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EDITORIAL COMMENTS

The Single European Act

After six months of negotiations the Single European Act was signed by nine Member States in Luxembourg on 17 February 1986, and by the remaining three on 28 February. It should enter into force on 1 January 1987.

The Single Act is not the first text to amend the EEC Treaty. (Apart from the new provisions regarding the Court of Justice, the amendments relate to the EEC Treaty only.) Previous amendments include the Merger Treaty, the two budget Treaties and the Treaty on the withdrawal of Greenland. However, none of these was as ambitious and comprehensive as the Single Act – or so fraught with dangers.

The Single Act does more than amend the existing Treaties; it also provides for the first time an agreed legal framework for European foreign policy cooperation. One of the primary concerns of the European Parliament and the Commission was that the two should be incorporated in a single text. The fact that this was achieved is undoubtedly one of the more positive aspects of the new Act. Negotations on the foreign policy side were far more straightforward than those on amendments to the Treaties. The explanation is simple. Essentially the provisions on foreign policy cooperation do no more than consolidate existing texts and practice. Moreover, they may be classed as conventional international law, the interpretation of which is a matter for the signatories. They do not, therefore, have the particular binding force of Community law. Although the negotations on amendments to the Treaties were difficult, progress was remarkably rapid by Brussels standards. Discussion centred on two purely institutional issues – greater efficiency and more democracy. Greater efficiency meant a twofold reform of the Council: first, the unanimity requirement had to be

replaced by marjority decision-making; second, the Council had to be relieved of some of the burden of implementing its own decisions of principle by increased delegation to the Commission. More democracy meant a larger role for the European Parliament in the Community's legislative process.

The Intergovernmental Conference, convened in July 1985 to negotiate amendments to the EEC Treaty, could have tackled these two fundamental institutional problems head-on. But had it done so, it would very probably have foundered in the face of opposition from the three dissenting parties in Milan (Denmark, Greece and Britain). Instead, the Conference opted for an indirect route proposed by the Luxembourg Presidency. It agreed to begin by defining new tasks for the Community and deciding on any new instruments that might be needed to perform them, leaving decision-making in the Council to the last. In this way changes to the unanimity rule became the inevitable consequence of practical decisions on new objectives rather than an abstract, purely institutional issue.

In point of fact, the new objectives and tasks (internal market, economic and monetary cooperation, social policy, economic and social cohesion, research and technological development, environment) are not really new. Again, what has been done here is to consolidate existing responsibilities rather than to grant further powers.

Far more significant than any increase in responsibilities is the easing of decision-making within the Council. Take the internal market, for example. The Commission estimates that, following the latest Treaty amendments, some two-thirds of the legislation needed to complete the internal market (referred to as "an area without internal frontiers" in the Single Act) can be adopted by a qualified majority.

The Single Act has also shifted the balance as regards the implementation of Council decisions. This task will be increasingly delegated to the Commission.

The weakest aspect of the Single Act is undoubtedly the section dealing with the European Parliament. It is true that Parliament is given genuine powers of co-decision in relation to any future accession or association negotiations; but these are relatively rare, exceptional events. Where qualified majority voting has replaced unanimity, the

Act introduces a cooperation procedure in relation to Parliament. This institutionalizes the second reading – first by Parliament and then, after the Commission has re-examined its proposals, by the Council. The effects are likely to be political rather than legal, especially if, under pressure from Parliament, the Commission pays more heed to its *desiderata* than it has in the past.

A welcome innovation – all the more so because no mention was made of the Court of Justice in Milan or in the draft amendments presented by the Luxembourg Presidency – is that the Single Act does something for the Court by paving the way for a new court of first instance.

How, then, are we to judge the latest round of amendments? Measured against Parliament's draft Treaty, the results are disappointingly meagre. They also fall short of expectations as far as the Commission and some of the Member States are concerned. But they reflect the limits of what was possible at the turn of the year.

The significance of the Single Act becomes clearer if we consider the initiatives which led up to it. These include: (a) Parliament's draft Treaty; (b) the "Genscher-Colombo initiative" which – although originally conceived as a Treaty of sorts – was rapidly reduced to little more than a political declaration; and (c) – much more directly – the Dooge Committee's March 1985 report, the institutional section of which was adopted subject to reservations by the British, Danish and Greek members.

The same reservations were expressed in a far more dramatic manner by the British, Danish and Greek Prime Ministers at the Milan European Council in July 1985. It hardly appeared likely, given the situation at the time, that agreement would be reached on amendments to the EEC Treaty. On the contrary, there was a danger that an agreement limited to foreign policy cooperation would emerge as a sop to the considerable public expectations which had been aroused in some Member States. This was, in fact, all the more probable, firstly, because it was something on which a consensus would be easier to find and, secondly, because such an agreement would not necessarily require the assent of all the Member States. What would have been the impact of an operation of that kind? Would it not have plunged the Community into a full-

scale politico-institutional crisis?

We have not raised these points to show the Single Act in a better light than it deserves. We believe, however, that it is important to place it in the historical context from which it arose. Viewed in that light, it becomes clear that, thanks to the Act, with its substantive and institutional amendments to the EEC Treaty and the introduction of a formal system of foreign policy cooperation, the Community has been spared the most serious crisis of its brief existence. It is now up to the Community institutions to apply the new procedures so that the objectives set can be achieved on time.