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Compact

The Concept of Maastricht

- No. 38 -

Petra Brenner, Attorney in Bonn

On February 7, 1992 the Council of Ministers of the European Community (EC) signed the Treaty on the Economic and Currency Union and the Political Union in Maastricht, The Netherlands. It is the product of negotiations and conferences that began in Rome and ended in Maastricht in December. At this summit meeting of the government heads of state of the EC, essential decisions for the future path to European union were taken. Upon ratification by the 12 member states, the treaty will enter into force.

The Economic and Currency Union (ECU)

The concept for introduction of the ECU has three stages in order to complete the integration gradually with a view to the interests of the individual member states and thereby avoid conflicts that could arise from an overly hasty integration.

First stage - setting the tone

The EC has been in the first stage on the way to European Union since July 1990. This has meant a stronger liberalization of capital movement (exceptions exists for Greece, Portugal and Spain), increased economic policy coordination among the national governments (i.e. convergence programs of member states), strengthening of the committee of central bank governors in order to obtain coordination in monetary policy as well as the inclusion of wherever possible all member states of the EC in the currency exchange mechanism of the current European currency system. Independently of this, the European Internal Market will be reached by the end of 1992 for approximately 380 million people.

Second stage - preparation

The second stage begins on January 1, 1994. The goal of this stage is to qualify as many member states as possible through economic and monetary efforts for the final stage of the currency union and to complete the necessary preparatory work for the establishment of the European Central Bank. Beginning with this stage the newly created European Currency Institute (ECI) will undertake a number of monetary tasks. In particular, it is to strengthen the cooperation among the national, still autonomous central banks and improve the coordination of currency policy, giving precedence to price stability. For Germany this means that the monetary policy will continue to rest completely and exclusively in the hands of the German Federal Reserve Bank, the Bundesbank. The ECI itself will be directed by a committee composed of a president and vice president as well as the central bank governors of the EC member states.

The EC Commision and the EC Currency Institute will issue reports on the progress of the member states before the end of 1996. The convergence of the member states will be measured using the following indicators:

- no excessive deficits: new debt may not exceed 3 % of gross domestic production (GDP) and the entire public deficit may not exceed 60 % of GDP.

- high degree of price stability: the increase in consumer prices should not be more than 1,5 % above the three most stable member states in the year before the decision on transition to the third stage.

- currency exchange stability: before the decision to move to the third stage is taken, the currencies should remain for at least two years in the 13 year old European currency system within the range of the exchange rate mechanism without devaluation.

- convergence of interest levels: before the decision to move to the third stage is taken, the longterm interest rate must for at least one year not be higher than 2 % above the three most stable member states.

The Council of Economic and Finance Ministers of the EC will decide by qualified majority on the basis of the submitted reports whether a particular member state or a majority of member states fulfills the criteria. The Council will make a recommendation to the heads of government, who then will have until December 31, 1996 at the latest, likewise by qualified majority, to decide if a majority of the member states have fulfilled the requirements. Where this is so, the third stage may begin as early as 1997. Otherwise the third stage will begin no later than January 1, 1999 for those member states that fulfill the criteria; a minimum number of participating countries then is no longer necessary. The final calculation of the exchange rates is tied to the transition to the third stage.

Third stage - completion

The third stage will begin at the earliest on January 1, 1997, at the latest on January 1, 1999. The European System of Central Banks (ESCB) including the European Central Bank (ECB), will be formed from the Currency Institute at the latest in 1999. Similarly, the final setting of the exchange rates is due no later than 1999, which will finally lead to the introduction of a common currency from Copenhagen to Madrid, from The Hague to Rome.

In designing the European unitary currency, the ECU, the European Central Bank is to consider the various customs in appearance and form of banknotes. It is, for example, possible that one side of the banknotes will have European symbols and the other appropriate national symbols.

The future European Central Bank (ECB) will be independent and obligated to maintain monetary stability. Both conditions have been placed into law following the model of the German Bundesbank. The member states of the EC that cannot yet participate in the third stage will have no influence on the monetary decisions of the European Central Bank. Also, there is no veto right of the governments as the Bundesbank law permits. Rather, the treaty text states that in the exercise of its authority, tasks and duties, neither the ECB nor a central bank of a member state nor a member of its executive bodies may seek or accept instructions from components or institutions of the EC, governments or member states or other authorities. In the Bundesbank law it says by contrast simply that the Bundesbank is independent of instructions from the federal government in the exercise of its delegated powers. A further result of this last stage is that at the latest with the establishment of the European Central Bank, the central banks in most other European countries which still are largely subject to their governments will become independent.

The location of the ECB was not decided in Maastricht. The president and vice president of the ECB will serve eight-year terms.

The governments of the member states are to establish broad outlines for a common economic policy by majoity vote. Sanctions will be available against member states that fail to meet the recommendations of the EC for reduction of public deficits. A strict prohibition against financing trade deficits of individual countries in the union through the central bank will exist.

The political union

The requirements for the political union are stated in a separate contractual packet. The preamble contains the common determination to establish a European Union as a step in the "ever closer" union among the peoples of Europe. The principle of subsidiarity was anchored as follows: "The Community will be active within the limits of the powers provided in this Treaty and its goals. In the areas in which it has no exclusive jurisdiction, the Community will only be active according to the principle of subsidiarity insofar as the goals of the measure under consideration cannot be adequately anchored at the level of the member states and therefore because of their scope or their effect, could be better achieved at Community level."

It is of essential importance for the internal cohesion and unity of Europe that every member state completely transforms into its law the directives of the Community within the appointed periods. Admittedly it is up to each member state to decide how best to apply the rules of Community law with consideration to the peculiarities of its institutions, legal order and other circumstances. Nevertheless, it is of essential significance for the smooth functioning of the Community that Community law be applied with the same efficiency and force as is the case for enforcement of the individual state's legal regulations.

The Maastricht Treaty introduces or enlarges the Community's jurisdiction in the areas of environment, education and consumer protection, health policy, and in foreign and security policy as well as in the long run a common defense policy. Further, EC jurisdiction will include immigration and asylum policy, the war against organized crime and drugs. A new European criminal police "Europol" for the war against international drug traffickers and organized crime is to be established.

Criminal justice systems in the members states are to be supported by the Community, especially in coordination of investigations and searches. Besides the accumulation of information data, a clearinghouse for evaluation and collection of information is planned to assist in investigations. National preventive measures are to be collected and evaluated and provided to the member states.

In the area of social policy, a protocol declaration, also to be ratified, provides that decisions in matters relating to the Social Charter passed in 1989 will be made by majority rather then unanimity and such decisions will be immediately transformed into national law. This protocol was signed by 11 member states without Great Britain. It should make easier the issuance of minimum standards (for example part-time work). The standards will not be mandatory for Great Britain unless its government expressly gives its consent.

The question of cohesion, i.e., the financial expenditure necessary to achieve the economic and social cohesiveness of the Community, is addressed by the establishment of two funds, one for transportation infrastructure and the other for environmental projects.

For the next elections of the European Parliament in June 1994, a parliament will be elected that has more decisionmaking and supervisory rights than before. For example, the European Parliament will confirm the new Commission members and the President of the Commission. The election periods of the Commision and Parliament will be harmonized. The Parliament will have a right to investigate and a right to submit petitions to the Commission. In this way, the Parliament's rights of supervision over the Commission can be made more effective than before. Finally, a genuine codetermination of the Parliament within the framework of Community legislature has been created on questions of the Internal Market, the rights of free establishment, of culture and education, environmental action programs and research programs as well as guidelines for trans-European links in transport, telecommunications and oil and gas distribution.

An increase of the number of voting German seats in the European Parliament (from 81 to 99) could not be achieved, however, there will be 17 newly elected observers from the five new German states, comprising the former East Germany.

A new union citizenship in the EC has already been introduced. It guarantees the right of residence and freedom of movement in the entire Community as well as the active and passive right to vote in municipal elections in a member state other than one's own. In third countries, a union citizen can demand diplomatic and consular protection from any EC country.

The length of office of Commission members will be five years from January 1, 1995. Currently it is four years.

The German federal states - like their equivalent in the other member states - will send representatives (24) to a Committee of Regions and thereby, for the first time, even if only in an advisory way, have direct influence over EC decisions. The members are to be named by the Council upon recommendation of the member states. It is left to member state procedures to regulate the status of Committee members and their selection.

In the area of industrial policy, Community policy must orient itself to open and competitive markets. Subsidies are expressly forbidden; incentive measures must be unanimously voted upon.

Regions on the extreme edge of the Community (overseas departments, the Azores, Madeira and the Canary islands) that on account of several factors (great distance, insulation, modest territory and economic dependence on a few products) are disadvantaged in their economic and social development, are under the provisions of the Treaty of Rome, however, it will remain possible to issue specific measures in their favor, as long as an objective need exists in view of the economic and social development of these areas. The measures must effectuate the realization of the internal market as well as respect regional needs. The goal of such measures is the attainment of the average economic and social status of the Community.

The member states of the Western European Union (WEU) issued an additional declaration on the Treaty of Maastricht regarding their role and their ties to the European Union and the North Atlantic Treaty Organzation (NATO).

The WEU member states see the development of a European security and defense identity as necessary. The WEU states are also in agreement that from a longterm perspective, a common defense policy with NATO and with the European Union could lead to a common defense. The WEU is ready to develop and carry out decisions and actions upon request by the European Union, whereby the WEU already plans various measures. Besides a harmonization of procedures and closer coordination of the institutions, a regular information exchange will begin. The relationship with NATO will be further developed in order to achieve the necessary clarity and cooperation between the two existing European security and defense structures and a common European security and defense identity. To carry out these measures, the seat of the Council and General Secretariat of the WEU has been moved to Brussels.

SUPPLEMENT to CASTON COMPACT No. 38, December 15, 1992

An American View of the Maastricht Treaty
by Kenneth Kilimnik, LL.M., M.Iur, Attorney-at-Law (USA), New York and Hannover

On the surface, the European debate about how to ensure a democratic, non-bureaucratic European Union resembles the constant debate in the United States between states rights and federal power. Federalism in the US assumes that the states should take a more active role than the federal government. The original U.S. federalists - the party of John Adams - advocated by contrast a stronger federal government. The current European debate in the wake of the defeat of Maastricht by Danish referendum in June 1992 concerns how to implement the principle "subsidiarity" and allow member states of the European Community more decisionmaking powers. This debate is different from the American context of federalism vs. states rights.

The advocates of subsidiarity begin from the opposite premise as their American "federalist" counterparts. In the United States, sovereignty and residual powers emanate from the individual states. The subsidiarity principle implies, in contrast, that the member states have transferred their sovereign powers to the Community, which then according to the principle of subsidiarity returns designated powers to the member states wherever feasible. The Community is also very eager to forge consensus of its member states through harmonization and integration of laws. The weakness of the state uniform law movement in the United States - except for commercial transactions - shows the lack of concern for consensus or uniformity among the individual states of the USA.

The key question facing the Community in the Maastricht debate is whether the member states wish to give up more of their democratically derived powers. If not, the European Commission likely will continue to be perceived as a faceless bureaucracy and the European Parliament a debating society without significant powers.

A democratically elected European Community government will remain elusive so long as the member states choose the 17 Commission members, issue Community legislation through the Council composed entirely of representatives of the states, select the judges of the European Court of Justice, and decline to give the European Parliament significant legislative powers. The Maastricht debate reveals that many do not trust that a European Union will adequately protect their individual interests, particularly the interests of smaller member states. The proponents of the Treaty argue that there is no reasonable alternative to prevent Europe from renationalization with all the dangers as evidenced by the war in ex-Yugoslavia. Surprisingly, there is little debate about reducing member states' control of Community institutions in favor of direct elections.

From the beginning of the first European Community - for Coal and Steel - in 1951, the goal was to prevent national rivalries from causing further conflict. The means was to substitute cooperation for domination.It is by no means clear, however, whether union at the European level - political or financial -will achieve this goal. A strong, democratic Europe may be desirable. Nevertheless, a European Union, however conceived, must develop remedies against excessive bureaucracy and abuses by the democratically governing majority.

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CASTON Wirtschaftsdienst GmbH,
Luisenstr. 5, D - 30159 Hannover,
Telefon 0511 - 30756-50, Telefax 0511 - 30756-60

eMail info@caston.info; Internet www.caston.info