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Article — Digitized Version
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Intereconomics

Suggested Citation: Hrbek, Rudolf (1986) : EC reform inch by inch, Intereconomics, ISSN 0020-5346, Verlag Weltarchiv, Hamburg, Vol. 21, Iss. 3, pp. 130-136, <https://doi.org/10.1007/BF02925283>

This Version is available at:
<https://hdl.handle.net/10419/140027>

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EC Reform Inch by Inch

by Rudolf Hrbek, Tübingen*

After ratification by member countries, the “Luxembourg reform package” worked out by the European Council at the end of 1985 is to provide the basis for the development of the European Community into the nineties. What are the challenges facing the EC? What opportunities do the Luxembourg reforms open up?

The member states of the European Community, and hence the Community itself, have been facing serious challenges for many years. Internally, these have taken the form of unemployment, ecological concerns and a marked disparity in the level of development of different countries and regions, particularly since the southward enlargement. From outside the Community have come the technological offensive from the USA and Japan, competition from newly industrialising countries in traditional fields of manufacturing industry, the effects of the North-South disparity and not least the problems of military security as a result of East-West confrontation. No country can resolve this catalogue of problems on its own. All member states are agreed that the European Community must be given fresh impetus so that it can play its part in overcoming the problems: that was the purpose behind the reform efforts.

The reformers have focused their sights on two aspects of the Community: its powers and its decision-making procedures. The first involves determining the tasks for which the Community is to be wholly or partly responsible, in other words expanding its powers and assigning it new responsibilities. The second concerns improving the Community's ability to take decisions and to act.

Opinions differ widely on the ways in which the Community can and should contribute more effectively to overcoming problems; proposals for EC reform are therefore equally varied. The view that it would be sufficient for the time being if the Treaty obligations that were still not being applied were fully implemented was

countered by demands to tackle new tasks at Community level and above all to define the political objectives of Community development in binding terms. The catalogue of new responsibilities that reformers wish to see adopted includes, in differing orders of priority, research and technology, the environment, monetary policy and security. The issues with regard to decision-making relate to the procedure applied by the Council (a greater readiness to accept majority decisions instead of insisting on a “right” of veto), the powers of the European Parliament and the role of the Commission, primarily in the implementation of decisions.

Differing Points of View

Opinions were also strongly divided on the appropriate method of reform. While some demanded the holding of an inter-governmental conference along the lines of the 1955 Messina Conference and the conclusion of contractual agreements, others considered that political consultation was fully adequate. In view of such differences of opinion on the emphasis and scope of the action to be taken, it is not surprising that some proponents eventually began to reflect openly whether progress towards integration was even possible if all member states were to be involved and whether a smaller group of countries should not perhaps stride ahead, or even act independently. Hence it was not only the strengthening of the Community that was being considered under the banner of EC reform, but also its modification or even moves to begin designing a new edifice.

The most ambitious proposal was undoubtedly the one made by the European Parliament. The draft treaty

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on the establishment of a European Union, which was passed by a majority of members on 14th February 1984, aimed at the creation of a federative organisation and was similar to a constitution.¹ The initiative was in sharp contrast to the failure of the Athens Summit of December 1983,² at which the European Council had taken no forward-looking decisions to give the Community fresh impetus; indeed, it had not even been able to solve current issues, such as reform of the common agricultural policy, settlement of the budget dispute with the United Kingdom and the terms for the accession of Portugal and Spain.

The Athens fiasco was nevertheless a catalyst. From a number of statements made in the first few months of 1984 it was clear that a change in the course of the European Community was in the wind and that a number of influential governments were determined it should be made. The most important factor in this respect was the attitude of France, as expounded by President Mitterrand when he addressed the European Parliament in May 1984;³ he said that France was ready to enter into negotiations on the creation of a European Union and considered the European Parliament's draft treaty to be one of the bases for this. He advocated strengthening the Commission and the European Parliament and the increased use of majority voting in the Council. He specifically mentioned "two-tier integration" as one of the ways of tackling additional tasks under the aegis of the Community without all member states being required to participate immediately. It was widely held that if these pronouncements were matched by action, reform of the EC would become a reality.

The "Dooge Report"

Assembled in Fontainebleau in June 1984 at the end of the French Presidency of the Council, the heads of state and government set up an ad hoc "Committee on Institutional Affairs" consisting of their personal nominees and instructed it to make suggestions for improving co-operation in various fields as a basis for concrete decisions that would then have to be taken with regard to progress towards European Union.⁴

The "Dooge Committee", so named after its Chairman, presented the results of its deliberations relatively quickly, publishing its interim report in December 1984 and its final report in March 1985. The

¹ The text is printed in Official Journal of the European Communities, Vol. 27 (1984), No. C 77, pp. 33 ff. A detailed discussion of various aspects of the draft Treaty is contained in the collection of essays by Jürgen Schwarze, Roland Bieber (eds.): Eine Verfassung für Europa. Von der Europäischen Gemeinschaft zur Europäischen Union, Baden-Baden 1984.

Dooge Report⁵ is a remarkable document. It contains suggestions for the further development of the Community which do not go as far as the European Parliament proposal, but would bring real progress towards integration:

- The overriding objective is stated to be the creation of a "genuine political entity", in other words a "European Union".
- The first individual objective should be to establish a homogeneous internal economic area by completing the creation of the internal Community market, promoting economic convergence, implementing the European Monetary System and mobilising additional financial resources.
- Secondly, all aspects of collective life should be given a European dimension, with especial reference to measures in the environmental and social fields.
- As a third objective, the Community should take gradual steps towards identity in foreign policy, explicitly including questions of military security.
- "Efficient and democratic institutions" are stated to be the means of achieving these aims. The European Parliament and the Commission should be strengthened and decision-making in the Council simplified by the greater use of majority voting. Countries should be able to use a "veto" only by express and justified reference to its "very important interests", and then only during a transitional period.
- Finally, an inter-governmental conference should be convened without delay to negotiate and approve a draft Treaty on European Union. The calling of such a conference would itself represent the "initial act" of the Union.

Reservations of the "Footnote States"

The Report did not find approval with all ten members. Reservations and objections are recorded in more than thirty footnotes that unmistakably demonstrate that not all member countries would participate in such a qualitative leap. Whereas the footnotes inserted by the Danish and Greek representatives signify an

² Cf. Rudolf Hrbek: The Community of Ten after the Athens Summit, in: INTERECONOMICS, No. 1, 1984, pp. 3 ff.

³ Reproduced in Europa Archiv 12/1984, pp. D 331 ff.

⁴ In the words of the Irish President of the Council Dr. Garrett Fitzgerald in explaining the decision; reported in Europa Archiv 19/1984, p. D 547.

⁵ The interim Report is reproduced in Bulletin of the European Communities, No. 11, 1984 and the final text in Bulletin of the European Communities, No. 3, 1985. For an interpretation of the Report, see Rudolf Hrbek: Welches Europa? Zum Zwischenbericht des Ad-hoc-Ausschusses für Institutionelle Fragen ("Dooge-Committee"), in: Integration 1/1985, pp. 3 ff.

unequivocal No, the British position should be regarded as one of hesitation and restraint, but not rejection. The reservations of the "footnote states" were directed firstly against the notion of giving the Community fresh impetus by including a new treaty, since they considered that the existing treaties were adequate and foreign policy co-operation should be developed further in a pragmatic way through greater consultation in European political co-operation (EPC) and did not need to be underpinned by treaty; secondly, there were objections to the institutional proposals; and finally the "footnote states" were quite vehemently opposed to convening an inter-governmental conference, in other words against the "initial act" of the Union.

What was to be the next step, given these contrasting views? In the first half of 1985 authoritative sources in Paris and Bonn repeatedly declared that the moment of truth had come. Given the situation that prevailed, this could only mean that a group of member states might set out on their own to strengthen and modify the Community. Such warnings may have been intended primarily as a means of persuading at least the hesitant British to go along with reform and perhaps even winning over the Danes and Greeks. To succeed in this respect, the threat had to be credible. However, doubt as to whether France and Germany could lead such a group was nurtured by the discord between the two governments on technology policy (the Eureka project), their reactions to the American SDI programme, future

policy within the framework of GATT and the behaviour of Germany. One aspect of the latter was Herr Kiechle's veto in the farm price negotiations, after Bonn had previously been one of the sharpest critics of the so-called "Luxembourg compromise" of 1966.

The outcome of the Milan summit in June 1985 therefore came as a tremendous surprise to many observers: the Italian President of the Council had called a vote on convening an inter-governmental conference. The scene for the conference was thus set, against the express opposition of Denmark, Greece and the United Kingdom. Initially, it was still uncertain whether the opposing countries would attend, or indeed what the conference would achieve. Its mandate was first to conclude a treaty on a common external and security policy and secondly to revise the Treaty of Rome (in accordance with Article 236 of the Treaty) in order to extend the Community's fields of activity and establish new institutional arrangements.

The Luxembourg Reform Package

Many overhasty and hence overoptimistic assessments of the boost to integration stemming from the Milan decision overlooked the fact that reviving the momentum of the Community by means of contractual agreements required finding the approval of all members, for such agreements have to be ratified. Treaty amendments give each member country the opportunity to block the change, so that they require consensus. It

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could therefore be foreseen that the outcome of the negotiations would be limited in scope and would certainly not mean the "great leap" into a new quality of Community.

The results of the inter-governmental conference, in which all EC member countries participated, have been known since the end of January 1986, when the "Single European Act" was unveiled.⁶ After the preamble and the first Title, which both expressly proclaim the creation of a European Union to be an objective, the Act consists of amendments and additions to the existing treaties and "provisions on European co-operation in the sphere of foreign policy". The lengthy document is termed the "Luxembourg reform package", since the European Council approved the broad outlines of the Act in Luxembourg at the beginning of December 1985. After ratification, it will constitute the basis for the development of the Community into the nineties.

Differing Reactions

It remains to be seen what developments can be expected, in view of the spectrum of widely differing reactions to the package, which again throw light on the present state of the Community and confirm the differences of opinion expressed in the Dooge Report:

- The Italian Government criticised the reforms as inadequate; the Community's responsibilities had not been widened and the institutional measures contained in a series of earlier proposals had not been adopted. It was impossible to speak of a true qualitative leap. The Government in Rome made its signature conditional on the approval of the Italian and European Parliaments.
- The criticism voiced by the European Parliament was along the same lines. In particular, it expressed great bitterness and disappointment that its suggestions and demands had been disregarded. It certainly cannot be said that the Parliament expressly endorsed the Act, and it only stopped short of voting it down because it judged that rejection would achieve nothing beyond demonstrating dissatisfaction and would impede the modest progress that the Act might bring. The Italian Parliament adopted a similar stance, so that the Italian Government received the go-ahead to sign the Act.
- The Danish minority Government could obtain no support in Parliament. A number of the Act's provisions went much too far for the majority of MPs, who called upon the Government to hold further negotiations with partner governments in order to seek the necessary adjustments. Criticism was levelled at the foreign policy provisions, the institutional arrangements and the possibility (or the danger, as some Folketing members

saw it) that high national standards of environmental protection and social security might be lowered in the name of harmonisation. The other EC member countries categorically rejected a further round of negotiations, as no-one wished to tinker with the Act, which was a compromise hammered out after difficult negotiations. The Danish Government therefore decided to hold a consultative referendum on the reform package, and the opposing majority agreed to respect the outcome. At the end of February 1986 56.2 % of the votes were cast in favour, with around 74.8 % of voters participating. However, the arguments put forward by both sides during the campaign reinforced Danish reservations against progress towards a political community with strong institutions.

- Finally, serious doubts were expressed in Bavaria about the possible effects of individual provisions of the Act; critics insisted that harmonisation, desirable though it be, should not be achieved at the expense of high German standards and that the Federal Government would have to obtain the express agreement of the Land governments in fields in which the Länder had exclusive powers before agreeing to Community arrangements such as those foreshadowed in the Act. Bavaria's objections found expression in a resolution of the Upper Chamber that won the backing of the Land governments ruled by the Social Democratic Party as well as Bavaria.⁷ All of the Länder are of one mind when it comes to defending their powers. They have therefore adopted positions that limit the Federal Government's freedom of action in implementing the programme contained in the Act.

Hence, while some feel that the programme to give the Community fresh impetus and accelerate the process of integration goes too far or warn of politically "wrong" consequences in implementing the reform package, others consider that it fails to respond adequately to the many demands being made of the Community and its member countries.

Content of the Reforms

What does the reform package contain, that its stimulus to integration is capable of such differing interpretations?

- The internal market is to be completed by the end of 1992. To achieve this aim, the Council's previous normal

⁶ The text of the Single European Act is reproduced in Bulletin of the European Communities, Supplement 2/86. An assessment is to be found in Rudolf Hrbek, Thomas Läufer: Die Einheitliche Europäische Akte. Das Luxemburger Reformpaket: Eine neue Etappe im Integrationsprozeß, in: Europa Archiv 6/1986, pp. 173 ff.

⁷ Bundesrat-Drucksache 50/86 of 21st February 1986.

practice of requiring unanimity will be replaced by majority decisions (a qualified majority of 54 of the 76 votes in the Community of Twelve). The EC Commission, which has a duty to make proposals, should always aim at the highest possible level of protection, although each member state has the right to apply national provisions, in other words to part company with the common approach, if it considers this necessary in the interests of protecting the working environment or the natural environment or in the context of the exceptions specified in Article 36 of the Treaty of Rome. Unanimity would continue to be required for decisions concerning the harmonisation of tax legislation and issues relating to the regulations of professions, training and conditions of access to professions in connection with the right of establishment.

□ Co-operation in the field of economic and monetary policy is aimed at achieving convergence. Any institutional changes that become necessary, such as the further development of the EMS in particular, would require a unanimous decision.

□ The operational sphere of the Community will be extended by defining responsibilities in the field of social policy (improvement of the working environment) and adding the fields of research and technology and protection of the environment. Here too there are safeguard clauses, however; in the social field and in environmental policy member countries can retain or introduce standards, the framework programme in the field of research and technology as well as environmental policy measures require unanimous decisions; co-operation in the field of research and technology can, if necessary, be undertaken by a narrower group of countries (unmistakably "variable geometry" and "two-tier integration")⁸ and involve non-member countries and international organisations.

□ "Economic and social cohesion" is given as a further aim of the Treaty. It was the weaker member countries, and primarily Greece, that expanded the reform package to include increased efforts to reduce regional disparities in the level of development. A global strategy for the more efficient and concentrated use of resources and financial instruments is to be drawn up, again unanimously, within the relatively short space of one year.

□ Foreign policy co-operation has been placed on a treaty basis. Apart from setting up a permanent

secretariat to serve the Council, the provisions contain nothing that goes beyond the policy co-ordination already practised. Questions of military security are effectively excluded by the fact that member countries belonging to the WEU and NATO are referred to these organisations in this regard.

□ There is provision for only marginal modifications in the Community decision-making process; the European Parliament is granted a true right to participate only in decisions relating to treaties of accession or association to the Community. As a rule, the Council retains the last word and Parliament is confined to delivering opinions on matters in which collaboration with the Council is prescribed. The introduction of a kind of second reading does give the Parliament an additional opportunity to exert influence, but these procedural arrangements are highly complicated and their practical impact is further limited by the introduction of short deadlines, so that they are far removed from genuine power-sharing. Most important of all, the reform package says nothing about the manner of decision-making that has been practised in the Council since 1966, and thus falls far short of the attempt in the "Dooge Report" to make it more difficult for individual states to invoke "very important interests" as a way of blocking decisions. Footnotes from the Committee's Report implicitly reappear here in the Act.

Cautious Further Development

In short, the "Single European Act" represents an extremely cautious attempt to develop the EC system further. The Community drew back from large-scale expansion, let alone radical modification or redesigning. In the light of the new tasks allotted to the Community, not in place of the responsibilities of member countries but complementary to them, it is possible to speak of a partial expansion and, as far as the institutions and procedures are concerned, cosmetic repairs. The reform act falls far short of being a grand design, or "great leap"; no convincing qualitative progress towards integration was to be expected once member states had opted for the path of treaty revision and extension. The reform package contains escape clauses and scope for exceptions, permits national solutions and stipulates unanimity on many issues that are important to individual countries. The "right" of veto remains untouched and the powers of the European Parliament are not genuinely increased. In this respect the Single Act mirrors the previous practice of Community development, namely to agree packages that pay heed to the interests of all parties involved, in other words to proceed in minute steps because nothing more is possible, at least not if all member states are involved.

⁸ On this set of problems, see the collection of essays by Eberhard Grabitz (ed.): *Abgestufte Integration. Eine Alternative zum herkömmlichen Integrationskonzept?* Kehl, Strasbourg 1984.

What consequences does this hold for the development of the EC in the years to come, particularly if one is aware of the above-mentioned differences in reactions to the reforms? In general terms, the programme laid down in the Single Act – for it is essentially a statement of intentions – will be implemented only to the extent that the member countries can agree on further packages of measures. Since the interests and priorities of individual states differ markedly, horse-trading will be unavoidable. For example, a country such as Greece will probably only agree to measures to complete the internal market or decisions in the fields of research and technology or environmental protection if its demands for economic and social cohesion are met. Moreover, it is not only the unanimity rule for many important decisions that threatens to impede rapid progress towards integration; even where decisions are to be taken by a qualified majority, as in the case of most measures to implement the internal market, there is scope for qualified minorities to block decisions or, to put it another way, to force a trade-off. It is not difficult to identify such “coalitions” of states with fairly similar interests on particular issues.

Optimistic Prospects

Nevertheless, it cannot be ruled out that cautious progress towards integration will be achieved, inch by inch. Such an optimistic outlook can be based on the following considerations and factors:

- Efforts are being made to set the decision-making process in the Council on a new basis. This does not even need a formal change in the rules of procedure but simply the political readiness of all participants to cease invoking “vital interests”; where important interests are really at stake each country could rely on the consideration of its partners and would not itself have to brandish the veto. In this way, the President of the Council could call a vote more often than in the past.
- The European Parliament could use its (political) weight more effectively and urge the Council to heed its opinions if it concentrated on a small number of points in those areas where co-operation with the Council is stipulated, rather than trying to assert views differing from those of the Council on all issues, such as the 300 or so decisions along the path to completion of the internal market.
- Under its President Jacques Delors, whose authority within the Commission vis-à-vis other Community

institutions and in member states instinctively invites comparison with the Hallstein Commission in the founding years of the Community, the present Commission has already made important suggestions during the reform debate, some of which have been taken up by governments. This can be seen as an encouraging sign that the Commission will continue to have success in exercising its right to propose, in other words that its suggestions will meet with the approval of governments.

- The United Kingdom, one of the “footnote states” but noted for its fundamentally pragmatic approach, now appears to be prepared to take an active part in the further expansion of the Community as laid down in the Single Act. If this assessment⁹ of a change in British policy towards Europe is confirmed, it will mean that the route followed with the reform package has been a success that can scarcely be underestimated.

Weighty Objections

Weighty objections can be raised to this rather optimistic assessment, however:

- Mention has already been made of Denmark’s fundamental rejection of true progress towards integration, a view that is shared to a greater or lesser extent by all the important political forces in the country. Denmark still sees the Community primarily and almost exclusively as an economic association that should not be developed further into a political entity.¹⁰ Greece’s stance is not much different.
- Numerous reservations about far-reaching standardisation are voiced by German Länder, with Bavaria in the forefront. The reference to the maintenance of established standards should also be interpreted as a plea for greater diversity in the further development of the Community. Now that the Community has twelve members, this demand will tend to increase and it will not always be possible to deny its plausibility and validity. But does this not threaten to riddle the Community edifice with exceptions and will it not inevitably lead to an “à la carte” Europe, where each country submits to Community rules and standards only where it thinks fit and perceives an advantage? Will not solidarity among EC member states inevitably suffer, and the pressure to hammer out a compromise with the other partners diminish?
- Moreover, day-to-day problems of greater or lesser importance will be on the Community agenda, as well as

⁹ Cf. Helen Wallace: *Reforming the European Community: The Luxembourg Package*, in: *The World Today*, February 1986, pp. 19 f.

¹⁰ Cf. Wolfgang Schumann: *Dänemark in der Gemeinschaft. Bestimmungsfaktoren und Handlungsspielraum dänischer EG-Politik*, SWP, p. 319, Ebenhausen, August 1985.

implementation of the reform package. Experience has shown that efforts to resolve such issues have a paralysing effect and can absorb the energy of all those involved for many years (reform of the common agricultural policy and the dispute over the United Kingdom's budget rebate, for example). There seems to be no shortage of such issues either now or in the future: the Community faces arguments about farm prices and future agricultural policy; its financial situation is more than a little precarious, partly as a result of the movements in the dollar exchange rate, and it is placing a severe constraint on the Community's scope for action, so that the potential for trade-offs of various kinds is small. Paris and Bonn, whose agreement on any steps towards greater integration is essential, hold differing views on the further development of the EMS, future external economic policy and technological co-operation with the USA. These differences of opinion will set the mood in the Community and are bound to affect efforts to implement the reform packet; in many cases there is a close material connection between different problem areas.

□ Finally, it must be remembered that government's room for political manoeuvre differs, depending partly on a variety of domestic considerations: a minority government must be careful to obtain sufficient support; in a coalition the need to take account of partners' views may restrict the government's freedom of action; consideration for particular groups of electors (such as the farmers in Germany at present) can reduce manoeuvrability to nil on particular issues.

If one compares these two assessments, it becomes apparent why reactions to the reform package were so

different; it provides the possibility of progress towards integration but no binding global concept. It is also understandable that the package is interpreted as a small step that can lead to only a cautious further development of the EC system and thus accords entirely with the picture of integration up to now. Among twelve member states, integration will not come about as a result of great leaps forward to a quite different quality of Community but through patient negotiation or even bargaining, in which ad hoc coalitions will undoubtedly be even more in evidence than in the past and the veto by one single country will decline in importance. With such structural and behavioural characteristics, the Community and the integration process will sustain considerable dynamism, which does not mean that rapid results will be achieved.

There are some indications that the reform package now awaiting ratification has instigated a phase of integration that will be marked by repeated and more frequent revision and extension of the treaties. The Single Act appoints dates at which stock is to be taken of what has been achieved – and hence of what has not yet been achieved. The conclusions drawn from this exercise (the first assessment is due to take place as early as the end of 1988, and the third direct elections to the European Parliament in the summer of 1989 will provide the political motivation for it to be a comprehensive review) could trigger the decision to seek further agreements in treaty form. It cannot be ruled out that attention will again focus on a question that the Luxembourg reform package has answered for the immediate future: whether further integration must involve all twelve members of the Community.

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