Chapter 5: the European Council and the Institutions Serving the European Union

General comment on the Institutions

5-1 In the scheme adopted by the Treaty on European Union, the substantive provisions on the Institutions are mainly contained in the Treaty establishing the European Community; and it is in these provisions, as amended by the Treaty on European Union, that the constitutional law governing the institutions will be found. This body of law is discussed in Part Three of this book. However, following the objectives set out in the Common Provisions of the Treaty on European Union, there are some provisions governing the European Union's institutional framework.

Single Institutional Framework

5-2 It is at the heart of the European Union's constitutional structure that it should "be served by a single institutional framework"[1] and that the institutions in question should be those set up to administer the European Communities.[2] There are five institutions: the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. Their duties are to "exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and Acts modifying them and supplementing them and, on the other hand, by the other provisions of this Treaty".[3] The conditions and purposes (including the objectives) contained in the Preamble and Common Provisions clearly govern the institutions, even though the judicial review of the provisions is limited. Originally, the institutional framework envisaged in the Common Provisions did not include the fifth institution - the Court of Auditors - possibly because the European Union as such had no income and expenditure to audit: the respective Communities, and in particular the European Community, are entrusted with the funds needed to achieve the Union's objectives.[4] The omission was, however, corrected by an amendment in the Treaty amending the Treaty on European Union.[5]

5-3 Institutions serving the European Union have four duties under the Common Provisions, over and above those contained in the Treaties establishing the European Communities:

- to ensure the consistency and continuity of the activities carried out to attain the objectives of the European Union[6];
- to respect and build upon the *acquis communautaire*[7];
- to ensure the consistency of the European Union's external activities as a whole in the context of its external relations, security and economic and development policies[8]; and
- to ensure the implementation of these policies.[9]

The third and fourth duties noted above are the responsibility of the Council and Commission. The fourth duty of implementation is the responsibility of each in accordance with its respective powers.[10] In ensuring the consistency of the European Union's policies, the Council and Commission are under a duty to "cooperate to this end".[11]

The European Council

5-4 In addition to confirming the role of the institutions properly so called, the Common Provisions formally establish what had already been functioning at the political, rather than the constitutional, level as the European Council, whose duties are now:

– to provide the European Union with the necessary impetus for its development and
– to define the general political guidelines thereof.[12]

Although the European Council cannot give instructions to the institutions, it can play a powerful part in shaping policies, prompting legislative action and directing political action.

5-5 Heads of State or Government of the Member States, together with the President of the Commission, form the European Council and are assisted by the Ministers of Foreign Affairs of the Member States and by a Member of the Commission. They are required to meet at least twice a year under the chairmanship of the Head of State or Government of the Member State which holds the Presidency of the Council.[13] There is no legal obstacle to the holding of more than one meeting in any half year; and, where this happens in the first half of the year, there is no legal obligation for the Presidency to convene a meeting in the second half of the year.

5-6 After each of its meetings, the European Council is required to submit a report to the European Parliament. It is also required to submit an annual written report on the progress achieved by the Union.[14]

5-7 Some indication of the scope of European Council meetings may be found from the reports referred to as the "Presidency Conclusions" after each meeting. For example, a European Council meeting was held at Santa Maria da Feira, in Portugal, on 19 and 20 June, 2000; when Portugal held the Presidency.[15] The conclusions covered the following matters:

- "preparing the future",
- employment, economic reforms and social cohesion,
- economic, financial and monetary affairs,
- Europe and the citizen and
- external relations.

The first of these headings is elliptical; it covered:

- the intergovernmental conference on institutional reform,
- the formulation of a charter of fundamental rights,
- strengthening the common security and defence policy and
- the enlargement of the European Union.[16]

1. Article 3 (formerly C), first paragraph, EU Treaty.

2. Article 5 (formerly E), EU Treaty.

3. Ibid.

4. See Articles 268 to 280 (formerly 199 to 209a), EC Treaty.

5. Article 1(7), Treaty amending the EU Treaty.

6. Article 3 (formerly C), first paragraph, EU Treaty.

7. Ibid. As to the *acquis communautaire*, see Chapter 4.

8. Article 3 (formerly C), second paragraph, EU Treaty.

9. Ibid.

10. Ibid.

11. Ibid. This duty was added by Article 1(6), Treaty amending the EU Treaty.

12. Article 4 (formerly D), first paragraph, EU Treaty.

13. Article 4 (formerly D), second paragraph, EU Treaty. The Presidency of the Council is determined by Article 203 (formerly 146), second paragraph, EC Treaty. See Chapter 17.

14. Article 4 (formerly D), third paragraph, EU Treaty. On the principle *inclusio unius exclusio alterius,* the report submitted after each meeting need not be a written report.

15. These reports may be found on the European Union website under "European Council".

16. See paragraph 1-20 and n48 thereto.