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TOWARDS EUROPEAN UNION: THE TREATY OF MAASTRICHT

EILEEN BARRINGTON*

SUMMARY

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I. BACKGROUND AND OUTLOOK

The Treaty of Rome of 1957,¹ which established the European Economic Community ("EEC"), described the goal of European integration as the "ever closer union among the peoples of Europe."² In 1987, the entry into force of the Single European Act ("SEA")³ amended the Treaty of Rome and extended the competence of the Community.⁴

The Treaty of Maastricht ("Treaty")⁵ was signed by the Member States of the Community in February 1992.⁶ It entered into

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1. Treaty Establishing the European Economic Community [EEC Treaty], March 25, 1957, 298 U.N.T.S. 11. The EEC Treaty is commonly referred to as the Treaty of Rome.

2. EEC TREATY Preamble.

3. Single European Act, 1987 O.J. (L169) 1.

4. See generally, Single European Act, title II, 1987 O.J. (L169) at 4-12.

5. Treaty on European Union, Feb. 7, 1992, reprinted in Common Mkt. Rep. (CCH) 25,300 and 1 C.M.L.R.573 and 719 (1992). The Treaty is better known as the Maastricht Treaty, a reference to the town in which it was signed.

6. George Brock, *Sober Suits set Seal on History*, THE (LONDON) TIMES, Saturday, February 8, 1992, Overseas News section; *European Community Treaty*, THE WASHINGTON POST, Saturday, February 8, 1992, page A17, Around the World Section; *EC nations sign Historic Pact*, THE CHICAGO TRIBUNE, Friday, February 7, 1992, page 1, News section.

force on November 1, 1993 having been ratified by all the Member States after much controversy and delay. It marks a new and important stage in the process of European integration by establishing a European Union.

In 1990 two inter-governmental conferences began an investigation on the topics of an Economic and Monetary Union ("EMU") and a Political Union ("EPU").⁷ The Member States of the European Community ("EC") signed the text presented by these conferences only after extensive negotiation and political compromise.⁸

The adjective "federal" appears nowhere in the Treaty. Certain Member States were too apprehensive to acknowledge what is clearly the objective underlying European integration: the drive towards a federal, or at least a confederal, Europe.

II. THE TREATY OF MAASTRICHT: STRUCTURE AND CONTENTS

A. *Goals and Principles*

The Treaty of Maastricht is rather complicated. It is comprised of what can best be described as three separate pillars, based on, and capped by, common provisions. This understanding is illustrated in Diagram A below:

7. *European Community; Conference Time*, THE ECONOMIST, December 22, 1990, at 62 (U.K. Edition at 55).

8. *The Deal is Done*, THE ECONOMIST, December 14, 1991 at 51 (at 55 U.K. Edition); on extensive negotiation and compromise, see *The Temple, the Tree and the Temper*, THE ECONOMIST, June 11, 1991 at 53 (at 56 U.K. Edition); *Sticking it to Delors*, THE ECONOMIST, May 4, 1991 at 51 (at 53 U.K. Edition); *The Spoilers*, THE ECONOMIST, March 9, 1991 at 44 (at 48 U.K. Edition).

The Treaty of Maastricht Common Provisions Title I: Articles A to F		
Pillar 1 Title II: Amendments to the EEC Treaty Title III: Amendments to the ECSC Treaty Title IV: Amendments to the Euratom Treaty	Pillar 2 Title V: Common Foreign and Security Policy	Pillar 3 Title VI: Co-operation in the fields of Justice and Home Affairs
Final Provisions Title VII: Articles L to S, Protocols and Declarations		

Diagram A

These common provisions set the goals and principles for the Treaty.

The common provisions establish the new "European Union."⁹ The Union is based on the three treaties which originally created the European Community ("EC"): the EEC,¹⁰ Euratom,¹¹ and ECSC¹² Treaties.¹³ These three treaties are supplemented by other policies and forms of co-operation established by the Maastricht Treaty such as Title V, "Common Foreign and Security Policy," and Title VI, "Co-operation in the Fields of Justice and Home Affairs."

The common provisions also set forth the objectives of the Union which include, inter alia:

- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers. . . through the establishment of economic and monetary union, ultimately including a single currency. . . ;

9. Treaty on European Union art. A.

10. Treaty Establishing the European Atomic Energy Community [Euratom Treaty].

11. Treaty Establishing the European Economic Community [EEC Treaty].

12. Treaty Establishing the European Coal and Steel Community [ECSC Treaty].

13. Treaty on European Union art. A.

- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy;
- to develop close cooperation on justice and home affairs.¹⁴

In addition, the Union is to respect the national identities of its Member States whose systems of government are founded on the principle of democracy.¹⁵

B. Amendments to the Treaty of Rome

The Treaty modifies the Treaty of Rome.¹⁶ It redefines the task of the Community and expands its existing list of activities.

The Treaty provides for a major, though primarily symbolic, innovation with the establishment of a Union citizenship.¹⁷ Nationals of any Member State will be citizens of the Union.¹⁸ As such, they will have the right to vote and to stand as candidates in both the municipal elections and the elections for the European Parliament in the Member States in which they reside.¹⁹ However, Member States may provide for derogations with regard to municipal elections, where such exceptions are warranted by problems specific to a Member State.²⁰ It should be noted that the provisions make no mention of the right of Union citizens to stand as candidates for election to national parliaments.

The Treaty modifies various policies of the EC. It extends the sphere of EC competence to new areas including education, vocational training and youth, culture,²¹ consumer protection,²² and industry.²³ Prior to Maastricht, the European Community had no express legal basis to act in these areas.

Additionally, the Maastricht Treaty grants the EC expanded powers to act in areas such as research and development²⁴ as well

14. Treaty on European Union art. B.

15. Treaty on European Union art. F.

16. Treaty on European Union art. G.

17. Treaty on European Union art. G(C), proposed EEC Treaty arts. 8 and 8A through 8E.

18. Treaty on European Union art. G(C), proposed EEC Treaty art. 8(1).

19. Treaty on European Union art. G(C), proposed EEC Treaty art. 8B.

20. *Id.*

21. Treaty on European Union art. G(B)(3), proposed EEC Treaty art. 3f.

22. Treaty on European Union art. G(B)(3), proposed EEC Treaty art. 3(s).

23. Treaty on European Union art. G(B)(3), proposed EEC Treaty art. 3(l).

24. Treaty on European Union art. G(B)(3), proposed EEC Treaty art. 3(m).

as environmental policy concerns.²⁵ It also modifies voting procedures so that a qualified majority, rather than unanimity, is all that now required to adopt legislation in many areas.²⁶

C. *Economic and Monetary Union*

Maastricht replaces three of the four chapters on economic policy in the Treaty of Rome.²⁷ This is perhaps the most controversial part of the Treaty. The proposed amendments concern economic and monetary policy and set up a timetable for Economic and Monetary Union ("EMU").²⁸ By agreeing to such amendments, the Member States are creating a new level of economic integration for Europe.

The proposed replacements for articles 105 through 109 of the Treaty of Rome deal with EMU.²⁹ The Treaty sets out the objectives of EMU and provides for the creation of a European System of Central Banks ("ESCB") and a European Central Bank ("ECB") to pursue such objectives.³⁰

The steps to be taken towards the achievement of an EMU are divided into three stages. Stage one, which has already begun, involves an adherence to the European Monetary System ("EMS")³¹ and a gradual removal of controls on the movement of capital between Member States.³²

Stage two, which is scheduled to start on January 1, 1994,³³ involves a closer coordination of macroeconomic policies³⁴ and

25. Treaty on European Union art. G(B)(3), proposed EEC Treaty art. 3(k).

26. Treaty on European Union arts. G(D)(60) and (61), proposed EEC Treaty arts. 189 and 189A to 189C.

27. Treaty on European Union art. G(D)(25), proposed EEC Treaty arts. 102A through 109M.

28. *Id.*

29. *Id.*

30. Treaty on European Union art. G(B)(7), proposed EEC Treaty art. 4a.

31. Adherence to the EMS was agreed at the European Council summit meeting in Brussels on December 4 and 5, 1978 and the system entered into force on March 13, 1979. OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES L-2985 LUXEMBOURG, EUROPEAN FINANCIAL COMMON MARKET (1992). The system however is now in disarray as a result of the monetary crisis which took place within the EC during the Summer of 1993, with the result that the Council was obliged to loosen up the EMS and the fixed exchange rates. Most currencies are now effectively floating and some, such as the pound sterling and lira, have left the EMS altogether.

32. EEC Treaty arts. 67 through 73.

33. Treaty on European Union art. G(D)(25), proposed EEC Treaty art. 10 E.

34. *Id.*

some development of the institutions which will eventually manage monetary policy and the common currency, the European Currency Unit ("ECU").³⁵

The European Council must decide before the end of 1996 whether a majority of Member States fulfill the necessary conditions for the adoption of a single currency.³⁶ If the Council determines that such a majority has been reached, it will proceed to set a date for the beginning of stage three.

In the third stage, exchange rates will be fixed irrevocably³⁷ and the new European Central Bank will prepare for the transition to a single currency, the ECU.³⁸ It should be noted that under the Treaty, Britain is given the right to opt out at this point.³⁹

The Treaty, however, makes it clear that "if by the end of 1997 the date for the beginning of the third stage has not been set, the third stage will start on January 1st, 1999."⁴⁰ At that point any number of states can proceed to EMU and those not meeting the necessary conditions will be granted a derogation and their position will be reviewed at least every two years.⁴¹

D. Common Foreign and Security Policy

The provisions for a common foreign and security policy are of an intergovernmental rather than supranational character.⁴²

Foreign policy was already covered by Title III of SEA,⁴³ which came into force in 1987. As previously stated, the main objective of the SEA was to amend various provisions of the Treaty

35. Treaty on European Union art. G(D)(25), proposed EEC Treaty art. 109F.

36. Treaty on European Union art. G(D)(25), proposed EEC Treaty art. 109J(2). The conditions are listed in proposed EEC Treaty art. 109J(1). These are:

- price stability, evidenced by a rate of inflation which is close to that of the three best performing Member States;

- no excessive budget deficits;

- having a currency which remains within the fluctuation margins provided by EMS;

- interest rate levels which reflect durable convergence.

37. Treaty on European Union art. G(D)(25), proposed EEC Treaty art. 109J(4).

38. *Id.*

39. Treaty on European Union, Protocol on certain provisions relating to the U.K.

40. Treaty on European Union art. G(D)(25), proposed art. 109J(4) of the Treaty of Rome.

41. Treaty on European Union art. G(D)(25), proposed art. 109K of the Treaty of Rome.

42. *See* Treaty on European Union art. J.

43. Single European Act art. 30, 1987 O.J. (L169) at 13.

of Rome to extend the competence of the Community in certain areas.⁴⁴ In addition, however, Title III of the SEA set up a system for European cooperation in the sphere of foreign policy. The system it established was intergovernmental in nature. However, the undertakings of the parties, “[t]o endeavor to jointly formulate and implement a European foreign policy”⁴⁵ were vague.

The language of the Treaty is stronger and the scope of the provisions is clearly broader.⁴⁶ It provides that: “The Union and its Member States shall devise and implement a common foreign and security policy. . . covering *all* areas of foreign and security policy” (emphasis added).⁴⁷

The objectives of the Common Foreign and Security Policy (“CSFP”) are:

- to safeguard the common values, fundamental interests and independence of the Union;
- to preserve peace and strengthen international security;
- to promote international co-operation;
- to develop and consolidate democracy and the rule of law and respect for human rights and fundamental freedoms;
- to strengthen the security of the Union and its Member states in all ways.⁴⁸

There is no commitment to a military alliance in the Treaty. However, Article J.4. makes a reference to “the eventual framing of a common defence policy, which might in time lead to a common defence.”⁴⁹ This issue has been set aside until 1996,⁵⁰ thus giving any neutral countries, such as Ireland, time to cope with their reluctance to get involved in any military alliances.

In general, Title V of the Treaty gave rise to prolonged debate between the Member States. This could very largely be ascribed to the attempt to introduce majority voting into foreign policy for the first time. Where the Member States have important interests in

44. See Single European Act Preamble, 1987 O.J.(L169) at 2.

45. Single European Act art. 30, 1987 O.J.(L169) at 13.

46. See Treaty on European Union art. J.1.

47. Treaty on European Union art. J.1.

48. Treaty on European Union art. J.1.

49. Treaty on European Union art. J.4.

50. Treaty on European Union arts. J.4(6) and N.2.

common, a new concept of joint action has been introduced.⁵¹ However, before any decision is taken by qualified majority, the Heads of Government in the European Council must decide by unanimity that an area is suitable for joint action and lay down guidelines for such action.⁵² The foreign ministers in the Council then define those matters on which the decisions are to be taken by a qualified majority, but again this is done by unanimous vote.⁵³ Therefore, it appears that actions taken on the basis of decisions adopted by a qualified majority will in practice be quite constrained.

E. Cooperation in the Fields of Justice and Home Affairs

Recalling Diagram A, it should be noted that the third pillar of the Treaty, like the second discussed above, concerns very sensitive matters. The Treaty provides that the Member States shall regard, *inter alia*, the following areas, as matters of common interest: asylum policy; immigration policy; combatting drug addiction; combatting fraud on an international scale; judicial cooperation in civil and criminal matters; customs and police cooperation.⁵⁴

Cooperation on these issues is increasingly important as a central feature of the completion of the internal market due to the removal of all physical barriers or systematic border controls.⁵⁵ Cooperation in such areas will be based on joint positions, joint action and conventions. Again, the situation concerning majority voting is complex.

As with the title on the common foreign and security policy, there is a provision for "joint action."⁵⁶ Such measures may be implemented on the basis of a qualified majority.⁵⁷

F. Final Provisions, Protocols and Declarations

The final provisions are established in Title VII.⁵⁸ The provi-

51. Treaty on European Union art. J.3.

52. Treaty on European Union art. J.3(1).

53. Treaty on European Union art. J.3(2).

54. Treaty on European Union art K.1.

55. The removal of such border barriers began on January 1, 1993 pursuant to EEC Treaty art. 8a.

56. Treaty on European Union art. K.3.

57. Treaty on European Union art. K.3(2)(b).

58. Treaty on European Union art. L through S.

sions include procedures for, among other things, amending the Treaty⁵⁹ and regulating applications for membership.⁶⁰ In addition, numerous protocols and declarations are annexed to the Treaty.

59. Treaty on European Union art. N.

60. Treaty on European Union art. O.