? The answer is that it could but need not be. On the contrary, properly handled, it could in the end prove a salutary experience not only for the Danes but for the Community as a whole.

The first and most basic question that has to be resolved concerns the willingness and ability of the Eleven to go forward if the Danes persist in their refusal to accept the treaty. The

earliest signs have been encouraging. If the Eleven maintain the position that they agreed at the special meeting of foreign ministers in Oslo on June 4th – no renegotiation of the Maastricht Treaty and ratification by the Eleven as originally planned – there seems little doubt that either the Danes will be asked by their government to reconsider their position, or some legal formula can be devised which will enable the Eleven governments, representing more than 95% of the total Community population, to do what they want to do and the Danes to find a more or less comfortable berth, linked to but not in the Union. The principal responsibility for ensuring that a nuisance does not turn into a disaster must therefore lie with the governments of the Eleven. If they meet this challenge, they will provide further confirmation of the thesis that the day of outright vetoes is over.

The Community must, however, go beyond damage limitation. There are important practical lessons to be learnt in the Danish story by every member state government and the Commission. Two noteworthy features of the Danish confrontation with Maastricht require special emphasis. Firstly, the Danish government's management of the domestic politics of the intergovernmental conferences was in many respects quite exemplary prior to 1992. Secondly, the Danish electorate was arguably better informed about and more focused on the substantive issues involved than is usually the case in a referendum campaign where extraneous questions can so easily creep in to complicate popular decisions.

To begin with the first point. Of the Twelve, no government had been more careful than the Danes' to craft an all party consensus on both substance and tactics in the intergovernmental process. In 1990, during the preliminary discussions about the agenda for the two conferences, the Danish government and its opposition worked together to prepare a coherent

and cohesive position. As a result, the Danish Personal Representative, who was chiefly responsible for conducting the negotiations on his governments behalf, was able to present his colleagues in October 1990 with a thoughtful and constructive paper reflecting the considered opinions of virtually all political groups on most if not all the most questions that seemed likely to arise in the intergovernmental conferences themselves. This all party consensus was maintained throughout 1991 by regular consultations between the government and opposition. When therefore the treaty was agreed and put to the Parliament for approval, an overwhelming majority of parliamentarians supported it.

Was the Danish electorate therefore simply obtuse and confused when it decided to reject such a strongly endorsed recommendation by the political establishment? The answer is undoubtedly no. The opposition to Maastricht was, it is true, very fragmented. Left wing socialists made common cause with right wing nationalists, feminists with blue collar workers. There were also, inevitably, some extraneous issues that emerged to confuse matters, including, for example, the prime minister's involvement in an episode concerning Tamil refugees. It would, however, be totally misleading to dismiss the Danish anti–Maastricht opposition as no more than a motley group of saboteurs. They undoubtedly had many motives, but they shared at least two common concerns which were of fundamental importance: distrust of their political leaders and apprehension about where the EC was headed. The two were closely linked.

The Danish political establishment brought down the temple on its own head by its own self destructive behaviour. Over a period of years rather than months, it has failed to explain to its voters at large what the European Community has always been about. Anybody who has

read the preambles of the treaties of Paris or Rome, not to mention the Single European Act should have been left in no doubt about the fact that the European Community is and always has been concerned with the creation of a new political system as much as if not more than with the forging of a new economy. In Denmark, however, as elsewhere, the political elites have, with a few notable exceptions, either ignored this reality or chosen to misrepresent it to their voters. The present Danish prime minister told his people in the referendum campaign that followed the Single European Act in 1986 that the Union was dead. It is hardly surprising, therefore, that when the same prime minister, six years later asked for their support for a treaty of Union he was somewhat wanting in credibility. His attitude was not, however, atypical. A leading Danish politician who listened to an earlier version of my Stockholm lecture expressed the hope that it would not be published in Denmark before June 2nd. 'Don't tell the children' is bad policy within a family: it is courting disaster in a mature democracy.

The damaging effects of this sustained attempt by the Danish political elite to pretend that the Community is or was intended to be less than a Union, have, paradoxically enough, only been compounded by the misguided rhetoric of those who, for whatever reason, were anxious to move the European Community forward faster and further than it either can or needs to go to achieve its goal. We return in fact to the observation quoted on page 31. The Community has as much to fear from the frustrated ambitions of its idealists as from the more overt hostility of the intergovernmentalists. The former come in many shapes and sizes. The problems that they provoke have been typified in the Maastricht story, however, by the role played by the Commission both in the negotiations themselves and subsequently. This is not the occasion to enter into a detailed discussion of the making of Maastricht. It is enough,

however, to say that at several key moments, the Commission overplayed its hand, and in doing so created an atmosphere of mutual distrust which has endangered the partnership between it and the member states that is at the heart of the Community's unique political system. Three incidents are worth citing: the tabling of its paper on the Common Foreign and Security Policy in February 1991, the submission of its paper on the hierarchy of norms, executive powers and legislative procedures which followed shortly afterwards and, most damagingly of all, the publication before the Dresden meeting of foreign ministers in June 1991 of its memorandum of the structure on the treaty. As I have indicated in the main text of the lecture, and more comprehensively elsewhere,[1] the Commission's powers of leadership, which are real and vital to the Community, can only be exercised effectively if they are founded on a balanced judgement of what the member states in the Council can or cannot take. This normally involves the closest possible cooperation with the presidency and more particulary the Council Secretariat. In all three cases mentioned above, – and in others not singled out – the Commission tried, disastrously, to go it alone. The inevitable rejection of its opinions bred, equally inevitably, frustration and bitterness which flawed the Commission's performance during the rest of 1991 and has been a conspicuous feature of the post–Maastricht tristese mentioned on page 31 of the lecture itself. The Commission has for much of 1992 displayed a curious, but highly dangerous combination of public 'disappointment' with the Maastricht treaty and, in the context of the blossoming debate about Enlargement, indiscreet impatience to demonstrate that a Community of twenty four or more would of necessity be more centralised – or, put another way, more classically federalist – than the ill–begotten Maastricht Union of three pillars. Out of this strange cocktail of pessimism and

[1] e.g. in The New European Community edited by Robert Keohane and Stanley Hoffmann, Westview Press 1991 pages 85–132

ambition emerged a general impression, supported by indiscretions from 'sources close to the president' that Brussels, and more particularly the President of the Commission, was bent on mastery of Europe. Given Jacques Delors' sustained championship of the principle of subsidiarity, the charges were ludicrous. So too, however, were the fantasies of those who provoked them.

To summarise. The outstanding defenders of the Maastricht treaty in Denmark itself Mr Elleman Jensen, the Foreign Minister, Niels Ersbϕll, the Secretary General of the Council of Ministers, and Henning Christophersen, Vice–President of the Commission, found themselves torpedoed by the mealy mouthed contradictions of their supposed allies in Copenhagen who continued to pretend that Maastricht represented a victory for 'intergovernmentalism' against 'federalism', and the Commission in Brussels, which, perhaps involuntarily, conveyed the impression that Maastricht was only the beginning of something that was to be much worse as the future unfolded. It would be easy to lay the blame on journalists and commentators who persist in peddling the totally facile, Manichean picture of a struggle between two camps, 'federalists' and 'intergovernmentalists'. The primary responsibility for the debacle, however, lies fairly and squarely with political leaders in Copenhagen and Brussels who only confirmed this silly oversimplification.

What conclusions are therefore to be drawn from the Danish episode? They are in the final analysis rather simple. The Eleven must obviously hold their ground. If, however, they are to seize the chances offered by the Treaty to build a real Union they and the Commission, not to mention others, must engage in a systematic effort to explain and justify the character and logic of the EC's unique political system, as it has developed over forty years and as it is

confirmed and consolidated in the Maastricht treaty. The no vote in Denmark is highly regrettable. Those who voted negatively offer no alternative vision of Europes future. Neither they nor the rest of Europes voters are, however, irrational or ill-educated. The Danes voted as they did because in the final analysis the EC's leaders have failed to explain the reasonableness and necessity of the venture on which we embarked over forty years ago.

The essential elements in any such campaign to explain and justify the Maastricht treaty are set out in the main text of this lecture. They can be conveniently summarised in programmatic form along the following lines:

- ***The European Community was and remains a necessary response to a large and growing number of policy challenges which individual member states could not and cannot alone resolve.*** The Maastricht treaty itself is not a fantastic flight into the future, but a realistic attempt to come to terms with practical requirements of European economic and political management created by its own momentum and the entirely new circumstances that arose following the collapse of Communism and the end of the Cold War. Hence its significant redefinition of the ***functions*** of the Union, described on page 13.

- ***The European Community's political system which has developed over forty years and which is consolidated by the treaty of Union reflects the realities of a Community based on proud, mature and in most cases long established sovereign states.*** Comparisons with the federal systems, in the United States or elsewhere, or with classic intergovernmental organisations, such as the United Nations, NATO and

the Bretton Woods institutions are misleading. The EC's system is sui generis, depending for its efficiency and authority on the common acceptance by member states of the binding character of laws and decisions formulated by them in partnership with the European Commission. The European Commission is not and is not likely to become an autonomous branch of government responsible to a bicameral legislature composed of the Council and the Parliament. The Council of Ministers was already and, as a result of the Maastricht treaty, will become still more, the core of the Community's governmental system which, in general terms, might be characterised as a government of the member states for the member states by the member states.

- ***There can be no facile solution to the problem of democratic accountability and control given the linkage between the governments of the member states and the Commission in the government of Europe. The Maastricht treaty nevertheless marks a major step forward in ensuring that the European level of government is more responsible and that tendencies towards excessive centralisation are firmly checked.*** This is does through at least five sets of provisions[2] concerning respectively the powers of the European Parliament, the role of the Council which as the institution representing the member states is itself a vital brake on irresponsible behaviour at the centre, the enunciation of the principle of subsidiarity, which put the onus of proof of the need for further centralisation firmly on those who advocate it, the acknowledgement of the role of the regions in the Community's polity and, by no means least, the establishment of the concept of European citizenship. Still more can and should be done at the next intergovernmental conference. Properly implemented,

[2] See pages 23–27

however, Maastricht should help to produce a Union which is more transparent and more responsible to the peoples of Europe than the Community has ever been.

If the Eleven were able to mount and maintain a public debate which clarified rather than obscured the real nature of the treaty of Maastricht, they would then be all the better placed to go back to the Danes in the latter part of this year and ask them whether or not they still wanted to remain outside this Union. In the light of Article C of the treaty which affirms the principle of the single institutional framework, they should leave both their own voters and the Danes and other potential members in no doubt that the Union conceived in the Maastricht Treaty is incompatible with half-membership. Temporary exemptions and special arrangements will remain possible as they always have been in Community history. If the integrity not to mention the efficiency of the institutions are to be maintained, however, all the members of the Union must accept the basic goals and rules. A country is either in or out.

Confronted by a picture of the Community which is at one and at the same time both more uncompromising and less threatening than the one that Danish political leaders and some conspicuous representatives of the European institutions managed to convey during the referendum campaign, it is obviously to be hoped that the Danish electorate could, in a second referendum have second thoughts. It may be, however, that they and others that seem likely in the near future to apply for full membership will conclude that in these circumstances the Union is not for them. To meet this contingency, the Community should also over the next nine months engage in serious preparation of alternative arrangements which ensure the closest possible association between states that do not want to accept the

full responsibilities of membership and the emerging Union. The agreement on the European Economic Area has, in the light of the Danish vote, acquired renewed significance. It is the obvious point of departure for any reflection on alternatives to membership, even if, as it stands, it is not enough.

This insistence on the need for contingency planning is not in any way inconsistent with the final paragraphs of my Stockholm lecture. Enlargement sooner rather than later to include all states not only in EFTA, but also in Central and Eastern Europe, who are willing to accept the political obligations of membership and whose economies can be accommodated to the Community system through generous but reasonable transitional arrangements is still an absolute priority. Plans for widening should proceed pari-passu with the Maastricht programme of deepening. The confused and dispiriting debate about Enlargement in the first few months of 1992 is in fact one of the most obvious causes and symptoms of the current malaise in the Community institutions. The future of the Union can only be assured through policies which encourage both deepening and widening.

Peter Ludlow

9 June 1992