Chapter 15: The Institutions and other Bodies

The Institutions

15-1 Under the Treaty establishing the European Community, there are five Institutions having between them the constitutional powers needed to carry out the Community's legislative, executive and judicial functions. As the European Union is founded on the European Communities, each of whose basic Treaties contains similar institutional provisions, these institutions provide the institutional framework for the European Union itself.[1] The five institutions responsible for fulfilling the tasks entrusted to the European Community are[2]:

- the European Parliament[3],
- the Council[4],
- the Commission[5],
- the Court of Justice[6] and
- the Court of Auditors.[7]

15-2 In this book, the names set out in the previous paragraph are used, except - for reasons explained below - in citations from judgments of the Court of Justice. A word of explanation is called for, since there are some commonly used variants of the official titles of the Institutions. Since the coming into force of the Single European Act in 1986, "European Parliament" has been the correct name of what was originally called the "Assembly". The Council is sometimes referred to as the "Council of Ministers" but describes itself, without citing a legal basis for so doing, as the "Council of the European Union".[8] The Commission describes itself - for example, on its letter-heads, - as the "European Commission" and is described, usually by the Court of Justice, as "the Commission of the European Communities".[9] The Court of Justice describes itself , and is indeed so described in one of the provisions of the Treaty on European Union, as the "Court of Justice of the European Communities".[10] Given that its jurisdiction over many of the substantive provisions on European Union is limited or excluded, it is right that this should be the full or extended title of the Court. As for the Court of Auditors, this appears to have no variants. Strictly speaking, since the Treaties do not give delegated power to change the names of the Institutions as set out in the Treaties themselves, it is those names which should be used. At the same time, there are so many councils and commissions in Europe that some distinguishing or qualifying description is desirable for those serving the European Union, particularly when the terms are used outside the immediate context of European Union affairs.[11] It is also desirable that there should be some consistency in these descriptions.[12]

15-3 Each institution must act within the limits of the powers conferred upon it by the Treaty.[13] This is similar to the *intra vires* provision already referred to[14], with these two differences. First, the earlier reference was to the Community, while the present reference is to the Institutions. Secondly, in the earlier reference, the Community is additionally required to act within the limits of the objectives assigned to it under the Treaty.

The other bodies

15-4 In the Part of the Treaty dealing with the Institutions and other bodies, five "other bodies" are specified:
- the Economic and Social Committee[15],
- the Committee of the Regions[16],
- the European System of Central Banks[17],
- the European Central Bank[18] and
- the European Investment Bank.[19]

15-5 It is the function of the Economic and Social Committee and of the Committee of the Regions to assist the Council and the Commission in an advisory capacity.[20]

15-6 It is the primary task of the European System of Central Banks to define and implement the monetary policy of the Community.[21] It must act within the limits of the powers conferred upon it by the Treaty and by the Statute of the European System of Central Banks and of the European Central Bank.[22]

15-7 In conjunction with the European System of Central Banks, the European Central Bank has advisory and regulatory functions.[23] Like the European System of Central Banks, it must act within the limits of the powers conferred upon it by the Treaty and by the Statute of the European System of Central Banks and of the European Central Bank.[24]

15-8 It is the task of the European Investment Bank to "contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the common market".[25] It must act within the limits of the powers conferred upon it by the Treaty and the Statute of the European Investment Bank.[26]

Miscellaneous bodies

15-9 In other Parts of the Treaty, there are references to various other bodies with some importance in the constitutional framework of the European Union. These include:
- the Advisory Committee on Transport[27],
- the Coordinating Committee[28],
- the Economic and Financial Committee[29],
- the 113/133 Committee[30],
- the European Social Fund Committee[31],
- the Committee of Permanent Representatives[32] and
- the Conciliation Committee.[33]

These bodies and their constitutional functions are discussed later in this book.[34]

15-10 All the foregoing bodies are creations of the Treaty. However, many bodies have been created under secondary legislation, of which one of the most recent is the European Anti-Fraud Office (known by its French acronym, OLAF), an independent body as far as operational activities are concerned. The Office took over the responsibilities of what had previously been an internal

Commission task force.[35]

15-11 There are limits on the scale and powers of bodies created by secondary legislation. One limit is the "balance of powers" doctrine, under which bodies cannot be created with such powers or on such a scale as to upset the constitutional balance of the Community.[36] Closely related to this doctrine is the principle of *delegatus non delegare potest,* which applies with particular force when a body is created within a Member State's constitutional framework.[37]

15-12 Nevertheless, the creation of bodies outside the Institutional framework but exercising wide administrative and even quasi-judicial powers is not only a useful device but also a demonstration of constitutional flexibility. The Office for the Harmonisation of the Internal Market is a paradigm. It was created to administer the Community Trade Mark system[38]; but, when the proposals for the protection of designs are finally adopted, the Office will also administer the Community Design system. The Office includes a Board of Appeal to hear cases where registration of Community Trade Marks is refused or challenged; and there is a right of appeal from the Board to the Court of First Instance. It is a far more sophisticated body in legal terms than most of the other technical bodies or agencies created under the Treaties.

Location of the Institutions and other bodies

15-13 As already noted[39], the location of the seats or headquarters of the institutions and certain other bodies has been determined under a Protocol annexed to the Treaty on European Union, as well as to the Treaties establishing the three Communities. The locations are set out in Table III.

1. See chapter 5. For a schematic indication of the Institutions and other bodies, see Table II at the end of the present chapter.

2. Article 7(1) (formerly 4(1)), EC Treaty.

3. Articles 7(1) and 189 to 201 (formerly 4(1) and 137 to 144), EC Treaty. See chapter 16.

4. Articles 7(1) and 202 to 210 (formerly 4(1) and 145 to 154), EC Treaty. See chapter 17. The "Council" must be distinguished from the "European Council", which is not an Institution of the European Communities: see paragraph 5-4 above.

5. Articles 7(1) and 211 to 219 (formerly 4(1) and 155 to 163), EC Treaty. See chapter 18.

6. Articles 7(1) and 220 to 245 (formerly 4(1) and 164 to 188), EC Treaty. See chapter 19.

7. Articles 7(1) and 246 to 248 (formerly 4(1) and 188a to 188c), EC Treaty. See chapter 20.

8. See Council Decision EC/591/93. The latter term is used by the Court of Justice and Court of First Instance: for example in Case T-246/93, *Gunter Buhring v Council of the European Union and Commission of the European Communities.*

9. Ibid. Under the ECSC Treaty, the Commission was originally known as the "High Authority".

10. Article 46 (formerly L), EU Treaty.

11. Logically, the extended descriptions should be: the Parliament of the European Union, the Council of the European Union, the Commission of the European Union, the Court of Justice of the European Communities and the Court of Auditors of the European Communities.

12. The Court of Justice refers, in the *Buhring* case in note 8 above, as well as in other cases, to the Council of the European *Union* and to the Commission of the European *Communities*. In other cases it refers to the Economic and Social Committee *of the European Communities* (Case T-183/96), and to the Committee of the Regions (without a suffix) (Case T-110/96).

13. Article 7(1) (formerly 4(1)), EC Treaty.

14. In paragraph 12-17 above.

15. Articles 7(2) and 257 to 262 (formerly 4(2) and 193 to 198), EC Treaty. See chapter 22.

16. Articles 7(2) and 263 to 265 (formerly 4(2) and 198a to 198c), EC Treaty. See chapter 22.

17. Articles 8 and (mainly) 105 and 106 (formerly 4a and (mainly) Article 105), EC Treaty. See chapter 23

18. Articles 8 and (mainly) 105 to 107 (formerly 4a, 105 and 106), EC Treaty. See chapter 23.

19. Articles 9, 266 and 267 (formerly 4b, 198d and 198e), EC Treaty. See chapter 22.

20. Article 7(2) (formerly 4(2)), EC Treaty.

21. Article 105(2), first indent, EC Treaty.

22. Article 8 (formerly 4a), EC Treaty. The Statute is in Protocol 18 to the EC Treaty.

23. Articles 105(4), 106 and 110(1) (formerly 105a and 108a(1)), EC Treaty.

24. Article 8 (formerly 4a), EC Treaty. The Statute is in Protocol 18 to the EC Treaty.

25. Article 267 (formerly 198e), first paragraph, EC Treaty.

26. Article 9 (formerly 4b), EC Treaty. The Statute is in Protocol 10 to the EC Treaty.

27. Article 79 (formerly 83), EC Treaty. Consultations with this Committee are without prejudice to the powers of the transport section of the Economic and Social Committee.

28. Article 36 (formerly K.4), EU Treaty. How far this Committee has a role in the implementation of the EC Treaty is not entirely clear. Before 1 May 1999, the Committee had a role under Article100d; but this has now been repealed.

29. Article 114(2) (formerly 109c(2)), EC Treaty.

30. Article 133(1) (formerly 113(3)), second paragraph, EC Treaty. At the time of writing, it is not known whether the 113 Committee has been renamed the 133 Committee.

31. Article 147 (formerly 124), second paragraph, EC Treaty.

32. Article 207(1) (formerly 151(1)), EC Treaty. This Committee is informally known by its French acronym (CoRePer).

33. Article 251(4) (formerly 189b(4)), EC Treaty.

34. See, in particular, chapter 22.

35. Commission Decision EC/352/99. A Regulation of the European Parliament and the

Council (OJ L.136, dated 31.5.99) concerns investigations conducted by the Office.

36. Case 9/56, *Meroni v High Authority.* Although this is an old case, it can unexpectedly thwart plans for the creation of new bodies.

37. Case 23/75, *Rey Soda v Cassa Conquaglio Zucchero.*

38. Under Council Regulation EC/40/94.

39. Paragraph 10-10 above. See the references in the notes thereto.