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# INSTITUTIONAL REFORM UNDER THE SINGLE EUROPEAN ACT

Kathryn Good\*

## INTRODUCTION

The Single European Act (Single Act)<sup>1</sup> is a treaty through which the European Community (Community) seeks to achieve European unity.<sup>2</sup> The Single Act entered into force on July 1, 1987.<sup>3</sup> In addition to amending and complementing the three treaties composing the Community,<sup>4</sup> it introduces new treaty provisions regarding European coop-

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1. Single European Act, *opened for signature* Feb. 17, 1986, 25 I.L.M. 503 [hereinafter Single Act].

2. *Id.* art. 1.

3. COMMISSION OF THE EUROPEAN COMMUNITIES, BULL. EUR. COMM. No. 6, point 2.4.5 (1987). All 12 member states had to ratify the Single Act before it could enter into force. *Single European Act: A Milestone on the Road Toward European Union*, 4 Common Mkt. Rep. (CCH) ¶ 10,812, at 11,886 (Sept. 25, 1986). Anti-Community campaigners in both Ireland and Denmark forced a referendum prior to the ratification of the Single Act. Peel, "Single European Act:" *Blueprint for Cooperation*, EUROPE, Nov. 1987, at 27. The Single Act originally was to enter into force on January 1, 1987. *Id.* The requirement that the Irish amend their constitution to permit ratification, however, delayed the entry into force of the Single Act. *See Irish Constituents to Decide on Ratification of Single European Act in Referendum*, 4 Common Mkt. Rep. (CCH) ¶ 10,877, at 12,117-20 (May 7, 1987) (discussing the ruling of the Irish Supreme Court). The Single Act finally entered into force on July 1, 1987, after the Supreme Court of Ireland ruled in favor of the Act. Peel, *supra*, at 27.

4. *See* Single Act, *supra* note 1, art. 1 (stating that the European Community "shall be founded on the treaties establishing the European Coal and Steel Community, the European Economic Community, the European Atomic Energy Community and on the subsequent treaties and acts modifying or supplementing them").

Three separate organizations comprise the European Community: the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (EAEC). *See* Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 140 (creating the ECSC); Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty] (creating the EEC); Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 167 (creating the EAEC). Common institutions manage all three European Communities. DIRECTORATE-GENERAL FOR INFORMATION, COMMUNICATION AND CULTURE, COMMISSION OF THE EUROPEAN COMMUNITIES, THE INSTITUTIONS OF THE EUROPEAN COMMUNITY 3 (1986) [hereinafter INSTITUTIONS OF THE EUROPEAN COMMUNITY] (available at the Delegation of the European Community Library, Washington, D.C.). For the sake of clarity, this article cites to an unofficial compilation of the Community treaties, B. RUDDEN & D. WYATT, BASIC COMMUNITY LAWS (2d ed. 1986), which incorporates all appropriate amendments into each treaty.

eration in the sphere of foreign policy.<sup>5</sup> The Single Act sets forth several means of achieving European unity: the establishment of a large market without internal frontiers by 1992;<sup>6</sup> the involvement of the Community in new fields;<sup>7</sup> the creation of a common policy for scientific and technological development;<sup>8</sup> the development of a unified economic and monetary policy;<sup>9</sup> a strengthening of economic and social cohesion;<sup>10</sup> and the coordination of actions relating to the environment and foreign policy.<sup>11</sup>

The drafters of the Single Act realized that they had to do two things to achieve their ambitious goals of European unity. First, they had to improve the decision-making process to enable the Council of the European Communities (Council) to make and implement decisions more rapidly and effectively.<sup>12</sup> Second, they had to give the directly elected European Parliament (Parliament) increased powers in the leg-

5. See Single Act, *supra* note 1, tit. III (setting forth provisions regarding European cooperation in the sphere of foreign policy).

6. See *id.* arts. 13-19 (supplementing the EEC Treaty with provisions aimed at the establishment of an internal European market by 1992); K. BORCHARDT, EUROPEAN UNIFICATION 31-38 (2d ed. 1986) (describing the interior market that the Community hopes to achieve by 1992). This interior market will allow free circulation of goods, free movement of workers and capital, freedom to provide services, and the right of establishment. *Id.* at 31. To complete the internal market, member states of the European Community will have to dismantle further all trade barriers; harmonize legislation, administrative practices, and taxation; and extend cooperation on monetary policy. *Id.*

7. See Single Act, *supra* note 1, arts. 24, 25 (involving the Community, the areas of research and technological development, and the environment).

8. See *id.* art. 24 (stating that the Community shall aim to strengthen the scientific and technological basis of European industry).

9. See *id.* art. 20 (calling upon EEC member states to cooperate in their economic and monetary policies).

10. See *id.* art. 23 (calling upon the Community to develop and pursue actions leading to more economic and social cohesion).

11. See *id.* art. 25 (calling upon member states to cooperate in issues involving the environment and foreign policy). Annexed to the Single Act is a Final Act listing 20 declarations concerning a range of specific subjects that the Presidency, the Commission, and individual governments made at the Conference of the Representatives of the Governments of Member States convened in Luxembourg on September 9, 1985. *Id.* at 23-26. The majority of these declarations relate to various articles of the EEC Treaty and the Single Act. *Id.* Other subjects these declarations cover include the Court of Justice, the powers of implementation of the Commission, the monetary capacity of the Community, and European political cooperation. *Id.*

12. COMMISSION OF THE EUROPEAN COMMUNITIES, THIRTY YEARS OF COMMUNITY LAW 12 (1983) [hereinafter THIRTY YEARS]; see COMMISSION OF THE EUROPEAN COMMUNITIES, THE SINGLE ACT: A NEW FRONTIER 9 (1987) [hereinafter THE SINGLE ACT: A NEW FRONTIER] (stating that the decision-making process of the Community suffers because the Community often makes tardy and incorrect decisions and is rarely able to implement these decisions effectively); Weiler, *The Genscher-Colombo Draft European Act: The Politics of Indecision*, 6 J. EUR. INTEGRATION 129, 129 (1983) (stating that a series of crises have plagued decision making in the Community).

islative process.<sup>13</sup> The Single Act, therefore, allows the Council to make certain decisions by a qualified majority,<sup>14</sup> rather than by unanimity to speed up the decision-making process.<sup>15</sup> In addition, the Single Act allows Parliament to assume full responsibility as colegislator in the "cooperation" procedure to increase the democratic legitimacy of the Parliament.<sup>16</sup> Consequently, the institutional modifications of the Single Act attempt to render the Community more democratic, more sovereign, and more efficient.<sup>17</sup>

This article examines the modifications in the decision-making procedure of the Community that the Single Act sets forth. Part I describes the "institutional triangle" of the European Community, consisting of the Council, the Commission, and the Parliament (collectively institutions), which is responsible for making Community decisions. Part II discusses the history of the Single Act. Part III describes the modifications to the decision-making process and the institutional powers implemented by the Single Act. Finally, Part IV discusses the impact that the Single Act will have on the institutional structure of the Community.

## I. THE INSTITUTIONS OF THE EUROPEAN COMMUNITY

### A. INTRODUCTION

The institutions of the Community are the Council, the Commission, the Parliament, and the Court of Justice (Court).<sup>18</sup> The institutional structure of the Community, however, differs from the tripartite struc-

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13. Peel, *supra* note 3, at 27. The voter turnout for the direct parliamentary elections has decreased disappointingly from 62% in 1979 to 60% in 1984. Lodge, *The 1984 Direct Elections to the European Parliament: A Profile of the Political Forces*, 8 J. EUR. INTEGRATION 33, 33 (1984) [hereinafter Lodge I]. The drafters of the Single Act hoped that giving increased legislative power to the European Parliament would increase voter confidence and participation in the institution. Interview with Auke Haagsma, Legal Department, Delegation of the Commission of the European Community, in Washington, D.C. (Nov. 17, 1987) [hereinafter Interview].

14. See Single Act, *supra* note 1, art. 148(2) (defining voting by a qualified majority). The Act requires 54 out of a total of 76 votes for the Council to approve a Commission proposal by qualified majority vote. *Id.* The Federal Republic of Germany, France, Italy, and the United Kingdom each have 10 votes; Spain has 8 votes; Belgium, Greece, the Netherlands and Portugal each have 5 votes; Denmark and Ireland each have 3 votes; and Luxembourg has 2 votes. *Id.*

15. Single Act, *supra* note 1, arts. 6-7.

16. *Id.*

17. INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 3.

18. THIRTY YEARS, *supra* note 12, at 17; see Treaty Establishing the European Economic Community, arts. 137-208, reprinted in B. RUDDEN & D. WYATT, *supra* note 4, at 19 [hereinafter EEC Treaty] (discussing the roles of the various Community institutions).

ture of modern democracies because the Community is not a state but a supranational organization composed of twelve member states.<sup>19</sup> Nevertheless, the member states have transferred their own sovereign powers to the Community institutions in a limited and progressive fashion.<sup>20</sup>

The Council, the Commission, and the Parliament together perform a legislative function.<sup>21</sup> The Council plays the greatest role in the decision-making process<sup>22</sup> and is the rough equivalent of a legislative body in a parliamentary democracy.<sup>23</sup> The Commission, which is the executive body of the Community, also plays an important role in the decision-making process.<sup>24</sup> On the other hand, the Parliament, the only body that the citizens of the Community elect directly,<sup>25</sup> participates in

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19. K. BORCHARDT, *THE ABC OF COMMUNITY LAW* 12 (2d ed. 1986) [hereinafter *THE ABC OF COMMUNITY LAW*]. The current members of the Community, or member states, include Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. *Id.* at 6. The Community is different from a nation because it lacks universal competence and the power to create new fields of competence. *Id.* at 12. The Community, however, has more power than an international organization because it has sovereign rights and an autonomous legal system. *Id.*; see also COMMISSION OF THE EUROPEAN COMMUNITIES, *THE EUROPEAN COMMUNITY'S LEGAL SYSTEM* 11 (2d ed. 1984) (stating that the Community is neither an international organization nor an association of states but is instead a sovereign association with a legal system independent of the member states).

The Court of Justice, in *Costa v. ENEL*, stated that the member states have limited their sovereign rights within defined fields and created a body of law that binds their nationals and themselves. *Costa v. ENEL*, 1964 E. Comm. Ct. J. 585, 593.

20. J. DE RUYT, *L'ACTE UNIQUE EUROPÉEN* 134 (1987); see *THE ABC OF COMMUNITY LAW*, *supra* note 19, at 10 (stating that the member states have not transferred full sovereignty to the Community in the areas of defense, diplomacy, education, and culture).

21. THIRTY YEARS, *supra* note 12, at 27; see Treaty Establishing a Single Council and a Single Commission of the European Communities, Apr. 18, 1965, art. 15, reprinted in B. RUDDEN & D. WYATT, *supra* note 4, at 83 [hereinafter *Merger Treaty*] (stating that the Council and the Commission shall decide their method of cooperation by common accord). The Court, however, does not participate in the decision-making process. See EEC Treaty, *supra* note 4, art. 164 (asserting that the function of the Court is to ensure that member states observe the law in their interpretation and application of the EEC Treaty).

22. Cf. EEC Treaty, *supra* note 4, art. 145 (empowering the Council to make decisions).

23. THIRTY YEARS, *supra* note 12, at 27.

24. *Id.*; *THE ABC OF COMMUNITY LAW*, *supra* note 19, at 21.

25. EEC Treaty, *supra* note 4, art. 138(3); Act Concerning the Election of the Representative of the Assembly by Direct Universal Suffrage, Sept. 20, 1976, art. 1, reprinted in B. RUDDEN & D. WYATT, *supra* note 4, at 133. The Community has held direct elections only since 1979. Lodge, *supra* note 13, at 33.

The Parliament has 518 members: 81 each from the Federal Republic of Germany, Italy, the United Kingdom, and France; 60 from Spain; 25 from the Netherlands; 24 each from Belgium, Greece, and Portugal; 16 from Denmark; 15 from Ireland; and 6 from Luxembourg. EEC Treaty, *supra* note 4, art. 138(3).

the legislative process but does not enjoy all of the powers vested in its counterpart in a parliamentary democracy.<sup>26</sup>

In structuring the Community institutions, the drafters of the European Economic Community Treaty (EEC Treaty) sought to establish a balance between the powers of the national governments and those of the Community institutions.<sup>27</sup> Consequently, the Council represents the individual interests of member states,<sup>28</sup> the Parliament represents the citizens of the Community,<sup>29</sup> while the Commission defends the interests of the Community by acting independently of the other Community organs in the performance of its duties.<sup>30</sup> A more detailed discussion of the functions of the individual institutions under the EEC Treaty follows.<sup>31</sup>

## B. THE COUNCIL

The Council is composed of twelve ministers, one from each member

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26. THIRTY YEARS, *supra* note 12, at 29; see van Schendelen, *The European Parliament: Political Influence Is More Than Legal Powers*, 8 J. EUR. INTEGRATION 59, 59-61 (1984) (stating that the Parliament is different from national parliaments in that it lacks the political, constitutional, and decision-making powers essential for effective legislation, budgeting, and exercise of control); see also THE ABC OF COMMUNITY LAW, *supra* note 19, at 23-24 (discussing the differences between the European Parliament and a parliament in a parliamentary democracy). The European Parliament is different from national parliaments because it does not elect a government. *Id.* Instead, the Council and the Commission perform the functions of a government. *Id.* In this sense, the Community is an "underdeveloped democracy." *Id.*

27. E. NOËL, *LES ROUAGES DE L'EUROPE* 35 (1979).

28. *But see* THE ABC OF COMMUNITY LAW, *supra* note 19, at 22 (stating the Council is at the same time also obliged to take into account the objectives of the Community as a whole).

29. See EEC Treaty, *supra* note 4, art. 137 (stating that the European Parliament shall consist of representatives of the citizens of the member states); see also THIRTY YEARS, *supra* note 12, at 28 (noting that members form political rather than national groups, vote on an individual and personal basis, and may accept neither instructions nor a binding mandate from their national government). In 1986, the members of Parliament were divided as follows: 172 Socialists, 119 Christian Democrats in the European People's Party, 63 European Democrats, 46 Communists and Allies, 41 members of the Liberal and Democratic Reformist Group, 34 members of the Group of the European Renewal and Democratic Alliance, 20 members of the Rainbow Group, 16 members of the European Right, and 7 members belonging to no group. INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 6.

30. THIRTY YEARS, *supra* note 12, at 24; see also Merger Treaty, *supra* note 21, art. 10(2) (prohibiting members of the Commission from receiving instructions from national governments or any other body); THE ABC OF COMMUNITY LAW, *supra* note 19, at 21 (instructing the Commission to endeavor constantly to make the interests of the Community prevail).

31. This article focuses only on the powers delegated to the institutions under the EEC Treaty because the modifications of the decision-making process under the Single Act apply only to the EEC Treaty.

state.<sup>32</sup> The Council is responsible for making major policy decisions for the European Community.<sup>33</sup> The EEC Treaty limits the power of the Council, however, because it allows the Council to act solely on proposals from the Commission.<sup>34</sup> The Council can reach its decisions either with a simple majority,<sup>35</sup> a qualified majority,<sup>36</sup> or a unanimous vote.<sup>37</sup>

### C. THE COMMISSION

The Commission consists of seventeen members who are chosen on the grounds of their general competence<sup>38</sup> through a mutual agreement of Community governments.<sup>39</sup> The Commission must include at least one, but not more than two, nationals from each member state.<sup>40</sup> The members of the Commission must achieve a majority vote to effect a decision.<sup>41</sup>

Article 155 of the EEC Treaty delineates the role of the Commission in defending Community interests.<sup>42</sup> The responsibilities of the Com-

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32. INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 5.

33. See EEC Treaty, *supra* note 4, art. 145 (establishing the powers of the Council). Article 145 states that the Council shall coordinate the general economic policies of the member states; possess the power to make decisions; and confer on the Commission the power to implement the rules that the Council adopts. *Id.*; see also THIRTY YEARS, *supra* note 12, at 21 (indicating that the Permanent Representatives Committee (Cor  per) assists the Council in finding solutions and reaching agreements on texts); Merger Treaty, *supra* note 21, art. 4 (stating that a committee composed of permanent representatives from the member states shall prepare the work of the Council and carry out its assignments). The Cor  per acts as a consulting body to the Council and, therefore, the Council is not obligated to adopt its recommendations. THIRTY YEARS, *supra* note 12, at 21.

34. EEC Treaty, *supra* note 4, art. 149; INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 5; see THIRTY YEARS, *supra* note 12, at 26 (noting that with few exceptions the Commission has the right of legislative initiative and that the Council cannot deliberate until the Commission initiates a formal dialogue).

35. See EEC Treaty, *supra* note 4, art. 148 (requiring the Council to act by a majority vote of its members).

36. See *supra* note 14 (discussing article 148(2) of the EEC Treaty, which defines voting by a qualified majority).

37. THIRTY YEARS, *supra* note 12, at 21. Each provision of the EEC Treaty states the type of vote that is required for the various decisions of the Council. Compare EEC Treaty, *supra* note 4, art. 49 (requiring a vote by a qualified majority for decisions regarding freedom of movement of workers) with *id.* art. 235 (requiring a vote by unanimity for decisions regarding attainment of objectives not specifically contemplated by the Treaty).

38. Merger Treaty, *supra* note 21, art. 10(1).

39. *Id.* art. 11.

40. *Id.* art. 10(1). The Commission is presently composed of two British, two French, two Germans, two Italians, two Spanish, and one citizen from each of the other member states. INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 3.

41. Merger Treaty, *supra* note 21, art. 17.

42. *Id.* art. 10(1).

mission include ensuring the correct implementation of both Community treaties and decisions of the Community institutions,<sup>43</sup> as well as proposing to the Council measures that would further the development of Community policies in the areas of agriculture, energy, industry, research, the environment, social and regional problems, external trade, and economic and monetary unity.<sup>44</sup> In addition, the Commission must cooperate with the Council in initiating and shaping legislative measures<sup>45</sup> and implementing policies based on Council decisions or EEC Treaty provisions.<sup>46</sup>

#### D. THE PARLIAMENT

The Parliament<sup>47</sup> is composed of 518 members elected by universal suffrage.<sup>48</sup> The Parliament plays an advisory and supervisory role in the

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43. EEC Treaty, *supra* note 4, art. 155. In its role as watchdog of the treaties, the Commission takes action if a member state fails to respect its obligations under the EEC Treaty. *Id.* arts. 169, 170; *see also id.* arts. 93(3), 102(1) (establishing the investigative powers of the Commission). Moreover, the Commission may impose penalties and bans on private individuals and corporations if they violate Community laws pertaining to unfair competition and transport. *Council Regulation (EEC) No. 17: First Regulation Implementing Articles 85 and 86 of the Treaty*, 13 J.O. COMM. EUR. 205, arts. 2, 3 (1962), translated in COMMISSION OF THE EUROPEAN COMMUNITIES, COMPETITION LAW IN THE EEC AND IN THE ECSC 21 (1986); *see EEC Treaty, supra* note 4, arts. 85-94 (discussing the competition policies of the Community). In addition, the Commission decides whether to invoke the safeguard clauses in the treaties, which call for a temporary waiver of Community rules in certain circumstances, when member states request such invocations. Single Act, *supra* note 1, art. 18 (amending article 100A(4) of the EEC Treaty).

44. *See EEC Treaty, supra* note 4, art. 155 (calling upon the Commission to formulate recommendations or opinions in matters the EEC Treaty addressed). Recommendations of the Commission are not binding. *Id.* art. 189.

45. EEC Treaty, *supra* note 4, art. 155; *see id.* art. 189 (stating that the Council and the Commission shall issue regulations, recommendations, and directives; make decisions; and deliver opinions); *id.* art. 149 (describing the "cooperation" process involved in decision making, in which the Council, the Commission, and the Parliament participate together).

46. EEC Treaty, *supra* note 4, art. 155; *see Single Act, supra* note 1, art. 10 (stating that under the Single Act the Council has the obligation to delegate implementing power to the Commission). The Council, however, may impose requirements with respect to the exercise of this power by the Commission and also may reserve the right to exercise implementing powers itself under certain circumstances. *Id.* Nonetheless, the Single Act gives to the Commission a greater role than to the Council itself in implementing the decisions of the Council. J. DE RUYT, *supra* note 20, at 139; *see id.* (stating that no internal market can exist unless the Council delegates a considerable amount of implementing power to the Commission).

47. *See THE ABC OF COMMUNITY LAW, supra* note 19, at 23 (stating that the European Parliament appears in the Community treaties under the title "the Assembly"); THIRTY YEARS, *supra* note 12, at 29 (explaining that the Assembly rechristened itself "the Parliament" in 1958).

48. INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 6.



Community<sup>49</sup> and lacks the legislative powers of national parliaments.<sup>50</sup> Nonexclusively, the EEC Treaty empowers the Parliament to dismiss the Commission with a two-thirds majority vote;<sup>51</sup> to supervise Commission programs through oral and written questions;<sup>52</sup> to oversee Council programs;<sup>53</sup> to participate with the Commission and the Council in making decisions regarding certain aspects of the Community;<sup>54</sup> and to take part in major decisions on Community expenditures.<sup>55</sup>

## II. HISTORY OF THE SINGLE ACT

### A. THE LUXEMBOURG COMPROMISE

The Community sought European unity several times prior to the passage of the Single Act.<sup>56</sup> The Community failed to attain European unity, however, largely because member states were unwilling to transfer their sovereignty to supranational institutions.<sup>57</sup> This fear of transferring power to the Community dates back to the crisis surrounding the Luxembourg Compromise of 1966.<sup>58</sup>

Until 1965, the Council made all decisions by unanimous vote.<sup>59</sup> On June 30, 1965, however, the Council failed to reach unanimity on an

49. EEC Treaty, *supra* note 4, art. 137.

50. INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 7.

51. EEC Treaty, *supra* note 4, art. 144; INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 7. The Parliament can force the Commission to resign through a vote of no confidence. THE ABC OF COMMUNITY LAW, *supra* note 19, at 24. Because the Parliament has no influence over the new composition of the Commission, however, in theory, member states could reappoint old Commission members. *Id.*

52. EEC Treaty, *supra* note 4, art. 140; *see* THE ABC OF COMMUNITY LAW, *supra* note 19, at 24 (describing the supervisory powers of the Parliament vis-à-vis the Commission). The Commission must report its actions to the Parliament in an annual report. EEC Treaty, *supra* note 4, art. 143; THE ABC OF COMMUNITY LAW, *supra* note 19, at 24.

53. EEC Treaty, *supra* note 4, art. 140.

54. Single Act, *supra* note 1, arts. 6, 7.

55. EEC Treaty, *supra* note 4, art. 203; INSTITUTIONS OF THE EUROPEAN COMMUNITY, *supra* note 4, at 7-8. The Parliament adopts or rejects the draft budget of the Commission and the Council and verifies proper execution of the Community budget. *Id.*; *see* THE ABC OF COMMUNITY LAW, *supra* note 19, at 30 (noting that since 1970, the Parliament has designed the budget with the Council and has had the power to make amendments regarding noncompulsory expenditures that the Council may not oppose under certain conditions).

56. De Zwaan, *The Single European Act: Conclusion of a Unique Document*, 23 COMMON MKT. L. REV. 747, 747 (1986). In October 1972, the European Council announced in Paris that it intended to achieve European unity by 1980. *Id.* At another meeting of the European Council in Paris in December 1974, the heads of state expressed a desire to improve the operative apparatus of the Council as a step toward attaining European unity. THIRTY YEARS, *supra* note 12, at 12.

57. THIRTY YEARS, *supra* note 12, at 11.

58. J. DE RUYT, *supra* note 20, at 116.

59. *Id.*

issue revolving around the common agricultural policy, and France claimed that allowing other member states to outvote it would prejudice its "vital interests."<sup>60</sup> As a result, France refused to participate in Council decisions for seven months.<sup>61</sup> During this time, the Council could not make decisions other than those concerning the day-to-day management of already existing policies.<sup>62</sup>

The Luxembourg Compromise, however, resolved the crisis. Under its terms, Council members were obliged to make every effort to reach a "unanimous agreement" on matters that prejudiced the "vital interests" of one of the member states.<sup>63</sup> The Luxembourg Compromise, however, failed to provide for situations in which member states are unsuccessful in obtaining unanimity.<sup>64</sup> As a result, unanimity became the rule for most Council decisions, including decisions on minor matters not involving national interests.<sup>65</sup> The requirement of unanimity led to the inefficiency and uncertainty that the Single Act attempts to alleviate. The Single Act increases the types of decisions the Council can make by a qualified majority vote.<sup>66</sup>

#### B. IMPACT OF THE LUXEMBOURG COMPROMISE

Voting by a qualified majority in the Council increased gradually between 1966 and 1984.<sup>67</sup> Nonetheless, member states hesitated to instigate actions that would paralyze the Community because of the Community's traumatic experience leading to the Luxembourg Compromise.<sup>68</sup> As a result, the unanimity requirement hindered the ability of the Council to make decisions efficiently throughout the 1970s.<sup>69</sup>

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60. THIRTY YEARS, *supra* note 12, at 5, 22.

61. *Id.* at 5.

62. *Id.*

63. The Luxembourg Accords, Jan. 31, 1966, art. 1, 5 I.L.M. 316, 316; THIRTY YEARS, *supra* note 12, at 5, 22. *But cf.* THE ABC OF COMMUNITY LAW, *supra* note 19, at 24 (stating that the Luxembourg Compromise provides no criteria for determination by the Council whether the "vital interests" of a member state are at stake).

64. See The Luxembourg Accords, *supra* note 63, art. 3 (stating that a divergence of views existed on what course to follow if member states fail to reach a complete agreement).

65. Weiler, *supra* note 12, at 134.

66. *Cf. id.* at 134 n.22 (stating that under the Single Act the member states may not invoke the Luxembourg Compromise if the EEC Treaty specifically calls for a qualified majority vote).

67. J. DE RUYT, *supra* note 20, at 116. Between 1966 and 1974, the Council made between 6 and 10 decisions by qualified majority. *Id.* Between 1974 and 1979, the Council made 35 decisions by qualified majority. *Id.* Between 1980 and 1984, the Council made 90 decisions by qualified majority. *Id.*

68. *Id.* at 13,116.

69. See *Single European Act: A Milestone on the Road Toward European Union*, *supra* note 3, at 11,889 (stating that the large number of decisions prior to the Single

Further, Community activity expanded into areas for which the EEC Treaty failed to define a clear voting policy.<sup>70</sup> This lack of clarity forced the Council to make decisions under articles 100<sup>71</sup> and 235,<sup>72</sup> both of which require unanimity.<sup>73</sup>

Member states thus increasingly became aware of the necessity to establish precise, well-defined legal bases in the EEC Treaty to allow the Council to make more decisions by qualified majority.<sup>74</sup> In addition, with the admission of Greece to the Community in 1981<sup>75</sup> and Spain and Portugal in 1986,<sup>76</sup> the already cumbersome decision-making process risked becoming seriously deadlocked.<sup>77</sup>

### C. NEGOTIATION OF THE SINGLE ACT

The direct election of the Parliament in 1979 began a surge toward European unity that culminated in the implementation of the Single Act.<sup>78</sup> At the instigation of Altiero Spinelli<sup>79</sup> and with the help of the

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Act requiring unanimity constituted a barrier to European unity).

70. J. DE RUYT, *supra* note 20, at 113.

71. See EEC Treaty, *supra* note 4, art. 100 (instructing the Council, when acting unanimously on a proposal from the Commission, to issue directives requiring member states to enact approximations of such provisions in any national laws, regulations, or administrative actions that directly affect the establishment or function of the Common Market).

72. *Id.* art. 235. Article 235 of the EEC Treaty allows the Council to act in areas in which the Treaty fails to provide explicitly for the requisite means of action. *Id.* These areas include research policy, development policy, environment policy, regional policy, and food aid policy. J. DE RUYT, *supra* note 20, at 113.

73. EEC Treaty, *supra* note 4, arts. 100, 235; cf. J. DE RUYT, *supra* note 20, at 113 (noting that the Council adopted most of its directives concerning harmonization of legislation under article 100 of the EEC Treaty and that the obligation of the Council always to obtain a unanimous vote under article 100 created one of the main barriers to achieving an internal market).

74. *Id.* at 114.

75. See Treaty Concerning the Accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, May 28, 1979, reprinted in B. RUDDEN & D. WYATT, *supra* note 4, at 164-65 (admitting Greece to the EEC and the EAEC).

76. See Treaty Concerning the Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community, June 12, 1985, reprinted in B. RUDDEN & D. WYATT, *supra* note 4, at 164-65 (admitting Spain and Portugal to the EEC and the EAEC).

77. Peel, *supra* note 3, at 27.

78. Jacqu , *L'Acte Unique Europ en*, 4 REVUE TRIMESTRIELLE DE DROIT EUROP EN 575, 575 (1986) [hereinafter Jacqu  I]; see THIRTY YEARS, *supra* note 12, at 28 (stating that prior to 1979 the national parliaments of member states designated delegates from among their own members to the EEC Parliament).

79. See Jacqu , *The Draft Treaty Establishing the European Union*, 22 COMMON MKT. L. REV. 19, 21-22 (1985) (contending that Spinelli first introduced the idea of drafting a treaty on European unity). Spinelli later served as the rapporteur of the Committee on Institutional Affairs, which drafted the treaty on European unity. *Id.* at

Crocodile Club,<sup>80</sup> the Parliament accepted a Draft Treaty Establishing the European Union on February 14, 1984.<sup>81</sup> In response to the draft treaty of the Parliament, the European Council,<sup>82</sup> while meeting in Fontainebleau in June 1984, set up an *ad hoc* Committee for Institutional Affairs, the purpose of which was to make suggestions to increase European unity.<sup>83</sup> The efforts of the Committee resulted in the issuance of the Dooge Report in March 1985.<sup>84</sup> The Dooge Report recommended the establishment of an intergovernmental conference to negotiate modifications to existing treaties rather than the adoption of a separate treaty for the implementation of a European Union.<sup>85</sup>

The European Council discussed the recommendations of the Dooge Report at a meeting in Milan in 1985.<sup>86</sup> Shortly thereafter, in accordance with article 236 of the EEC Treaty,<sup>87</sup> the Council convened an intergovernmental conference in Luxembourg to discuss amending the

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22. Spinelli sought to modify the decision-making process of the Community and believed that only a new treaty could achieve a European union. *Id.*

80. See *id.* at 21-22 & n.4 (noting that Spinelli formed a group named the Crocodile Club to discuss European unity).

81. Draft Treaty Establishing the European Union, Feb. 14, 1984, *reprinted in* 27 O.J. EUR. COMM. (No. C 77/33), at 33 (1984); De Zwaan, *supra* note 56, at 747.

82. See THIRTY YEARS, *supra* note 12, at 31 (discussing the role of the European Council). The European Council, which is not to be confused with the Council of Ministers, consists of heads of state and their foreign ministers. *Id.*; see Merger Treaty, *supra* note 21, art. 2 (providing that representatives from each of the member state governments shall comprise the European Council); THIRTY YEARS, *supra* note 12, at 31 (discussing the composition and role of the European Council). This body meets at least three times a year to deal with Community issues and political cooperation. *Id.* at 31.

83. Lodge, *The Single European Act: Towards a New Euro-Dynamism?*, 24 J. COMMON MKT. STUD. 203, 206 (1986). The European Council meeting at Fontainebleau also established a second committee, the Adonnino Committee, to draft title III of the Single Act, which deals with European cooperation. *Id.*

84. Glaesner, *L'Acte Unique Européen*, REVUE DU MARCHE COMMUN, June 1986, at 308.

85. *Id.* In proposing modifications to existing treaties, the intergovernmental conference used its own conclusions, the Community patrimony, the Stuttgart Solemn Declaration on European Unity, and the draft treaty of the European Parliament as guides. De Zwaan, *supra* note 56, at 749.

86. De Zwaan, *supra* note 56, at 749.

87. See EEC Treaty, *supra* note 4, art. 236 (enumerating the steps the institutions must take to amend the EEC Treaty). Article 236 establishes the following steps: (1) the government of a member state or the Commission submits a proposal to the Council; (2) if the Council decides to call an intergovernmental conference after consulting the Parliament and the Commission, the conference shall be convened by the President of the Council for determination by common accord the amendments to be made to the Treaty; (3) the amendments shall enter into force after all member states ratify them. *Id.* To initiate the negotiation of the Single Act within the meaning of article 236, the President of the Council, the government of Luxembourg, submitted a proposal to amend the EEC Treaty. De Zwaan, *supra* note 56, at 750. The proposal obtained a favorable opinion from all three Community institutions. *Id.*

treaties of the European Community.<sup>88</sup> The Council also established two committees, one to work on a revision of the EEC Treaty and the other to draw up a draft of the Treaty on Political Cooperation with a View to a Common External Security Policy.<sup>89</sup> The committees submitted a combined draft treaty<sup>90</sup> at the Luxembourg Conference held on September 9, 1985.<sup>91</sup> At the Luxembourg Conference, all member states agreed to set down both the amendments to the EEC Treaty, the ECSC Treaty, the EAEC Treaty, and the Treaty on Political Cooperation between European Countries in a single text called the Single Act.<sup>92</sup> The Single Act was opened for signature on February 17, 1986, at which time Italy, Greece, and Denmark failed to endorse it.<sup>93</sup> The final phase of the signing ceremony took place on February 28, 1986, when all members signed it.<sup>94</sup>

### III. INSTITUTIONAL REFORMS OF THE SINGLE ACT

#### A. MECHANICS OF THE "COOPERATION" PROCESS

The Single Act significantly modifies the relationship among the different institutions in the Community through the introduction of the process of "cooperation" and the qualified majority vote.<sup>95</sup> Under the

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88. See Glaesner, *supra* note 84, at 308 (stating that although only seven member states initially supported holding an intergovernmental conference, all the member states participated at the Luxembourg Conference).

89. De Zwaan, *supra* note 56, at 751.

90. See Jacqué I, *supra* note 78, at 587 (noting that this draft treaty did not address the question of the Luxembourg Compromise); J. DE RUYT, *supra* note 20, at 117 (explaining that the five member states that had always opposed repealing the Luxembourg Compromise changed their opinions and supported the repeal in 1985 when the Federal Republic of Germany tried to invoke its "vital interest" in a negotiation regarding agricultural prices).

91. Cf. De Zwaan, *supra* note 56, at 752 (indicating that the Parliament played a consultative role at the Luxembourg Conference, but could not join in the decision).

92. Glaesner, *supra* note 84, at 308. The member states incorporated the Treaty on Political Cooperation into the Single Act at the Luxembourg Conference, thereby bringing political cooperation inside the framework of the EEC Treaty and expanding the powers of the Community. Interview, *supra* note 13. Prior to the Single Act, the EEC Treaty focused on economic, but not political, unity. *Id.*

93. De Zwaan, *supra* note 56, at 762.

94. *Id.*

95. See Jacqué I, *supra* note 78, at 590 (asserting that decision making by "cooperation" applies to most situations in which the Council may rule by qualified majority). Instances exist, however, in which the Single Act provides only for a qualified majority vote, thereby excluding the "cooperation" procedure. *Id.* See J. DE RUYT, *supra* note 20, at 126 (arguing that the "cooperation" procedure does not apply to decisions taken by a qualified majority in certain areas). These exceptions include alteration of customs tariffs under article 28; nonapplicability of the EEC Treaty to certain activities under article 55; abolition of restrictions on freedom to provide services under articles 59 and 63; issuance of directives for abolition of restrictions on the movement of capital under

"cooperation" procedure, the Commission makes a proposal and the Parliament gives its opinion on the proposal.<sup>96</sup> Subsequently, the Council adopts a "common position" with respect to the proposal of the Commission.<sup>97</sup> If the Council adopts the proposal of the Commission, it may do so by a qualified majority vote.<sup>98</sup> Conversely, if the Council wishes to modify the proposal, it must do so by unanimous vote.<sup>99</sup>

The Council next communicates its "common position" to the Parliament.<sup>100</sup> The Commission also gives the Parliament its opinion on the "common position" of the Council.<sup>101</sup> If the Parliament does not act within three months, or if it approves the "common position,"<sup>102</sup> the Council must adopt the act in question according to the "common position."<sup>103</sup>

Alternatively, within this same three-month period, the Parliament may still amend or reject the "common position" of the Council.<sup>104</sup> Even if the Parliament chooses to reject the "common position," the Council may adopt it on a "second reading" with a unanimous vote.<sup>105</sup> If the Parliament amends the "common position," however, the Council may not deliberate directly on the amendments.<sup>106</sup> Rather, the Commission serves as a "filter,"<sup>107</sup> reexamining the "common position" of

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article 69; coordination of the exchange policies of member states with respect to the movement of capital under article 70(1); exchange restrictions on the movement of capital under article 75(1); and transportation under article 84. Jacqué I, *supra* note 78, at 590. The "cooperation" procedure also does not apply to the environmental area. *Id.*

96. Single Act, *supra* note 1, art. 7(2)(a).

97. *Id.*; cf. Jacqué I, *supra* note 78, at 591 (noting that the Single Act does not provide the Council with a time frame in which to issue its "common position").

98. Single Act, *supra* note 1, art. 7(2)(a); Jacqué I, *supra* note 78, at 591.

99. Single Act, *supra* note 1, art. 7(2)(c); see also J. DE RUYT, *supra* note 20, at 128 (indicating that the Single Act retains the rule of the EEC Treaty that requires the Council to act unanimously if it amends a proposal of the Commission).

100. Single Act, *supra* note 1, art. 7(2)(b).

101. *Id.*

102. See Jacqué I, *supra* note 78, at 591 (asserting that the Parliament may approve the "common position" by a simple majority because the Single Act specifies no particular voting method).

103. *Id.*

104. Single Act, *supra* note 1, art. 7(2)(c). The Parliament may amend or modify the decisions of the Council by absolute majority. *Id.*

105. *Id.*; see *id.* art. 7(2)(f) (stating that the Council must conduct its "second reading" of the "common position" within three months).

106. Glaesner, *supra* note 84, at 320; see Single Act, *supra* note 1, art. 7(2)(d) (requiring the Commission to reexamine the proposal while taking into account the amendments that the Parliament offers).

107. Interview, *supra* note 13 (explaining that the Council may not debate directly on the amendments offered by the Parliament because the Commission is the only institution that can issue proposals).

the Council along with the proposed amendments of the Parliament<sup>108</sup> and forwarding this reexamined proposal to the Council with the amendments of the Parliament that it rejected.<sup>109</sup> The Council may adopt the reexamined proposal by qualified majority,<sup>110</sup> but it needs a unanimous vote to adopt the amendments of the Parliament that the Commission rejected.<sup>111</sup> If the Council wishes to amend the reexamined proposal of the Commission, it also needs a unanimous vote.<sup>112</sup> In any event, the Single Act sets forth a three-month period within which the Council must act on the Commission's reexamined proposal and the Parliament's amendments.<sup>113</sup> Insofar as the Council has not acted during that time, however, the Commission may alter its proposal at any time.<sup>114</sup>

## B. THE SCOPE OF INSTITUTIONAL REFORMS

The qualified majority vote and the "cooperation" process described in article 7 of the Single Act does not extend to all legislative activity of the Community.<sup>115</sup> For example, the Single Act does not affect decisions made under the ECSC Treaty and the EAEC Treaty.<sup>116</sup>

Article 6 of the Single Act lists the provisions of the EEC Treaty to which the "cooperation" procedure does apply.<sup>117</sup> These provisions include article 7, which focuses on discrimination based on nationality; article 49, which provides for the freedom of movement of workers; and articles 54(2), 56(2), and 57, which authorize the freedom of establishment.<sup>118</sup> The "cooperation" procedure also extends to a large number of new articles that the Single Act added to the EEC Treaty. These new provisions include article 100A<sup>119</sup> and 100B,<sup>120</sup> which discuss the

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108. *But see* Glaesner, *supra* note 84, at 320 (noting that the Commission cannot reexamine its position if the Parliament either approved the "common position" of the Council or rejected it instead of proposing amendments).

109. *Id.*

110. Single Act, *supra* note 1, art. 7(2)(e).

111. *Id.* art. 7(2)(d).

112. *Id.* art. 7(2)(e).

113. *Id.* art. 7(2)(f); *cf.* J. DE RUYT, *supra* note 20, at 132 (stating that the failure of the Council to act on the proposal of the Commission does not permit either the Commission or the Parliament to prevail).

114. Single Act, *supra* note 1, art. 7(3).

115. J. DE RUYT, *supra* note 20, at 127.

116. *Id.*

117. Single Act, *supra* note 1, art. 6(1)-(7).

118. *Id.*

119. *Id.* art. 18; *see* Peel, *supra* note 3, at 28 (asserting that article 100A is the key reform implementing the decision to abolish internal trade barriers and to create an internal market). The Single Act provides for a qualified majority vote in all areas involving the creation of an internal market, with the exception of the harmonization of

approximation and harmonization of laws;<sup>121</sup> article 118A, which addresses improvements in work environments;<sup>122</sup> article 130E, which focuses on implementation of decisions relating to the European Regional Development Fund;<sup>123</sup> and article 130Q(2), which discusses research and technological development.<sup>124</sup>

### C. THE IMPACT OF INSTITUTIONAL REFORMS

Although the amendments to the EEC Treaty incorporated in the Single Act<sup>125</sup> render the decision-making process more complex by adding a "second reading" to article 149, they also make the EEC Treaty more democratic. The "first reading" of the Council under the Single Act remains unaltered from the "first reading" under the unamended EEC Treaty. Instead of ending in a decision, however, the "first reading" in the Single Act ends in the adoption of a "common position" which then goes through a "second reading."<sup>126</sup> By adding this "second reading" the Single Act gives the Parliament more power vis-à-vis the Council without upsetting the subtle balance among the institutions.<sup>127</sup> Prior to the Single Act, the EEC Treaty limited the Parliament to a consultative role in creating Community legislation.<sup>128</sup>

tax laws. *Id.* at 30.

120. Single Act, *supra* note 1, art. 19.

121. See COMMISSION OF THE EUROPEAN COMMUNITIES, *EUROPE WITHOUT FRONTIERS - COMPLETING THE INTERNAL MARKET* 38 (1987) [hereinafter *EUROPE WITHOUT FRONTIERS - COMPLETING THE INTERNAL MARKET*] (stating that the approximation and harmonization of laws involves the adjustment of national legislation to conform to a uniform Community standard). Harmonization of laws eliminates trade barriers and provides for a freer movement of goods, persons, services, and capital. See *id.* at 38-39 (discussing the positive effects of the harmonization of laws by member states). The Single Act also amends the EEC Treaty to note generally that "the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured." Single Act, *supra* note 1, art. 13.

122. Single Act, *supra* note 1, art. 21.

123. *Id.*

124. Single Act, *supra* note 1, art. 24; see also *id.* art. 25 (amending the EEC Treaty to require the Council to define all environmental matters that require decisions by a qualified majority); Glaesner, *supra* note 84, at 320 (stating that the drafters of the Single Act did not want to broaden the powers of Parliament to cover the movement of capital, sea and air navigation, and commercial policies).

125. Glaesner, *supra* note 84, at 320.

126. *Id.*

127. J. DE RUYT, *supra* note 20, at 133.

128. *Id.* at 121. The Single Act increased the consultation powers of the Parliament. *Id.* The Act grants consultation powers to the Parliament in articles 99, 130D, 130Q, and 130S of the EEC Treaty. Single Act, *supra* note 1, arts. 17, 23-25; Jacqué I, *supra* note 78, at 590 n.22. The Single Act also extends the consultation powers of the Parliament to new decisions concerning the Court. Single Act, *supra* note 1, art. 27; J. DE RUYT, *supra* note 20, at 124.



In the same fashion, the Single Act introduces voting by qualified majority in a larger number of areas, which also augments the power of the Commission in relation to the Council.<sup>129</sup> Originally, the EEC Treaty required the Council to make many important decisions by unanimous vote.<sup>130</sup> This requirement made it difficult for the Commission to persuade the Council to adopt its proposals.<sup>131</sup> Because the Single Act allows voting by a qualified majority in many more situations, the Single Act facilitates the acceptance of the proposals of the Commission by the Council.<sup>132</sup>

#### IV. ACHIEVING EUROPEAN UNITY: FORECASTING THE CHANCES OF SUCCESS FOR THE SINGLE ACT

The underlying purpose of the Single Act is to quicken and democratize the decision-making process of the Community, thereby promoting European unity and achieving an entirely internal market by 1992.<sup>133</sup> In addition, through the increased participation of the directly elected Parliament in the legislative process, the drafters of the Single Act sought to encourage public awareness of, and support for, the Community.<sup>134</sup> If the Community citizenry is aware that a directly-elected and influential Parliament is meaningfully engaged in a legislative process

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Articles 8 and 9 of the Single Act also give the power of "co-decision" to the Parliament regarding new memberships in the Community and negotiation of agreements of association. Single Act, *supra* note 1, arts. 8, 9. Article 8 provides that the Council shall act unanimously after consulting the Commission and after receiving the majority consent of the Parliament when considering the admission of a new European state to the Community. *Id.* art. 8. The same process applies in concluding agreements between the Community and a third state. *Id.* art. 9. Prior to the Single Act, the Parliament simply played a consultative role in membership and association agreements. J. DE RUYT, *supra* note 20, at 123.

In September 1987, the Parliament, already exercising this new power of "co-decision" under the Single Act, voted to include the new member states of Spain and Portugal in the association agreements with North Africa. Peel, *supra* note 3, at 30. The Parliament will undoubtedly play a major role in deciding on the application of Turkey for membership to the Community. *Id.* The Parliament is trying to expand even further its "co-decision" powers under article 238 to enable it to participate in the ratification of the General Agreement on Tariffs and Trade. Interview, *supra* note 13.

129. J. DE RUYT, *supra* note 20, at 133.

130. See EUROPE WITHOUT FRONTIERS - COMPLETING THE INTERNAL MARKET, *supra* note 121, at 22-23 (noting that the Single Act replaces the unanimity requirement under the EEC Treaty with decisions by qualified majority in areas relating to the establishment and functioning of the internal market).

131. *Id.* at 23.

132. Jacqué I, *supra* note 78, at 590.

133. *Id.* at 586-87.

134. Cf. *id.* at 587 (stating that the drafters of the Single Act intended the increased participation of the Parliament in the legislative process to increase the democratization of the Community).

that affects their lives, the Community will become more powerful, sovereign, and unified.<sup>135</sup> Despite this result, one leading commentator is skeptical as to whether the institutional modifications of the Single Act will bring about the desired changes.<sup>136</sup> The concerns of this commentator are worthy of discussion.

#### A. BARRIERS TO EUROPEAN UNITY

##### 1. *The "Cooperation" Procedure May Slow Down the Decision-Making Process*

The Community institutions could easily abuse and immobilize the decision-making process that the Single Act establishes in article 7. First, because the Single Act does not provide a time limit within which the Council must issue its "common position," the Council could stall the decision-making process through inaction.<sup>137</sup> Additionally, if a member state asserts that it has a "vital interest" at stake under the Luxembourg Compromise, it could block the ability of the Council to make a decision.<sup>138</sup>

Second, the Parliament could also inhibit the decision-making process. Although the Council adopts a "common position" by qualified majority vote,<sup>139</sup> it must attain unanimity to adopt that "common position" on a "second reading" if the Parliament rejects it.<sup>140</sup> It is unlikely that a member state, if it were in the minority that voted negatively on the first vote of the Council, would change its negative vote on a "second reading" if it had the support of the Parliament.<sup>141</sup> Member states could also change their position on the "common position" after the Parliament rejects it and further hinder its adoption.<sup>142</sup> The power of rejection of the Parliament, therefore, is significant. If the Parliament uses this power in an irresponsible manner to pursue parochial interests, it could slow down the decision-making process considerably.<sup>143</sup>

Third, the Commission also has the power to block the decision-making process if it fails to respect the time limits that the Single Act

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135. *Id.* at 586.

136. See J. DE RUYT, *supra* note 20, at 133-37 (describing potential shortcomings of the "cooperation" procedure).

137. Jacqué I, *supra* note 78, at 591.

138. *Id.*

139. Single Act, *supra* note 1, art. 7(2)(a).

140. *Id.* art. 7(2)(c).

141. J. DE RUYT, *supra* note 20, at 137.

142. *Id.*

143. *Id.*

imposes.<sup>144</sup> Although the Single Act requires the Commission to re-examine the amendments the Parliament proposes within a one-month period,<sup>145</sup> it fails to establish sanctions against the Commission for non-compliance with that deadline.<sup>146</sup> Moreover, the Council may only make a "second reading" after the Commission has acted on the "common position."<sup>147</sup> Consequently, dilatory tactics by the Commission could potentially block the "second reading" of the Council.

## 2. *The "Cooperation" Procedure Could Politicize the Decision-Making Process*

The introduction of a "second reading" and the augmentation of the role of the Parliament in the Single Act could seriously "politicize" the decision-making process.<sup>148</sup> Because Parliament uses a majority vote system, coalitions of interests will form.<sup>149</sup> Furthermore, these interest groups will undoubtedly seek to influence the other institutions.<sup>150</sup> First, it could conceivably pressure the member states of the Council to invoke "vital interests." Second, because the Parliament controls the budget, it could also coerce the Commission to adopt its proposed amendments.<sup>151</sup> Finally, the Parliament has the power to force the resignation of the Commission.<sup>152</sup>

The increased situations in which voting by qualified majority can occur under the Single Act could also result in the creation of interest groups within the Council.<sup>153</sup> For example, Greece, Portugal, and Spain could block a vote by qualified majority by combining their twenty-one votes.<sup>154</sup> This type of pressure could create a politicized atmosphere in which the institutions and member states exchange favors.<sup>155</sup>

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144. Glaesner, *supra* note 84, at 321.

145. Single Act, *supra* note 1, art. 7(2)(d).

146. *But see* Glaesner, *supra* note 84, at 321 (stating that the Community could interpret article 144 or article 175 of the EEC Treaty to provide for sanctions against the Commission).

147. Single Act, *supra* note 1, art. 7(2)(d).

148. J. DE RUYT, *supra* note 20, at 138.

149. Jacqué I, *supra* note 78, at 593.

150. *Id.*

151. *See supra* note 55 and accompanying text (describing the power of the Parliament with regard to the budget); Interview, *supra* note 13 (stating that, in theory, the Parliament can censure the Council through its budgetary powers, but that to date, the Parliament has never exercised this power).

152. EEC Treaty, *supra* note 4, art. 144; J. DE RUYT, *supra* note 20, at 138.

153. Glaesner, *supra* note 84, at 312.

154. *Id.*

155. van Schendelen, *supra* note 26, at 67. Members of Parliament have at their disposal many networks and contacts that they can use to achieve political ends. *Id.*; *see id.* at 68 (discussing the reputation of the Parliament for exerting influence over

Such a politicized atmosphere could jeopardize the independence of the Commission,<sup>156</sup> make it difficult for the Council and the Commission to carry out their mandates, and render the decision-making process less effective. Under the "cooperation" procedure, the institutions may find that instead of acting within their designated roles, they are granting reciprocal favors to avoid deadlocks and difficulties.<sup>157</sup>

The Commission may assume the role of a mediator if the decision-making process becomes politicized.<sup>158</sup> If the Single Act is to succeed, the Commission must take this role seriously and always remain committed to acting in the best interests of the Community. For example, when adopting the re-examined proposal, the Commission should be hesitant to embrace amendments offered by the Parliament that are unpopular with the Council. Behaving otherwise could immobilize the decision-making process: if the Council rejects the re-examined position of the Commission, it must obtain a unanimous vote to adopt any other position.<sup>159</sup> Achieving this unanimity may prove difficult or impossible. If the Commission rejects certain parliamentary amendments, however, the Parliament could become retaliatory or uncooperative.

### 3. *The Single Act Fails to Resolve the Question of the Luxembourg Compromise*

Although the Luxembourg Compromise does not have a legal basis, with the implementation of the Single Act, it is uncertain whether a member state can still invoke a "vital interest" to block the decision-making process.<sup>160</sup> One commentator has argued that the "cooperation" process of the Single Act overturns the Luxembourg Compromise.<sup>161</sup> No provision in the Single Act, however, explicitly prohibits a member state from invoking a "vital interest."<sup>162</sup> Voting by qualified

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decisions).

156. See *supra* note 30 and accompanying text (noting that the Commission must act independently and in the best interest of the Community).

157. van Schendelen, *supra* note 26, at 71.

158. Peel, *supra* note 3, at 30.

159. See Single Act, *supra* note 1, arts. 7(1), 7(2)(e) (requiring a unanimous vote in the Council to amend the re-examined proposal of the Commission).

As long as the Council has not acted, the Commission may modify its position and propose a compromise capable of reuniting a qualified majority, although at the price of sacrificing the amendments of the Parliament. *Id.* art. 7(3). The Commission, however, in exercising this prerogative, must avoid censuring the Parliament and depriving it of its power. *Id.*

160. Jacqué I, *supra* note 78, at 588.

161. *Id.*

162. But see *id.* at 599 (arguing that the addition of the safeguard clause to the Single Act by the drafters indicates their rejection of the Luxembourg Compromise

majority, therefore, may become very inefficient if a member state asserts an essential national interest and thereby prevents the Council from making decisions.

#### 4. *Member States May Circumvent the Requirement of a Qualified Majority Vote in Certain Decisions*

The Single Act introduces legal bases for making decisions in areas that article 235 of the EEC Treaty traditionally addressed.<sup>163</sup> The Single Act implements the procedures of "cooperation" and vote by a qualified majority for most of these new areas.<sup>164</sup> To circumvent the requirement of a qualified majority vote, however, member states reluctant to adopt a position and the Council may rely on other articles of the EEC Treaty that mandate a unanimous vote. Conversely, if the EEC Treaty requires unanimity in a certain area, the Commission and the Parliament may try to make decisions under the articles of the EEC Treaty that permit voting by a qualified majority. In such situations, the Court would need to decide whether the legal bases that the Council is proposing are acceptable.<sup>165</sup> For example, article 99 of the Single Act requires unanimous decisions in the area of harmonization of tax laws.<sup>166</sup> The Institutional Committee of the Parliament, however, in seeking to expand the Single Act to the broadest extent possible, argues that the institutions should make tax decisions under article 100A, which calls for a qualified majority vote on issues involving the harmonization of laws.<sup>167</sup>

This type of expansion contradicts the clear language of both the Single Act and the EEC Treaty and alters the role of the Commission in the decision-making process.<sup>168</sup> Such confusion regarding the correct legal basis for Council decisions will significantly impair the decision-

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because the safeguard provisions would be unnecessary if the Luxembourg Compromise were still in effect). See generally *infra* notes 182-85 and accompanying text (discussing safeguard provisions).

163. De Zwaan, *supra* note 56, at 763-64. Examples of areas covered by article 235 are technology and the environment. *Id.*; see *supra* note 72-73 and accompanying text (describing article 235 and noting that it requires unanimity).

164. See Single Act, *supra* note 1, arts. 21, 24 (providing that the "cooperation" procedure shall apply to decisions concerning research, technological development, and social policy).

165. See EEC Treaty, *supra* note 4, art. 164 (stating that the Court of Justice ensures the correct legal interpretation of the EEC Treaty).

166. Single Act, *supra* note 1, art. 17.

167. *Id.* art. 18; Interview, *supra* note 13.

168. See *supra* notes 127-32 and accompanying text (describing how the role of the Commission in the decision-making process varies depending on whether a decision is taken by qualified majority or by unanimity).

making process.<sup>169</sup>

In *Commission of the European Communities v. Council of the European Communities*<sup>170</sup> the Court admonished the Council for circumventing the requirement of making certain decisions by qualified majority. The Council, acting on a Commission proposal, adopted regulations that suspended customs duties, either completely or subject to Community quotas or ceilings, on a number of products from developing countries.<sup>171</sup> The regulations that the Council adopted, however, differed in substance from those proposed by the Commission.<sup>172</sup> In addition, the Council failed to cite a legal basis for issuing these suspensions.<sup>173</sup>

The Commission claimed that article 113 of the EEC Treaty, which requires a qualified majority vote,<sup>174</sup> was the only possible legal basis for adopting the requirements.<sup>175</sup> The Council, however, argued that article 113 was not the sole legal basis for the regulations<sup>176</sup> and that it could also rely on article 235, which requires a unanimous vote.<sup>177</sup> The Commission responded that recourse to article 235 was unfair because the Council had a greater possibility of accepting the proposals of the Commission under article 113.<sup>178</sup> The Commission, therefore, asked the Court to cancel the regulations, claiming that the incorrect legal basis for the action of the Council significantly undermined the powers of the

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169. J. DE RUYT, *supra* note 20, at 134.

170. *Commission of the European Communities v. Council of the European Communities*, Case No. 45/86 Common Mkt. Rep. (CCH) ¶ 14,421 (Mar. 26, 1987).

171. Opinion of the Advocate General, Case No. 45/86, at ¶ 3 (Jan. 29, 1987) [hereinafter Opinion] (available at the European Community Delegation Library, Washington, D.C.).

172. *Id.* ¶13.

173. *Commission of the European Communities v. Council of the European Communities*, Case No. 45/86, 4 Common Mkt. Rep. (CCH) ¶ 14,421, at 17,943 (Mar. 26, 1987). The preamble of the regulations contains only the phrase "having regard to the Treaty establishing the European Economic Community." Opinion, *supra* note 171, ¶ 11; see EEC Treaty, *supra* note 4, art. 190 (requiring the Council and the Commission to state the basis of their regulations).

174. See EEC Treaty, *supra* note 4, art. 113 (covering common commercial policies and tariffs).

175. *Commission of the European Communities v. Council of the European Communities*, Case No. 45/86, 4 Common Mkt. Rep. (CCH) ¶ 14,421, at 17,941 (Mar. 26, 1987).

176. *Id.* at 17,944. The Council believed that it could not rely solely on article 113 but that it also needed recourse to article 235 because the decision involved development policy as well as commercial policy. *Id.*

177. EEC Treaty, *supra* note 4, art. 235; see *supra* notes 67, 154 and accompanying text (describing the provisions contained in article 235); see Opinion, *supra* note 171, ¶ 22 (explaining that when the Council adopted the wording "having regard to the Treaty" it was referring to the provisions of articles 113 and 235 of the EEC Treaty).

178. *Commission of the European Communities v. Council of the European Communities*, Case No. 45/86, 4 Common Mkt. Rep. (CCH) ¶ 14,421, at 17,944 (Mar. 26, 1987).

Commission.<sup>179</sup>

The Court concluded that the Council had substantially violated the EEC Treaty. In reaching this decision, the Court noted that the Council could resort to article 235 only if other provisions of the Treaty did not confer the necessary competence to make a decision.<sup>180</sup> The Court would not excuse the Council from using article 113 to make a decision simply because the regulation only tangentially involved development policy.<sup>181</sup>

*5. Member States May Rely on the Safeguard Provisions of the Single Act to Circumvent Decisions Taken by a Qualified Majority Vote*

The member states may rely too heavily on the safeguard provisions of the Single Act<sup>182</sup> and thereby circumvent the implementation of Council decisions taken by qualified majority vote. These provisions, which are set forth in article 18, provide that member states can receive an exemption from implementing a decision made by a qualified majority under article 100A of the EEC Treaty.<sup>183</sup> To obtain this objective, member states must demonstrate "major needs"<sup>184</sup> or prove that their divergent national legislation is not a discriminatory measure or a disguised restriction on trade.<sup>185</sup>

Denmark has already used these safeguard provisions to maintain higher standards for environmental protection.<sup>186</sup> Prior to the Single Act, Denmark blocked a proposal to implement common standards for exhaust fumes in the Community, claiming that the proposed standards were too lax.<sup>187</sup> Denmark relied on the rule of unanimity under article 100A of the EEC Treaty to defeat the proposal. The Single Act, however, amends the EEC Treaty to permit the Council to make these

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179. *Id.*

180. *Id.*

181. *Id.* at 17,944-45.

182. See Single Act, *supra* note 1, art. 18 (setting forth the safeguard provisions that allow the member states to take provisional measures).

183. *Id.*

184. See EEC Treaty, *supra* note 4, art. 36 (listing "major needs" such as public morality, public policy, public security, and the protection of human life and health); see also Glaesner, *supra* note 84, at 312 (noting that the Single Act contains safeguard provisions because the drafters recognized that in establishing the internal market, some of the adopted measures would have serious consequences for less developed countries); Peel, *supra* note 3, at 30 (stating that Denmark, Ireland, and the United Kingdom insisted on the addition of safeguard provisions to the Single Act to protect national laws on health, safety, and environmental and consumer protection).

185. EEC Treaty, *supra* note 4, art. 36.

186. Peel, *supra* note 3, at 30.

187. *Id.*

types of decisions by qualified majority.<sup>188</sup> Thus, after the Community enacted the Single Act, Denmark allowed the other member states to outvote it.<sup>189</sup> Denmark, nevertheless, indicated that it planned to apply stricter standards than other Community member states.<sup>190</sup> In the future, the Court will have to confront the task of deciding whether the newly adopted article 100A(4) embodied in article 18 of the Single Act permits member states to engage in independent activity or whether such activity constitutes a barrier to a free market.<sup>191</sup>

## CONCLUSION

Although it is as yet uncertain whether the institutional modifications of the Single Act will make the decision-making process of the Community more efficient or democratic, the final evaluation is pessimistic. The goals that the institutional changes of the Single Act endeavor to achieve, democracy and efficiency, conflict. The Single Act, therefore, will not help Europe to achieve a unified internal market by 1992.

Although a qualified majority vote may enhance the decision-making process, the Single Act sacrifices efficiency by instituting the cumbersome "second reading" as part of the "cooperation" process. Further, European citizens may not fully appreciate the drafters' efforts to make the Parliament more democratic. Low election turnouts<sup>192</sup> manifest the citizens' relative indifference to the Parliament. Moreover, the "cooperation" process is unlikely to make Europeans consider the members of Parliament as their true representatives in matters of great significance.<sup>193</sup> Rather, the increased participation of the Parliament in decision-making is likely to have a negative effect, resulting in the pursuit of more parochial interests by parliamentarians, an excessive politicization of the process, and an increased difficulty in reaching consensus.

In addition, the Single Act is weak because it fails to abolish irrefutably the Luxembourg Compromise, to provide for appropriate deadlines and penalties in certain areas of the "cooperation" process, and to limit the use of safeguard provisions. Without concessions in these areas, however, the member states would not have ratified the Single Act.

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188. Single Act, *supra* note 1, art. 18.

189. Peel, *supra* note 3, at 30.

190. *Id.*

191. *Id.*

192. See Lodge I, *supra* note 13, at 33 (discussing the low voter turnout for the elections of the Parliament).

193. See *id.* (stating that upon his election to the Parliament, Pierre Pflimlin commented on the Europeans' "abysses of ignorance" over the Parliament).



Because the institutions can do little to correct these weaknesses now, it is crucial that they strive to avoid deadlock, give high priority to Community interests, and avoid resorting to the loopholes of the Single Act.

For example, member states should avoid invoking "vital interests" and the Council should not make decisions under legal bases not explicitly stated in the EEC Treaty as amended by the Single Act. The Council and the Commission should act within a reasonable amount of time, even if the Single Act does not manifestly embody a deadline. Before engaging in a "second reading" or taking a "common position," each institution should consider the reaction of the other institutions. If one institution deliberately makes an objectionable decision, the decision-making process may become immobilized. Although the Single Act has neither the clarity nor the internal policing mechanisms necessary to make the decision-making process run smoothly, the institutions can avoid deadlock through the exercise of discipline and good faith.