

Krägenau, Henry; Wetter, Wolfgang

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Henry Krägenau and Wolfgang Wetter*

Maastricht II: Reviewing European Integration

According to the wishes of the signatory states, the Maastricht treaty, which only came into force in November 1993, is to be re-assessed at another inter-governmental conference in 1996. Which issues should the inter-governmental conference deal with? Which Maastricht I rules require revision, which require elaboration and which require consolidation?

Maastricht did not manage to balance the three pillars of the treaty to the satisfaction of all the parties involved. Thus, in contrast to the primary pillar consisting of economic and monetary policy and the single market, foreign and security policy as well as domestic and legal policy (which are to be conducted within a framework of inter-governmental collaboration) were excluded from a common regulatory framework. In addition to the task of intensifying collaboration on the second and third pillars, the Maastricht II conference must address the new challenges to the Union's policy of integration arising from the collapse of the Eastern/Western blocs and the related problems of expanding the Union into Eastern Europe.

The primary object of the forthcoming conference cannot be to revise the old treaty. While the removal of inconsistencies, ambiguities and the treaty's overcomplicated structure would certainly be welcome, this would not be enough. The situation in Europe as a whole and the consequences of the Maastricht treaty demand more of the conference: it must pave the way for the Union's integration policy in the 21st century. The shape of significant institutional reforms will hereby depend on the direction this integration is intended to take. It is therefore important – particularly in the run up to the conference – that intensive public debate take place on the acceptancy and finality of the Union, a debate which has thus far been somewhat neglected.¹ This essay is conceived as a contribution to such debate in that, rather than concentrating on pragmatic political solutions,

important conference issues are selected in order to illuminate fundamental questions of European integration.

Finality of Integration

Probably the most important argument for European integration was and is the need to secure peace in post-war Europe. Supranational cooperation is intended to prevent the development of potential conflicts between member states. As far as large segments of the German elites in particular are concerned, it is hoped that Europe may overcome fears which, historically, are adequately described by such terms as coalitions, isolation, (semi-)hegemony, renationalization, and the German *Sonderweg*. Following German unification in 1990, the "German issue" appeared to become acute as the country once again threatened to occupy a core geopolitical position and become a "central power"² in Europe, such that the Maastricht treaty sought to integrate Germany into the European house as quickly as possible.

However, since there was no majority consensus at Maastricht in favour of a Federal European State, the package originally introduced by Germany coupling monetary and political union had to be relinquished. Thus the treaty reached a (further) unstable compromise between German federalist aspirations and French pragmatism, a compromise which leaves

¹ See also Rolf H. Hasse: *Europäische Währungsunion im Spannungsfeld zwischen politischem Wunsch und ökonomischer Realität*, Universität der Bundeswehr, Diskussionsbeiträge zur Wirtschaftspolitik, No. 51, Hamburg 1995.

² See also Hans-Peter Schwarz: *Die Zentralmacht Europas – Deutschlands Rückkehr auf die Weltbühne*, Berlin 1994.

* Hamburg Institute for Economic Research (HWWA), Hamburg, Germany.

its mark on everything from legislative regulation to the institutional design of the Union's various organs.

Plans to integrate the Central and Eastern European countries not only put an end to the vision of a Federal European State³ for the foreseeable future, they also demand a new approach to the question of integration policy.

The inter-governmental conference in 1996 therefore offers no place for utopian ideals. It must carry out the necessary reforms on the basis of a Union "as a federal and decentralised multi-tier system ... in which its members can maintain their statehood, their regional roots and their identity".⁴ In particular it is necessary:

□ to make clearer the duality between national legitimacy and the transferral of powers to the Union. In order to achieve this aim, structures and decision-making procedures must become simpler and more transparent;

□ to adapt the institutions (Council, Commission, Parliament) to the demands of an expanded Union as far as their efficiency and legitimacy are concerned;

□ to demonstrate the way in which new members can in future be integrated into the EC, with its single market and economic and monetary union, and into the two inter-governmental pillars of the Union treaty.

While endeavours should be made to improve collaboration in questions of common foreign and security policy, it is doubtful whether majority Council decisions are possible⁵ without endangering the substance of national sovereignties. What is true of foreign and security policy must also be taken into

³ However, public comments made by members of the German government seem to imply that even in future the idea of the EC as a federal state will continue to be referred to in official statements. Cf.: Gerda Zellentin: Staatswerdung Europas? Politikwissenschaftliche Überlegungen nach Maastricht, in: Rudolf Hrbek (ed.): Der Vertrag von Maastricht in der wissenschaftlichen Kontroverse, Baden-Baden 1993, p. 42.

⁴ Werner Weidenfeld (ed.): Europa '96 – Reformprogramm für die Europäische Union, Gütersloh 1994, p. 9.

⁵ This is also an aim of the German Federal Government. In the words of foreign minister Klaus Kinkel: "Similarly in the field of foreign policy there is no alternative to majority decisions in distinct areas which have previously been clearly defined." Foreign minister Klaus Kinkel in a government statement of June 22, 1995, published in: Presse- und Informationsamt der Bundesregierung: Bulletin, No. 51, June 26 1995, p. 459.

⁶ In this area there is therefore a particular need for procedures which respect member states' autonomy. It is thus questionable whether Europol is really necessary as a new, central unit, or whether it would have been more appropriate to connect existing computer networks, create multi-national working groups, strengthen the rights of foreign police, etc.

account in domestic and legal policy where there are undoubtedly important areas which require common solutions. However, negotiations surrounding the creation of a European police force (Europol) have demonstrated just how sensitive this particular area is, intruding as it does into the very core of member states' autonomy.⁶

In the following, the most important remaining issues shall be analysed more closely.⁷

Division of Powers

How and to what extent powers are transferred from the national to the EU level is of central importance within the dualistic organisation of the European Union. In principle, according to Art. 3b of the EC treaty, the member states assign responsibility to the Union by means of limited single-issue authorization only. However, rather than providing a detailed list of powers according to their material content, the EC treaty assigns powers in general functional terms in line with the aims of Art. 3. On the one hand, this functional assignment principle facilitated a dynamic integration process which permitted pragmatic solutions to be reached; on the other hand it opened – and opens – the way for a continual extension of the Union's powers.⁸ With the authority to remove market distortions, to ensure legal alignments within the single market and with the blanket authorization contained in Art. 235 of the EC treaty, the Community's institutions succeeded in penetrating virtually every sphere of member states' policy.

As the German Constitutional Court's Maastricht judgement has shown, no legal barriers stand in the way of the basic legitimacy of transferring powers to the Community level. The Union's actions are based on the decision of the member states to delegate primary responsibility in certain areas to the supranational level.⁹

⁷ As space is limited, the problems of domestic and legal policy as well as common foreign and security policy will not be further discussed here. See instead an extensive number of publications, e.g. Josef Janning: Außen- und Sicherheitspolitik nach Maastricht; Anke Gimbal: Innen- und Justizpolitik – die dritte Säule der Europäischen Union, both in: Werner Weidenfeld (ed.): Europa '96 – Reformprogramm für die Europäische Union, op. cit., pp. 55 ff.

⁸ On the growth of EU powers see Heinz Laufer, Uwe Arens: Die kontinuierliche Ausweitung der EG-Kompetenzen, in: Werner Weidenfeld (ed.) op. cit., pp. 193 ff.

⁹ According to the Constitutional Court's "Maastricht Judgement", this is the case for Germany if each additional transferral of power to the EU is bound to what are for the Bundestag "foreseeable conditions".

However, Maastricht is mostly criticised for the fact that the ordinary citizen can no longer see which powers the Union has. Furthermore, decisions taken within its assigned sphere of authority are said to be opaque and not always appropriate to the matter in hand. An analysis of member states' and Union spheres of responsibility does indeed reveal a lack of systematic structure and a wealth of areas where powers are intermingled.¹⁰ "Clarity of legislation"¹¹ and "a clear demarcation of Union and member states' responsibilities"¹² are therefore required, thus necessitating a change in the principle upon which the allocation of responsibilities is based. The outcome should be the replacement of the functional assignment principle by power transfer based on clearly defined spheres of responsibility.¹³

In addition, the conference should formulate in concrete terms the regulatory principles upon which the exercise of power is to be based. These include above all the principle of subsidiarity. Furthermore, autonomy-protecting principles should be safeguarded by the introduction of a hierarchy of norms, and the blanket authorization provided by Art. 235 of the EC treaty should be deleted.

Strengthening Subsidiarity

The principle of subsidiarity is generally held up as a basis for the allocation and exercise of powers. Following Maastricht, Germany – supported by the UK – had formulated the subsidiarity principle in concrete terms and further stated its case in the Council, the Commission and the European Parliament.¹⁴ According to Art. 3b of the EC treaty, the Community is supposed to act "in areas which do not fall under its exclusive responsibility" only if the intended measures "cannot be adequately achieved on member state level and therefore, because of their extent or their effect, can be better achieved on the Community level" (Art. 3b EC treaty).

¹⁰ See the catalogue of powers in Werner Weidenfeld (ed.): *op. cit.*, pp. 19 ff.

¹¹ Foreign minister Kinkel in a government statement of June 22, 1995, *op. cit.*, p. 460.

¹² *Ibid.*

¹³ This can be achieved by altering Art. 3 such that the present catalogue of aims is replaced by a clear assignment of powers. With regard to this proposal see: Bayerische Staatskanzlei: Bayerische Ziele für die Regierungskonferenz 1996, in: *Euro Aktuell*, Appendix 1 to No. 134, pp. 7 f.

¹⁴ For more details, see Joachim Bitterlich: *Die Verankerung des Subsidiaritätsprinzips und seine operative Umsetzung*, in: Werner Weidenfeld (ed.): *Reform der Europäischen Union*, Gütersloh 1995, pp. 177 ff.

This wording of the subsidiarity principle must be criticised on two counts. On the one hand, the Community should assess on a case by case basis whether or not and to what extent a planned measure requires common regulation, even in those areas which do fall under its exclusive responsibility.¹⁵ Absolute priority should be given to decentralised solutions in such situations.

On the other hand, problems are posed by the scope of interpretation to which the wording is open. In order to ensure that the subsidiarity principle is observed, the Commission thus means to carry out two tests. Firstly, a "comparative efficiency test" which is intended to determine whether or not member countries have the necessary means (including financial resources) at their disposal for implementing the measure, and finally a "value-added test" for ascertaining how efficient the Community measure is.¹⁶

Criteria cited by the Commission for passing judgement within the framework of the comparative efficiency test include the maintainance of necessary coherence and the avoidance of competitive distortions within the single market.¹⁷ Coherence and community solidarity are seen as being jeopardised by subsidiarity.¹⁸ If, on this basis, the efficiency test shows that individual member countries cannot carry out a particular measure, then for reasons of coherence that measure becomes a task for the Community. This will pose problems for financial measures too, especially when the Union is expanded to include the Central and Eastern European countries.

Similarly, the use of harmonised central measures to remove supposed competitive distortions tends to serve the preservation of often encrusted market structures rather than raising efficiency.

Despite all attempts to clarify the subsidiarity principle in the Union treaty, it should not of course be overlooked that it is the Council with its political responsibility which is essentially responsible for the

¹⁵ As long as Art. 3 is not rewritten – as demanded above – this wording is unclear, since there is usually no clear distinction between exclusive and competing areas of responsibility.

¹⁶ European Commission statement to the Council and the European Parliament on the subsidiarity principle of October 27, 1992, printed in Werner Weidenfeld (ed.): *Reform der Europäischen Union*, *op. cit.*, p. 325.

¹⁷ See Werner Weidenfeld (ed.), *ibid.* p. 313.

¹⁸ See e.g. Marc Belse: *Mehr Hilfe zur Selbsthilfe*, in: *Handelsblatt*, No. 155, 14.8.1995, p. 7.

principle's proper implementation. Not least the numerous special councils were responsible for frequent violations of the precept of decentralisation. The possibility of establishing an independent review body for the implementation of the subsidiarity principle as a "representative of the public interest" should therefore also be examined.¹⁹

The subsidiarity principle and the primacy of decentralised solutions act as stabilising factors within the Union's integration policy by protecting national autonomies, and it is important in this context for work on the introduction of a "hierarchy of norms" to be completed during the conference. While the country of origin and subsidiarity principles have led to guidelines becoming the rule, there are also an increasing number of regulations regarding the implementation of measures therein which blur the distinction between directives and guidelines. A hierarchy of norms should distinguish between treaty alterations, institutional laws, full laws, and implementation regulations. This would enable clear distinctions to be made between various types of legal measure according to their actual function.²⁰

¹⁹ See: Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirtschaft: Ordnungspolitische Orientierung für die Europäische Union, Tübingen 1994, p. 24.

²⁰ Corresponding proposals have been made to the Commission and the European Parliament. See also Werner Weidenfeld (ed.): Reform der Europäischen Union, op. cit., p. 31.

The Union's powers were significantly extended by the blanket authorization of Art. 235 of the EC treaty. This may, in the past, have provided a desirable impetus to integration. Thus it was argued that "a legal community which is in the throes of evolution needs a dynamic, flexible power norm such as Article 235".²¹ With the Maastricht treaty, if not before, the Union has reached a stage of political maturity in which an extension of its powers should be permitted only with appropriate amendments to the treaty – and thus with the direct participation of the national parliaments. Deleting Art. 235 would also help check or even prevent the legally questionable practice of loan-financing the Union.

Involvement of the European Parliament

Critical scrutiny of the decision-making procedures contained in the Maastricht treaty is required on three counts. On the one hand, the treaty now includes around 20 procedures which complicate decision-making and restrict its transparency. Possible simplifications should therefore be considered. On the other hand, the question of extending the rights of the European Parliament to participate in decision-making is of even greater importance. Finally, the inter-governmental conference must address the

²¹ Werner Weidenfeld (ed.): Europa '96 – Reformprogramm für die Europäische Union, op. cit., p. 30.

Hans-Georg Ehrhart/Anna Kreikemeyer/Andrei V. Zagorski (Eds.)

Crisis Management in the CIS: Whither Russia?

Political and social instability on the territory of the former Soviet Union is aggravated by violent conflicts. In these Russia is playing a central role. Due to its potentials it is in a structurally hegemonial position while being itself deeply involved in a long-term process of internal change. At the same time Russia is striving for a reintegration within the framework of the Commonwealth of Independent States (CIS) and is also engaged in armed conflicts in the "near abroad". On the one hand, the West is interested in the integration of Russia and in the containment or the resolution of these conflicts within collective security systems. On the other hand, it is restraining itself from becoming more engaged in the CIS.

Which background do the violent conflicts in the CIS have? Which role does Russia play in the crisis management? What is the behaviour of the international community? Is Europe going to be divided into new spheres of influence? These questions are examined by experts from noted research institutes, policy advisers, diplomats and military men. The book provides topical and indispensable background information for all those who are interested in Russian policy and the security of Europe.

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(Demokratie, Sicherheit, Frieden, Vol. 92)



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problem of adequate representation of the larger member states in Council decisions.

The participation of the European Parliament in decision-making procedures cannot be taken for granted. With regard to the inter-governmental pillars of the Union treaty in particular, the powers of the European Parliament are limited in accordance with the principle of multilateral agreements. On the other hand, more European democratic involvement is desirable as far as legal issues on the Community level are concerned.²² Currently, however, the European Parliament does not enjoy sufficient legitimacy to allow such democratic involvement to develop. Fundamentally, therefore, the far-reaching powers of decision-making and endorsement granted to the Parliament by the Maastricht treaty are themselves cause for concern. It is also unclear by which criteria particular subject matters were assigned to the various decision-making procedures (decision-making, endorsement, cooperation, hearing).²³ Should the aims of Art. 7a be fulfilled, for example, then Art. 100a of the EC treaty provides for the involvement of the European Parliament in decision-making according to Art. 189b – and thus in matters concerning the liberalisation of the service sector. However, Art. 63 of the EC treaty which regulates procedures for liberalising services accords the European Parliament the right to hearings only. Similarly there is no justification for the fact that the European Parliament enjoys more rights in the fields of health and education – for which member states have primary responsibility – than in transport and even in agricultural policy which are areas of joint Community policy.

These contradictions are the result of a compromise between the numerous demands for more democracy in decision-making processes and the inclination of the majority of member states to

involve the Parliament as little as possible. If decision-making procedures are to be standardised and simplified then members must make clear their conception of the finality of the Union.²⁴ A transition to joint decision-making as the routine procedure in spheres of Community responsibility implies the de facto creation of a two-chamber system in which the Council and the Parliament enjoy equal rights as far as decision-making powers are concerned.

Weighted Voting and Majority Decisions in the Council

A further problem is the question of weighted voting and decision-making rules in the Council. The larger countries feel increasingly under-represented because the smaller states have far more votes than would be justified by the relative size of their populations. If the rules governing the allocation of votes remain unchanged, then the problem will worsen substantially when the Union expands to include the small – i.e. low-population – Central and Eastern European countries. Admittedly, this imbalance cannot be redressed simply by altering the weighting formula without jeopardising the future success of the integration process or even endangering that which has already been achieved.

Council decisions have always been made in an area of tension between “consensus and efficiency” (Leipold). Decisions are efficient when they are made with a minimum of interdependency costs which consist of decision costs (information and agreement costs) and external costs (“frustration costs”).²⁵ The smaller and/or more homogeneous the group in which a decision is to be made, the lower are the interdependency costs, since decision costs and also – given identical interests – frustration costs are lower. In less homogeneous groups, decision-making is more difficult and takes longer, and in the case of majority decisions frustration costs will arise. Given maximum protection of minorities – i.e. the requirement that decisions be unanimous – there will be low external costs on the one hand and high agreement costs on the other, while in the case of majority decisions, decision costs will be lower but there will be greater frustration costs. As far as the stability of a (democratic) system is concerned, the external costs are of greater significance than the costs of reaching a decision. In this respect it should be borne in mind that “low external costs promote, high external costs endanger consensus”.²⁶ In the Union system, which is conceived between national

²² The German Constitutional Court came to the same conclusion in its Maastricht judgement.

²³ For a summary of the assignment of subject matters, see: Werner Weidenfeld, Christian Jung: *Das Entscheidungsgefüge der Europäischen Union: Institutionen, Prozesse und Verfahren*, in: Werner Weidenfeld (ed.): *Maastricht in der Analyse: Materialien zur Europäischen Union*, Gütersloh 1994, Appendix 2, pp. 50 ff.

²⁴ *ibid.* p. 14.

²⁵ See James M. Buchanan, Gordon Tullock: *The Calculus of Consent: Logical Foundations of Constitutional Democracy*, Ann Arbor 1962.

²⁶ Helmut Leipold: *Die EG im Spannungsverhältnis zwischen Konsens und Effizienz*, in: Helmut Gröner, Alfred Schüller (eds.): *Die europäische Integration als ordnungspolitische Aufgabe*, Stuttgart, etc. 1993, p. 43.

and Community interests, the willingness to bear frustration costs is lower than within a national system since the Union has no pan-European identity or democratic basis.

During the founding phase of the EEC it was possible within the highly consensual founding group to make swift progress towards integration under the precept of unanimous decisions. While procedures were accelerated by the transition to the majority voting rule in Community procedures,²⁷ it could only work as long as formal procedures remained the exception, such that decisions were "packed" in such a way as to create consensus by balancing interests. If the inter-governmental conference wishes to make decision-making procedures more efficient it must "square the circle": if, with around 20 member states, Council decisions are to be made at acceptable costs, then majority voting must be applied with the lowest possible minimum number of votes required for a majority. This will, however, create a potential for frustration costs which endanger the cohesion of the Union. This will also be the case if insufficient

consideration is given to the weight of the larger countries and if the smaller countries are marginalised.

Consequently, the only solution remains the procedure of consensus – irrespective of the solution set out in the treaty. In much the same way as the earlier Luxemburg compromise, the Ioannina compromise – with its function of limiting majority voting – already has greater significance for Council decisions than the wording of the Maastricht treaty.²⁸

If efficient decisions are to be made, then the question of Council decision-making rules must be combined with the future method of integration. If, for example, within the concept of "variable geometry" certain areas of decision-making are only negotiated for countries with appropriate structures, then efficient decisions can be made. It must not be overlooked, however, that methods of integration such as "variable geometry" or "concentric circles" can complicate the Union system still further and thereby jeopardise cohesion.

Institutional Reforms

Institutional reform is concentrated on re-organising the European Commission which already comprises 20 members and will become unacceptably large if the number of commissioners is calculated along present lines when the Union is extended. A number of proposals for reforming the

²⁷ See *ibid.*; also Christian Engel, Christine Borrmann: Vom Konsens zur Mehrheitsentscheidung: EG Entscheidungsverfahren und nationale Interessenpolitik nach der Einheitlichen Europäischen Akte, Bonn 1991.

²⁸ In this respect, foreign minister Klaus Kinkel points to the fact that of 300 Council decisions in the 16 months since August 1995, only 40 were taken by way of a formal vote. Cf.: Bonn wirbt für Mehrheitsvoten, in: Handelsblatt, No. 154, 11/12.8.1995, p. 6.

Hans-Joachim Christe

Die USA und der EG-Binnenmarkt

Die amerikanische Außenwirtschaftspolitik gegenüber der EG 1985–1992:
Strukturen, Entwicklungen, Entscheidungsprozesse

The foreign trade decision-making process has been one of the more neglected fields of political science research. In this book, this decision making process, especially with regard to the European Community, is analyzed in light of the U.S.' reaction to the EC 1992 internal market project in the years 1985 to 1992. The book will focus on the question: Where and according to which rules is the American policy towards the European Community formulated?

The study shows that in this case the political system did not act on behalf of the private sector, but mostly on its own, even having to alert the private sector to be more aware of the potential dangers the EC internal market could present to American economic interests. The relevance of the various actors in foreign economic policy issues is determined by the type of policy issue. The distinction of distributive, redistributive, and regulatory policy issues was developed by the American scholar Theodore Lowi. In the book, this distinction is further developed to include structural, strategic, reactive and crisis issues.

The second part looks at the role the private sector, the Administration, and the Congress play in this decision making process.

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Commission are currently the subject of public debate. The most important are the following:

- The larger countries should retain their members in the Commission, while the smaller countries are represented alternately within a group.
- Each country should be allowed just one commissioner.
- The number of members should be limited according to specific fields. The commissioners are selected according to their qualifications in a specific field and not according to proportional national representation.

While the first proposal runs the risk of marginalising the smaller countries²⁹ and the second proposal would lead to the relative weight of the smaller countries being over-emphasised, the third approach represents the solution with the lowest partial decision-making costs. Considering the important role of the Commission in the consensual process, however, which stipulates that the Commission must try to make Council drafts passable as legislation by taking into account wide-ranging national interests, it may on the whole be more efficient to have at least one representative with a strong political connection from each country. A further argument against the third proposal is the independent status of the Commission which is formally independent of the individual states and, moreover, is not answerable to the Council on subject matter. The Commission's tasks are so diverse and of such immense importance for the Community and its member states³⁰ that only by changing the status of the Commission to that of a "dependent" administration could the foundation for an efficient and appropriate solution be laid.

Economic Integration and the Inter-governmental Conference

The Maastricht treaty has – in the spirit of the Treaty of Rome – specified explicitly and unambiguously an economic system which is dedicated to the fundamental principles of an open market economy with free competition (Art. 3a (1) of the EU treaty). However, reality has shown that interventionist and

protectionist temptations are by no means small. The field must be pegged out at the second conference. There is no need, for example, for Brussels to hold powers in energy or tourism, and similarly the appropriateness within the given political and legal framework of contractual rules in the fields of trade and industrial policy, capital movements and European competition policy should also be reviewed.

Commission president Santer argues that monetary union, particularly in respect of the convergence criteria, should not be brought up at the inter-governmental conference as a legislative topic "since this would mean opening a Pandora's box".³¹ This is a highly defensive position which demonstrates little confidence in the Union's ability to come to rational decisions. The relevant monetary convergence criteria for third stage entry have been variously criticised with regard to choice, ceilings and discretionary powers. This would, in principle, seem a good reason for dealing with this complex at the inter-governmental conference. The objections levelled by Britain in particular against the choice of exclusively monetary criteria should also be taken seriously.³² Fiscal criteria, which are of significance for stability policy and which also form an integral part of the monetary union, should at least be placed on the agenda.

Tasks Concerning the Regulatory Framework

Industrial policy usually distinguishes between two dimensions,³³ a *general* dimension which deals with the creation or improvement of a *broad framework*, and a *specific* dimension which permits market intervention for maintaining endangered industries, for adjustment to structural change and for the promotion of industries of the future. Reasons cited in favour of industrial policy intervention (compensation for market imperfections, correction of market results and political failure) can seldom be justified from the point of view of overall economic requirements. Depending on their design, they usually distort

²⁹ The German Federal Government has already spoken out against this proposal. See foreign minister Klaus Kinkel in a government statement of June 22 1995, op. cit., p. 460.

³⁰ On the tasks and standing of the Commission, see Bengt Beutler et al.: Die Europäische Union – Rechtsordnung und Politik, Baden-Baden 1994, pp. 139 ff.

³¹ Interview with Commission president Santer on European integration under the title "Wir wollen nie die Harmonisierung der Nationen erreichen", in: Neue Zürcher Zeitung, No. 179, 5/6.8.1995.

³² See also Henry Krägenau, Wolfgang Wetter et al.: Länderspezifische ordnungs- und strukturpolitische Anforderungen beim Aufbau der Europäischen Wirtschafts- und Währungsunion, Hamburg, October 1994; Christian Schmidt, Thomas Straubhaar: Maastricht II: Are Real Convergence Criteria Needed?, in: INTERECONOMICS, Vol. 30 (1995), No. 5, pp. 211 ff.

³³ See Ludolf von Wartenberg: Europäische Industriepolitik aus Sicht der deutschen Industrie, in: ifo-Schnelldienst, Vol. 46 (1993), p. 34.

competition between companies, industries and production factors and are a source of friction in international trade. Thus the directive addressed to the Community and its members in Art. 130 of the Maastricht treaty to pursue industrial policies in order to promote the competitiveness of European countries whenever it is threatened, continues to be cause for disquiet as far as the political and legal framework of the Union is concerned. By legitimising "industrial policy" in this way, the Community fails more than ever to live up to the historical resolution in favour of an economic constitution geared to free markets and undistorted competition.³⁴ While the treaty restricts industrial policy to the general approach (no introduction of measures which will lead to a distortion of competition), there is still a danger that the wording of the treaty will be transcended by political reality. Possible risks include the following:³⁵

- the Community's institutions enjoy a certain amount of latitude for relaxing the substantive legal conditions in favour of discretionary industrial policy;
- the enumeration of the fields of activity (Art. 130, para. 2) does not contain any clearly compelling limits to dirigistic industrial policy;
- a form of interaction between industrial political activities and particular issue-related authorizations could pave the way for protectionism, subsidy and state-controlled cooperation.

"Experience and insight into the dynamics inherent within institutions and of sets of rules with interventionist potential lead one to expect that opportunities for intervention will indeed be used. European agricultural policy demonstrates how quickly, from relatively harmless beginnings, an uncontrollable network of interventions can arise."³⁶ In view of the risks contained within Art. 130 there is a strong case to be made for its deletion.

The same can be said of Art. 115 of the EC treaty with which EU countries can, among other things, receive protection against imports of third country products by means of inner-Community restrictions on goods trade. Regulations such as these entirely

contradict the idea of a competitive single market. Furthermore, the abolition of Art. 115 would put a brake on autonomous attempts by EU countries to achieve protection vis-à-vis third countries by means of "grey area measures" such as voluntary restraint agreements.

For consistent regulatory policies geared to the requirements of the free market economy, the responsible institutions must be organised in a manner appropriate to their respective functions: safeguarding appropriate market structures for a competitive economy demands institutions which are politically independent and which are capable of resisting interest-group pressure.³⁷ The Commission's responsibility as a *political* authority for controlling European competition harbours the danger that external influence may be exerted. Basically, therefore, demands for an *independent* European competition authority, which are supported by Germany, belong on the agenda of the inter-governmental conference. It would be desirable to have an authority strictly dedicated to fair trading and free market competition under the retention of the current *single tier* merger control procedure. A *two-tier* approach, in which the Commission could revise decisions on market competition by applying the political criteria granted to it, should be avoided.

Financing and Fiscal Criteria

Union financial issues are not really to be discussed until 1999. However, the inter-governmental conference should look at the problem of credit-financing the EC which, in contrast to the ECSC and Euratom, is not provided for in the E(EC) treaty. This is true not only for debts incurred in covering the budget which, as is explicitly prescribed, must be financed using own resources, but also for debts incurred for financing Union loans.³⁸ The various methods of raising loans practised since 1976 have been the result of Council resolutions based on the blanket clause of Art. 235. This "grey area" of democratic control is just as problematical as the infringement of the principle of budget unity (Art. 199 of the EC treaty) in the case of Art. 235 loans and possible risks for an orderly budget should the practice of such

³⁴ See: Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirtschaft: Ordnungspolitische Orientierung für die Europäische Union, op. cit.

³⁵ See: Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirtschaft, op. cit., pp. 35 ff.

³⁶ See: Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirtschaft, op. cit., pp. 37.

³⁷ See Erhard Kantzenbach, Reinald Krüger: Wettbewerbspolitische Leitbilder für Europa, HWWA Diskussionspapier, No. 15 (1993), p. 18.

³⁸ On the problems of debt practices in the EU, see Rolf Caesar: Die Verschuldung als Finanzierungsinstrument der Europäischen Gemeinschaften, in: Dieter Biehl, Gero Pfennig (eds.): Zur Reform der EG-Finanzverfassung, Bonn 1990, pp. 221 ff.

transactions be extended. Applying the 1993 Delors White Book's "New Financing Instruments" can be interpreted as an attempt at taking a first step – not covered by the treaty – towards EU financial sovereignty.³⁹

In contrast to monetary policy, fiscal policy in the monetary union remains within the national sphere of responsibility, whereby the "no bail out" rule of Art. 104 of the EC treaty means that member countries are responsible for their own stability policies. Whether or not this exclusion of others' liability can indeed be upheld when countries run into difficulties appears highly uncertain, and political pressure on the central bank cannot be ruled out. There is much to be said for tightening the budget rules. In order to achieve a credible restriction of members' debt behaviour, the Scientific Advisory Council to the German Federal Economics Ministry favours a budget rule linked to economic developments which would limit the average deficit quota over a number of years to under 3% of GNP.⁴⁰ For if the 3% quota is exploited in good times as well as bad, then the 3% maximum will automatically be overstepped in times of recession – and in this situation domestic politics will allow no latitude for deficit correction.⁴¹ Hasse, in his in-depth study, also supports tightening Art. 104c, and draws particular attention to voting rights as a disciplinary instrument. As a last resort he favours temporary suspension of voting rights in the Council of Ministers should the conditions of Art. 104c, para. 9 be disregarded.⁴²

Summary

The 1996 inter-governmental conference should not merely review the Maastricht treaty which came about hastily under the pressure of German unification, but more importantly – in view of the inevitable Union expansion to include the Central and Eastern European countries – the entire European integration complex must be reconsidered. Structures and procedures can only be optimised if there is consensus regarding the finality of the Union. There is much to be said for maintaining the current dual conception in which the member states remain the

Union's supreme sovereign and Community tasks are created only when joint solutions are better for the common good.

It is usually competition – including competition between states and systems – which highlights the most efficient solutions. The conference should fundamentally affirm the precept of decentralised solutions and discuss possibilities for making the implementation of the subsidiarity principle more transparent for the public and more independent of political quarrels. A stable Union is only possible if national autonomies are protected. This is the only way of achieving acceptability among the populations of Europe.

One of the most difficult tasks facing the inter-governmental conference is the reform of decision-making procedures. Clarification is required in this context on the involvement of the European Parliament, whose democratic deficiencies hamper its struggle for legitimacy. In addition, the decision-making procedures in the Council must be made more efficient without jeopardising the necessary consensus. Furthermore, the extension of majority voting must take into consideration that frustration costs will occur in the "defeated" countries, possibly endangering the stability of the Union. Solutions should be considered which, like "variable geometry" for instance, are appropriate for enabling decisions to be taken between groups which are as homogeneous as possible.

The inter-governmental conference should also correct any conditions of the treaty which lead to doubts regarding the Union's fundamental commitment to free market competition and basic liberties. The creation of an independent European anti-trust authority should be regarded as an important task as far as the political and legal framework of the Union is concerned. Furthermore, Maastricht II must correct the legally dubious procedures concerning the financing and budgeting of loans. As far as the monetary union is concerned, the conference must at least toughen third stage fiscal principles.

³⁹ See Manfred Streit: Zwischen marktwirtschaftlichen Bekenntnissen und eurokratischem Interesse – Ordnungspolitische Aspekte des EU-Weißbuches, in: Heinz König (ed.): Bringt die EU-Beschäftigungsoffensive den Aufschwung? – Die deutsche Wirtschaftsforschung nimmt Stellung zum Delors-Weißbuch, Zentrum für Europäische Wirtschaftsforschung, Sonderband 1/1994, p. 20.

⁴⁰ See: Gutachten des Wissenschaftlichen Beirats beim Bundesministerium für Wirtschaft: Ordnungspolitische Orientierung für die Europäische Union, op. cit., p. 74.

⁴¹ As an addition to Art. 104c, the Scientific Advisory Council proposes a rule which would take the economic situation into consideration by allowing staggered maximum rates for new debt. The maximum deficit quota (3%) would be replaced by a staggered system of deficit quotas oriented to the state of the business cycle or the degree to which the capacity of the national economy is being utilised. See *ibid.*, p. 75.

⁴² Rolf H. Hasse: Europäische Währungsunion im Spannungsfeld zwischen politischem Wunsch und ökonomischer Realität, op. cit., pp. 12 ff.