
Editorial

EC or EU: More than a Question of Semantics?

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What's in a Word?

In a recent issue of the European Commission in-house bulletin a translator expressed his bewilderment: what should he use 'European Community' or 'European Union'? Interestingly, the bulletin failed to provide the confused translator with an authoritative reply.

'Les princes qui nous gouvernent' have indeed created some confusion when in 1992 they concluded the Treaty on European Union, commonly referred to as the Maastricht Treaty. They subsequently added to the confusion by using the term 'European Union' indiscriminately and improperly. This could be a typical example of Euro-speak make-believe. By referring to 'European Union' some policy makers seem to convey the impression that the 'European Community' is something of the past and replaced by a looser structure; others appear to tell us that the 'European Union' is simply an extension of the 'European Community'. They both are plainly wrong in legal terms.

The European Union does not exist

The Treaty on European Union – a term which the Maastricht Treaty does not define – states that '[T]he Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty' (Article A).

The 'European Union' is thus a term used to refer on the one hand, to the existing European Communities – the European Economic Community becoming the European Community 'tout court' – and, on the other hand, to intergovernmental cooperation in the field of foreign and security policy and in the field of justice and home affairs.

In reality 'European Union' is hardly more than a catch-all term. The European Union as such has no legal existence. It has no legal personality. It does not enjoy any legal capacity whatsoever in the Member States. It cannot conclude treaties with third countries. Only Member States or the European Communities have these qualities. Saying e.g. that the European Union will take Member State X to court or that the European Union will conclude an agreement with the US is talking legal nonsense.

The 'European Union' has no Institutions and no Powers

The Council (of Ministers) of the European Communities has renamed itself 'Council of the European Union'. Quite improperly so, as under the Maastricht Treaty the European Union has no Council, nor for that matter, a Parliament, a Court of Justice or a Commission of its own.

The only 'bridge' between the European Union and the existing institutions of the European Communities is that these institutions are put at the disposal of the European Union, which is to be 'served' by them (Article C of the Maastricht Treaty). This is of course an additional cause of confusion. A perusal of what the Maastricht Treaty states with respect to the fields that are outside of the European Communities Treaties shows what is meant by 'served' by the existing institutions.

The European Parliament only has the right to be consulted 'on the main aspects and the basic choices of the common foreign and security policy' (Article J.7) and 'on the principal aspects of activities' in the area of justice and home affairs (Article K.6). No provision is made allowing for procedures by way of co-decision, cooperation or assent.

The European Commission is to be 'fully associated with the work carried out in the

common foreign and security policy field' (Article J.9) and 'fully associated with the work' in the area of justice and home affairs (Article K.4). There is no question of granting the European Commission the sort of legislative initiative or the own powers it has under the European Communities' Treaties.

The Court of Justice of the European Communities has no jurisdiction whatsoever in the area of foreign and security policy and in that of justice and home affairs, except that in this field conventions between Member States may grant the Court of Justice jurisdiction to interpret such conventions and to rule on any disputes regarding their application (Article K.3), a possibility which in any event Member States already had under the Treaty establishing the European Economic Community.

The Council of the European Communities or, as it now calls itself Council of the European Union, can only implement principles and guidelines for common foreign and security policy laid down by the European Council, i.e. the Heads of State and Government, and then only by acting unanimously (Article J.8). In the field of justice and home affairs the Council can, acting by unanimity, adopt 'joint positions' or 'joint actions', promote 'cooperation' and draw up conventions 'which it shall recommend to the Member States for adoption'. In short, for the non-Communities matters referred to in the Maastricht Treaty, the Council is no more than an intergovernmental forum. Even where the Council can adopt certain acts, these are acts adopted by the Council 'serving' the European Union, thus acts of the Member States in the Council.

In short, presented under the 'chapeau' of the European Union, which has no legal existence, there is an amalgam, on the one hand, of matters decided upon by the European Communities acting through their institutions in the framework of the European Communities legal system and, on the other, of matters decided upon by Member States jointly, possibly using the Council as a vehicle, in the international law framework of inter-governmental cooperation. The European Union as such does not act and no decision can be attributed to it.

EC or EU – What to use?

If one wants to use the term 'European Union', assuming that it makes legal sense, one should at least use it properly, i.e. by reference to what EC Member States agree to do together under the Maastricht Treaty in the fields of foreign and security policy and of justice and home affairs.

European Union agricultural, commercial, transport and competition policies are simply misnomers. These policies are conducted by the European Community acting under the Treaty establishing the European Community. They should continue to be called European Community policies.

For tax matters dealt with at European level, one should thus refer to the European Community in almost all cases. One could imagine that under the heading 'Justice of Home Affairs' there would be some joint position or action or some cooperation within the meaning of the Maastricht Treaty to combat fraud in civil and criminal matters. Only if and when that happens could one form tax matters properly refer to the European Union. This would be the case if the Convention on the Customs Information System is concluded.