Chapter 12: Objectives of the Treaty

The Preamble and the Principles

12-1 In the Treaty establishing the European Community, it is possible to distinguish seventeen general objectives. Some of these are single objectives; some have multiple elements. Some are explicitly described as objectives; some are described as the Community's task, activities and policies. Of the seventeen described in this chapter, nine are drawn from the preamble[1], while eight are drawn from Part One of the Treaty, entitled "Principles".[2]

First Objective: Ever Closer Union

12-2 In the first recital, the contracting parties express their determination "to lay the foundations of an ever closer union among the peoples of Europe". Given the circumstances of the contracting parties in 1958, it is probably wrong to read too much into the use of the word, "union", which has since come to mean a far more closely integrated community than the one which the original Member States may have had in mind. In 1958, union had an idealistic ring; forty years later, it is more of a political rallying-cry.

Second Objective: Economic and Social Progress

12-3 In the second recital, the contracting parties express their resolve "to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe". This objective has two parts. One is the general aim to ensure economic and social progress; the other is to take common action to eliminate certain barriers. The first of these is expressed in more concrete terms in the text of the Treaty.[3] The second may refer to various kinds of barrier but almost certainly to the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital.[4] Another classification of the different types of barrier appeared in a Commission document on the internal market: there they were grouped according to whether they were "physical barriers", that is, on the Member States' common borders; "legal barriers", or such differences between the Member States' laws as to create obstacles to free movement; and "fiscal barriers", consisting mainly of excise duties and similar forms of tax liable to cause difficulties for inter-state trade.[5]

Third Objective: Living and Working Standards

12-4 In the third recital, the contracting parties affirm "as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples". This objective is given more substance in the text of the Treaty.[6]

Fourth Objective: Concerted Action

12-5 In the fourth recital, the contracting parties recognise "that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair

competition". This objective has three elements, the first of which has already been covered, namely, the removal of obstacles or barriers between the Member States.[7] The second is the paramount need for concerted action. This is at the heart of the Treaty, whose whole purpose may be summed up as the attempt to create the constitutional machinery to ensure concerted action in the economic and social fields between disparate and still largely independent Member States. As for the third element, this contains three subsidiary objectives, all of which are given in more detail in the text.[8]

Fifth Objective: Cohesion

12-6 In the fifth recital, the contracting parties express their wish "to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less-favoured regions". In other words, the objective is to bring all parts of the Community - that is, all the Member States and, within each Member State, all the various regions, - so far as possible to a condition of economic parity. The name given to this process is "cohesion". It operates in practice by a distribution of funds throughout the Community. As a broad generalisation, the prosperous northern countries contribute more to the Community, while the less prosperous southern countries receive more from the Community. Within Member States, poorer areas tend to qualify for more and greater allocations of funds. The principal sources of help are the European Social Fund[9], the other structural funds, such as the European Regional Development Fund[10], and the Cohesion Fund.[11]

Sixth Objective: Common Commercial Policy

12-7 In the sixth recital, the contracting parties express the desire "to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade". In practice, the provisions of the common commercial policy[12] allow for protective measures as well as for the removal of restrictions.[13]

Seventh Objective: Prosperity of Overseas Countries

12-8 In their seventh recital, the contracting parties express their intention "to confirm the solidarity which binds Europe and the overseas countries" and their desire "to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations". The overseas countries and territories, which in general are intended to refer to the former colonies of certain Member States, are specifically listed in the Treaty[14]; other countries may also be covered by cooperation agreements and conventions. An example is the cooperation between the European Community and certain African, Caribbean and Pacific countries under the ACP/EEC Convention, which is not prejudiced by the existence of special provisions for the "overseas countries and territories".[15]

Eighth Objective: Pooling of Resources

12-9 In the eighth recital, the contracting parties express their resolve, "by thus pooling their resources, to preserve and strengthen peace and liberty", and call upon "the other peoples of Europe who share their ideal to join in their efforts". This is a somewhat generalised aim: as for the call to other states, this can be interpreted as an invitation either to enter into a bilateral treaty with the Community[16] or to apply for membership of the Union.[17]

Ninth Objective: Education

12-10 In the ninth recital, the contracting parties express their determination "to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating". This broad objective is not fully matched by legal provisions in the text of the Treaty. However, a provision introduced by the Treaty on European Union imposes on the Community a duty to contribute to the development of quality education, including "developing the European dimension in education".[18] The new provision does, however, fall short of giving the Community power to harmonise the Member States' education laws.[19]

Tenth Objective: Establishment of the European Community

12-11 Under the last words of the preamble to the Treaty and the first provision in the text of the Treaty itself, the contracting parties establish among themselves a European Community.[20]

Eleventh Objective: the "Task" of the Community

12-12 Although the text of the Treaty refers to the Community's "task", it is referring to the practical objectives of the Treaty.[21] It does so by providing that the Community shall have as its task,

- by establishing a common market and an economic and monetary union[22] and
- by implementing the common policies or activities listed in the Treaty,[23]
    - to promote throughout the Community
        - a harmonious, balanced and sustainable development of economic activities,
        - a high level of employment and of social protection,
        - equality between men and women[24],
        - sustainable and non-inflationary growth,
        - a high degree of competitiveness and convergence of economic performance,
        - a high level of protection and improvement of the quality of the environment,
        - the raising of the standard of living and quality of life, and
        - economic and social cohesion and solidarity among Member States.

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Twelfth Objective: The Policies and Activities of the Community

12-13 In a sense, the provisions of the Treaty setting out the policies and activities of the Community are a bundle of specific objectives. The bundle is inclusive, not exhaustive; and each of the individual objectives is more specifically defined in subsequent provisions of the Treaty noted below. For the purposes of the tasks described above (as the Eleventh Objective), the activities[25] of

the Community include, as provided in the Treaty and in accordance with the timetable set out therein:

(a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect[26];
(b) a common commercial policy[27];
(c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital[28];
(d) measures concerning the entry and movement of persons as provided for in Title IV[29];
(e) a common policy in the sphere of agriculture and fisheries[30];
(f) a common policy in the sphere of transport[31];
(g) a system ensuring that competition in the internal market is not distorted[32];
(h) the approximation of the laws of Member States to the extent required for the functioning of the common market[33];
(i) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment[34];
(i) a policy in the social sphere comprising a European Social Fund[35];
(j) the strengthening of economic and social cohesion[36];
(k) a policy in the sphere of the environment[37];
(l) the strengthening of the competitiveness of Community industry[38];
(m) the promotion of research and technological development[39];
(n) encouragement for the establishment and development of trans-European networks[40];
(o) a contribution to the attainment of a high level of health protection[41];
(p) a contribution to education and training of quality and to the flowering of the cultures of the Member States[42];
(q) a policy in the sphere of development cooperation[43];
(r) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development[44];
(s) a contribution to the strengthening of consumer protection[45];
(t) measures in the spheres of energy, civil protection and tourism.[46]

Thirteenth Objective: Economic Policy

12-14 A further objective[47], supplementary to those set out above, reflects the importance attached to the economic tilt given by the Treaty on European Union, since it provides for the adoption of an economic policy which is based on:

- the close coordination of Member States' economic policies[48];
- the internal market[49]; and
- the definition of common objectives[50],

and conducted in accordance with the principle of an open market economy with free competition.[51]

12-15 As concurrent elements of the Community's economic objective[52], there are:

- the irrevocable fixing of exchange rates[53] leading to the introduction of a single currency, the ECU[54], and

– the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.[55]

12-16 Price stability heads the list of subsidiary objectives of the Community's economic policy in a provision[56] that these activities of the Member States and the Community must entail compliance with the following guiding principles:

– stable prices,
– sound public finances and monetary conditions and
– a sustainable balance of payments.

Fourteenth Objective: Vires

12-17 When the Treaty provides[57] that the Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein, it is not merely stating an additional objective, it is also laying down an essential constitutional principle to the effect that all acts must be *intra vires*. In practice, the principle figures in litigation in the more precise terms of the Treaty provisions governing the powers of the Court of Justice.[58] But this is not to underestimate the importance of the principle itself.

12-18 It follows from the provision on *vires* that the Community does not have constitutional powers of a reserve kind.[59] At the same time, there is a provision in the Treaty which has given rise to some controversy in the past; this is that, if action by the Community should prove necessary to attain, in the course of operation of the common market, one of the objectives of the Community and the Treaty has not provided the necessary powers, the Council may take the appropriate measures.[60] It is, however, an important safeguard that this power may be exercised only on a unanimous vote.[61]

12-19 A further limitation on the Community's legal powers is to be found in the provision that any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.[62]. It follows that, in any case in which there is substantial doubt about whether a given legislative proposal is necessary to achieve one of the objectives of the Treaty, there are *prima facie* grounds for challenging its constitutional validity.

Fifteenth Objective: Subsidiarity

12-20 On the face of it, there is another limitation on the Community's powers in the provision that, "in areas which do not fall within its exclusive competence[63], the Community may take action, in accordance with the principle of subsidiarity[64], only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community".[65] However, the long-term effect of this provision may be to extend, rather than to restrict, the Community's powers.[66]

Sixteenth Objective: Establishment of the Common Market

12-21 Although the establishment of the common market is at the heart of the European Community, the provisions governing the time-table for establishing the common market have been repealed.[67] In theory, this is because the establishment of the common market has been completed. In practice, this is only partly true, since there are many elements of the internal market still to be fully established.[68]

Seventeenth Objective: Establishment of the Internal Market

12-22 According to the provisions of the Treaty on the establishment of the internal market[69], the Community's objective was to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992.[70] The internal market is defined as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty.[71] Although the establishment of the internal market has not yet been completed, the Treaty provisions enabling the Community to complete the legislative processes are still in place.[72]

1. The preamble comprises nine recitals.

2. See the Annex to Chapter 10 and the Annex at the end of the book. Articles 7 to 9 (formerly 4, 4a and 4b), EC Treaty, are discussed in chapter 15; Articles 10 and 12 (formerly 5 and 6), EC Treaty, are discussed in chapter 13.

3. Article 2, EC Treaty; see below.

4. Article 3(c), EC Treaty.

5. White Paper on the Completion of the Internal Market, 1985.

6. Article 2, EC Treaty; also Article 3(i), (j), (k), (l), (p), (q), (t) and (u), EC Treaty.

7. See paragraph 12-3 above. It is arguable that the word, "obstacles", in the context in which it is used, refers to obstacles to trade, while the word, "barriers", has the wider meaning suggested in the White Paper referred to in note 5 above.

8. All three are referred to in Article 2, EC Treaty; competitiveness is also mentioned in Article 3(g), EC Treaty.

9. Article 146 (formerly 123), EC Treaty.

10. Article 159 (formerly 130b), EC Treaty.

11. Article 161 (formerly 130d), EC Treaty.

12. Articles 131 to 134 (formerly 112, 113 and 115), EC Treaty. Many Regulations have been made under these provisions. See, for example, the reference in Chapter 2, note 53. See also Council Regulation EC/3286/94, laying down Community procedures in the field of the common commercial policy to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation.

13. Articles 133(1) (formerly 113(1)) and 134 (formerly 115), first paragraph, EC Treaty.

14. In Annex II; see Article 299(3) (formerly 227(3)), EC Treaty.

15. Article 179(c) (formerly 130w(c)), EC Treaty. Under Council Regulation EEC/3245/81, a European Agency for Cooperation was established; the legal basis, however, was Article 235, EEC Treaty (now Article 308, EC Treaty).

16. For example, under Articles 113(3) and 228, EC Treaty.

17. Originally under Article 237, EEC Treaty; now under Article 49 (formerly O), EU Treaty.

18. Article 149 (formerly 126), EC Treaty.

19. Article 149(4) (formerly 126(4)), first indent, EC Treaty.

20. Article 1, EC Treaty. The original contracting parties were Belgium, France, Germany, Italy, Luxembourg and the Netherlands. For the subsequent and present membership, see paragraphs 1-6 and 1-7 above.

21. Article 2, EC Treaty.

22. The provisions on economic and monetary union are contained in Articles 98 to 124 (formerly 102a to 109m) EC Treaty. (For the meaning of the "common market", see paragraph 1-15.

23. That is, in Articles 3 and 4 (formerly 3a), EC Treaty.

24. Article 141 (formerly 119), EC Treaty, deals with equal pay for men and women.

25. Sc. "and policies" (Article 2 is correct in describing some of the elements of Article 3 as "policies"; and Article 3 is wrong to include policies in a list of activities).

26. Articles 25 to 30 (formerly 12 to 36), EC Treaty. See also Article 135 (formerly 116).

27. Articles 131 to 134 (formerly 110, 112, 113 and 115), EC Treaty.

28. Article 14 (formerly 7a), EC Treaty. Goods are covered by Articles 28 to 31 (formerly 30 to 36), EC Treaty; persons, by Articles 39 to 48 (formerly 48 to 58), EC Treaty; services, by Articles 49 to 55 (formerly 59 to 66), EC Treaty; and capital, by Articles 56 to 60 (formerly 73b to 73h), EC Treaty.

29. Articles 61 to 69 (formerly 73i to 73q), EC Treaty. Examples of secondary legislation under these provisions include Council Regulation EC/1348/00 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters; Council Regulation EC/2725/00 concerning the establishment of "Eurodac" for the comparison of fingerprints; and Council Directive EC/40/2001 on the mutual recognition of decisions on the expulsion of third country nationals.

30. Articles 32 to 38 (formerly 38 to 47), EC Treaty.

31. Articles 70 to 80 (formerly 74 to 84), EC Treaty.

32. Articles 81 to 89 (formerly 85 to 94), EC Treaty.

33. Articles 94 to 97 (formerly 100 to 102), EC Treaty. Strictly speaking, Articles 100a and 100b, EC Treaty, do not refer to the "common market", but to the "internal market". See paragraphs 1-15 and 1-16 above.

34. Articles 125 to 130 (formerly 109n to 109s), EC Treaty.

35. Articles 146 to 148 (formerly 123 to 125), EC Treaty.

36. Articles 158 to 162 (formerly 130a to 130e), EC Treaty.

37. Articles 174 to 176 (formerly 130r to 130t), EC Treaty.

38. Article 157 (formerly 130), EC Treaty.

39. Articles 163 to 173 (formerly 130f to 130p), EC Treaty.

40. Articles 154 to 156 (formerly 129b to 129d), EC Treaty.

41. Article 152 (formerly 129), EC Treaty.

42. Articles 149 to 151 (formerly 126 to 128), EC Treaty; Article 151 (formerly 128) is concerned with culture.

43. Articles 177 to 181 (formerly 130u to 130y), EC Treaty.

44. Articles 182 to 188 (formerly 131 to 136a), EC Treaty.

45. Article 153 (formerly 129a), EC Treaty.

46. Energy and tourism are not subject to specific provisions. Civil protection is covered, at least in part, by Title VI of the EU Treaty: see Chapter 8.

47. Article 4 (formerly 3a), EC Treaty. Unlike the previous objectives, which have been solely in terms of the Community as such, this objective refers to the "activities of the Member States and the Community".

48. Articles 98 and 99 (formerly 102a and 103), EC Treaty.

49. Article 14 (formerly 7a), EC Treaty.

50. The definition of the monetary policy of the Community lies with the European System of Central Banks: Article 105(2), EC Treaty.

51. This last phrase appears in various forms in the Treaty. In Article 98 (formerly 102a), EC Treaty, it is followed by the words, "favouring an efficient allocation of resources". In Article 157 (formerly 130), there is a reference to "a system of open and competitive markets".

52. Article 4(2) (formerly 3a(2)), EC Treaty.

53. Articles 118 (formerly 109g), second paragraph, and 123 (formerly 109l(4)), EC Treaty.

54. The ECU is the European Currency Unit. Written in lower-case letters, it is an old French coin. Disputes over the naming of the new currency were resolved when the name "Euro" was adopted.

55. Under Article 105(1), EC Treaty, it is the primary objective of the European System of Central Banks to maintain price stability.

56. Article 4(3) (formerly 3a(3)), EC Treaty.

57. Article 5 (formerly 3b), first paragraph, EC Treaty.

58. In particular, Articles 230 and 231 (formerly 173 and 174), EC Treaty.

59. Certainly nothing comparable to the prerogative powers in the United Kingdom.

60. Article 308 (formerly 235), EC Treaty.

61. Ibid. In a sense the provision is contradictory: since, if it is included in the Treaty, it means that the Treaty has in fact provided the necessary powers.

62. Article 5 (formerly 3b), third paragraph, EC Treaty.

63.63. That is, areas so defined by the Treaty or areas which are subject to "common rules", within the meaning of Case 22/70, *Commission v Council* (re AETR).

64. The principle is amplified in Protocol 30. See chapter 25.

65. Article 5 (formerly 3b), second paragraph, EC Treaty.

66. The reasons for this view are discussed in chapter 25.

67. Old Article 7, EC Treaty, now repealed under Article 6(I)(3), Treaty amending the Treaty on European Union. The timetable in this Article provided for the common market to be established by 1970, with a possible extension to 1973:

68. See paragraphs 4-16 and 4-17 above.

69. Articles 14 and 15 (formerly 7a to 7c), EC Treaty. Former Article 7b, a transitional provision, has been repealed under Article 6(I)(4) of the Treaty amending the Treaty on European Union.

70. Article 14(1) (formerly 7a(1), EC Treaty.

71. Article 14(2) (formerly 7a(2)), EC Treaty.

72. In particular, Articles 95 and 308 (formerly 100a and 235), EC Treaty.