

**European Council** Two or three times a year since 1974 the European Council has convened heads of state and government from the member states of the EUROPEAN COMMUNITY (EC) to discuss and negotiate the major issues and conflicts arising out of EC business. They also deliberate on foreign policy questions emerging from the procedures of European Political Co-operation. Originally intended by President Giscard d'Estaing as an informal forum for intimate debate, the European Council has increasingly become a decision-making body. However its agreements have to be translated into formal legislation by the COUNCIL OF MINISTERS. Broadly its procedures follow those of the Council in that it is chaired by the Council Presidency and prepared by working groups of officials as well as the Foreign Affairs Council with servicing from the Council Secretariat and papers from the commission. Votes, though unusual, may be taken. But the European Council can and does operate more flexibly and its activities reveal more sharply than the Council of Ministers the influences of personality and the differential bargaining power of individual member states. Its functions include acting as a court of appeal for the Council of Ministers, handling the most politically-charged issues and broaching new policy questions. Views differ as to the effectiveness of the European Council and on whether its role should be extended. Some governments, notably from smaller member states, prefer a limited role. Others would like to see it become the predominant guiding force of the EC. HW

### Reading

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**European Court of Justice** Each of the founding treaties of the European Commu-

ities (the European Coal and Steel Community (ECSC), the European Economic Community (EEC), and the European Atomic Energy Community (Euratom)) established a Court of Justice with the function of 'ensuring that in the interpretation and application of this Treaty the law is observed'. A convention signed at the same time as the EEC and Euratom treaties established a single Court of Justice for all three Communities. The Court sits at Luxemburg. The Court of Justice of the European Communities should be clearly distinguished from the European Court of Human Rights which sits at Strasburg and was established within the framework of the Council of Europe by the EUROPEAN CONVENTION ON HUMAN RIGHTS.

The Court of Justice now consists of thirteen judges, one from each member state plus one additional judge nominated by the member states in rotation (to ensure an odd number). The Court elects its own president. It may, and in some cases must, sit in plenary session but it frequently sits in chambers of three or five judges. In either case the Court operates on the principle of collegiality, all judgments being the judgment of the Court with no dissenting judgments. The judgments tend to be terse, sometimes to the point of delphic utterance. This may make them unexciting to those who are familiar with the COMMON LAW system, but it contributes to their political acceptability in a multinational community.

The Court is assisted by six advocates-general, whose function is to deliver an independent opinion on the case. The opinions of the advocates-general, unlike the judgments of the Court, discuss the issues of law and fact, and are therefore in that respect comparable to the judgment of the judge of first instance under the common law system. They are themselves a source of law and are frequently the best guide to the thinking of the Court.

The jurisdiction of the Court is laid down by the founding treaties and falls, broadly speaking, into five categories: actions by the Commission against a member state, or by one member state against another, claiming that the defendant state has failed to fulfil a treaty

## EUROPEAN COURT OF JUSTICE

obligation; actions for JUDICIAL REVIEW of the acts (or failure to act) of the Community institutions; actions of damages against the Community itself; references from national courts and tribunals on questions of Community law; and actions by members of the staff of the institutions relating to their conditions of employment (for which a new court of first instance is expected to be established in the near future).

The Court has also been given jurisdiction to determine questions arising under supplementary conventions, for example the Brussels (Judgments) Convention, and international agreements, for example the Lomé Convention.

Because the nature and scope of its jurisdiction are defined in the treaties, the Court is not a 'supreme court' and has no general or overriding power. The Court has, if anything, been cautious in keeping within the strict limits of its jurisdiction and has incurred some criticism on that account. But that may be a measure of its success because, in spite of the weakness of the EUROPEAN PARLIAMENT, the inertia of the COUNCIL OF MINISTERS and the shackling of the COMMISSION, it is through the Court that the momentum of integration has been maintained. The Court has therefore had a profound (if largely unnoticed) political influence in post-war Europe.

Essentially, the Court has insisted that the member states should honour the obligations they undertook in the treaties: to co-operate in achieving the objectives of the treaties; to accept the consequences of having agreed to exercise their sovereignty in decisive areas of policy through autonomous Community institutions; above all, to remove the multifarious barriers to freedom of movement in the economic life of their citizens. The principal legal doctrines developed by the Court for this purpose are the doctrine of the primacy (or supremacy) of Community law and the doctrine of direct effect.

The doctrine of primacy is based on the principle that if all member states are to honour their obligations equally, the law deriving from the treaties must be applied uniformly throughout the Community. Con-

sequently member states cannot be allowed to derogate unilaterally from Community law and national courts must apply it in preference to national law (including subsequent parliamentary legislation) which is inconsistent with it. This might be seen as a direct challenge to the doctrine of the supremacy of parliament and analogous doctrines in other member states, but although the treaties provide no machinery by which the Court can enforce its judgments, there have been very few cases where a member state or its courts has refused to respect and apply Community law. This has been so in spite of the political sensitivity of many of the issues coming before the Court (for example, in the United Kingdom, tachographs in lorries, fisheries, and the relative weight of taxation of beer and wine). The Court has been particularly alive to the susceptibilities of national courts and has stressed that the relationship between them is one of co-operation in applying a new system of law which is common to them all.

The doctrine of direct effect is based on the wording of the treaties themselves, from which the Court concluded that the contracting member states intended to confer rights, not only upon the Community institutions and upon each other, but also upon individuals. If these rights are to be effective, they must be enforceable by the national courts in disputes between individuals or between individuals and national authorities. Broadly speaking, the doctrine applies wherever the terms of the treaties or secondary Community legislation are such as to impose clear and unconditional obligations giving rise to corresponding rights. So the Court has given immediate and binding effect to the key provisions of the EEC treaty on freedom of movement of goods, persons, services and, to a limited extent, capital. Left to themselves, even with the negotiating machinery provided by COREPER and the Council of Ministers, it is inconceivable that the member states would have agreed to dismantle the many protectionist barriers which have been removed at a stroke by a few judgments of the Court.

The Court has therefore played a vital political role, first in defusing issues which could otherwise, individually or at least

cumulatively, have led to renewed tension in Western Europe; second in making a reality (albeit only partial) of the internal market.

An area in which the political consequences of the Court's judgments are only beginning to be apparent is in relation to the powers of the European Parliament. Although the powers of the Parliament are severely limited, the Court has insisted that they be effective, and that the rights of the Parliament be respected by the other Community institutions. The Council of Ministers can no longer ignore the Parliament, and the Commission now finds it a valuable ally.

In the field of administrative law the Court has drawn upon the laws of the member states to develop a body of general principles for the law of the Community. The principles of natural justice in United Kingdom law have influenced this development, but other member states (particularly Germany) have had more reason to develop a coherent theory of the relationship between the citizen and the state and to provide the citizen with adequate armour against the power and pretensions of the executive. It is significant that the House of Lords has now begun to draw upon Community law as a source of inspiration to fill gaps in the patchy system of ADMINISTRATIVE LAW in the United Kingdom.

See also JUDICIAL FUNCTION AND PROCESS; JUDICIARY. DAOE

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**European Parliament** The world's first directly elected supranational legislature; the representative institution of the EUROPEAN COMMUNITY. It has three types of powers: supervisory, budgetary and the right to participate in Community legislation. Its powers

are primarily consultative; although its functions are defined by Article 137 of the Treaty of Rome 1957 as 'advisory and supervisory', the Treaty of 1975 amended certain financial provisions and the Parliament became, with the Council of Ministers, the budgetary authority of the European Community with the power to adopt or to reject the general budget. The budget was in fact rejected in 1980 and 1985. This Treaty also empowered Parliament to amend that part of the budget covering expenditure not necessarily resulting from the Treaty or from other Community legislation.

The European Parliament gives advisory opinions to the Council of Ministers on legislative proposals made by the European Commission under Article 149 of the Treaty of Rome. Such opinions usually include amendments to the proposal; but Parliament has no power to insist that the Council should adopt such amendments. Parliament thus has the right to participate in the legislative process of the Community, although it is not the Community's legislative authority.

The relations between Parliament, the Council and the Commission are further governed by the Joint Declaration of 1975 on the conciliation procedure, which provides for discussions on amendments proposed by the Parliament to legislative proposals by the Commission, if such amendments are unacceptable to the Council.

Parliament, however, cannot initiate new Community policies, and it is in theory possible for Community policies to be adopted against its wishes. Its powers, limited as they are, are directed primarily at the Commission, but it is the Council of Ministers and the European Council which have turned out to be the most powerful institutions of the Community. By decisions of the Foreign Ministers of the Member States meeting in European Political Co-operation, information is given to Parliament in various ways on decisions taken by the Ministers on foreign policy matters affecting the Community itself, and the Member States acting in co-operation.

The election and composition of the Parliament are governed chiefly by Article 138 of the Rome Treaty, by the Act of 20 September