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Second Edition

John Peterson and Michael Shackleton

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The Institutions of the European Union

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Edited by

John Peterson

and

Michael Shackleton

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Preface

The first edition of this book was only the second to appear in the Oxford University Press 'New European Union' series, after Helen and William Wallace's milestone in the EU literature, *Policy-Making in the European Union*. The shelf on which these two books once sat alone now groans under the weight of no fewer than five other volumes, including a new (2005), fifth version of *Policy-Making*. Whereas we once faced 'only' the (already daunting) task of living up to the high standards set by Wallace and Wallace (recently joined by Mark A. Pollack), we now find ourselves having to be good enough to avoid letting down a stable of other authors and editors who together have made the 'New European Union' series an essential set of works for any student of European integration. Quite a lot of the blame for putting us under so much pressure lies with Professor Helen Wallace, the series co-editor, whose energy, enthusiasm, razor sharp mind, and all-around good citizenship never cease to amaze us.

We owe a large debt to our colleagues at Oxford University Press for helping to keep the project on track. Miranda Vernon's professionalism in seeing the book through the production process was exemplary. Ruth Anderson has worked hard to ensure that this book, along with others in the series, finds the audiences it deserves. John Peterson wishes to make it clear that the past efforts of Ruth's predecessors, Sue Dempsey and Angela Griffin, have not been forgotten. Michael Shackleton wishes to make clear that the views expressed in chapters he has authored are purely personal and do not necessarily reflect the position of the European Parliament.

Our authors have almost invariably worked to a high standard, while patiently coping with our active editorship and constant urgings to respect the next deadline. We have learned much from them and are enormously grateful to each for the part they played in making this project a success. We also are in debt to Craig Stewart, Natasa Zambelli, and Kath Francis for their crucial help in preparing the final text.

Our final expression of thanks is to our families: Elizabeth, Miles, and Calum in Edinburgh and Katie, Lucy, and Jan in Brussels. They have now put up with literally years of the two of us neglecting them while we conferred, debated, and cajoled each other and our authors about this project. Their support was especially appreciated in 2005 after French and Dutch voters kicked us (along with their own governments) in the shins by voting down the Constitutional Treaty just as we thought this book was done. We dedicate the final product to them.

JP, MS

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Here we list the abbreviations for European Parliament party groups in the 2004–09 Parliament only. See Chapter 15 for details of groups that existed beforehand, of European political parties and of national political parties.

ABM	activity-based management
ACP	African, Caribbean and Pacific countries
ADAR	Audit Developments and Reports
AFSJ	area of freedom, security and justice
ALDE	Alliance of Liberals and Democrats for Europe
AMP	annual management programme
APA	Administrative Procedure Act (United States)
APS	annual policy strategy
BSE	bovine spongiform encephalopathy (mad cow disease)
CAP	common agricultural policy
CATS	Comité de l'article trente-six (operating in JHA field)
CCP	common commercial policy
CEECs	central and eastern European countries
CFI	Court of First Instance
CFP	common fisheries policy
CFSP	common foreign and security policy
CHMP	Committee for Medicinal Products for Human Use
CIREA	Centre for Information, Discussion, and Exchange on Asylum
CIREFI	Centre for Information, Discussion, and Exchange on the crossing of Frontiers and Immigration
COA	Court of Auditors
COCOR	Commission de Coordination du Conseil des Ministres
COMP	Committee for Orphan Medicinal Products
CoR	Committee of the Regions
Coreper	Committee of Permanent Representatives
Coreu	Correspondant Européen (EPC communications network)
CPMP	Committee for Proprietary Medicinal Products
CPVO	Community Plant Variety Office
CSCE	Conference for Security and Cooperation in Europe
CST	Civil Service Tribunal

CVMP	Committee for Veterinary Medicines
DG	Directorate-General (in European institutions)
EAGGF	European Agricultural Guidance and Guarantee Fund
EASA	European Aviation Safety Agency
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECA	European Court of Auditors
ECB	European Central Bank
ECHO	European Community Humanitarian Office
ECJ	European Court of Justice
Ecofin	(Council of) Economic and Finance Ministers
Ecosoc	Economic and Social Committee
ECSC	European Coal and Steel Community
EDC	European Defence Community
EDP	excessive deficit procedure
EDU	European Drugs Unit
EEA	European Environment Agency
EEC	European Economic Community
EFC	Economic and Financial Committee
EFSA	European Food Safety Authority
EFTA	European Free Trade Association
EIB	European Investment Bank
EIF	European Investment Fund
EJN	European Judicial Network
EMEA	European Agency for the Evaluation of Medicinal Products
EMI	European Monetary Institute
EMSA	European Maritime Safety Agency
EMU	economic and monetary union
ENISA	European Network and Information Security Agency
EP	European Parliament
EPC	European political cooperation (or European Political Community)
EPP	European Public Prosecutor
EPP-ED	European People's Party and European Democrats
ERDF	European Regional Development Fund
ESCB	European System of Central Banks
ESDP	European security and defence policy
ESS	European security strategy

EU	European Union
EUL/NGL	European United Left/Nordic Green Left
EU-OSHA	European Agency for Safety and Health at Work
EURATOM	European Atomic Energy Community
Eurojust	European Union Judicial Cooperation Unit
Europol	European Police Office
Eurostat	EU statistical office
G8	Group of eight industrialized nations
GAC	General Affairs Council
GAERC	General Affairs and External Relations Council
GATT	General Agreement on Trade and Tariffs
GDP	gross domestic product
G/EFA	Greens/European Free Alliance
GNP	gross national product
HMPC	Committee on Herbal Medicinal Products
HR/CFSP	High Representative for common foreign and security policy
IND/DEM	Independence and Democracy
IGC	intergovernmental conference
IMF	International Monetary Fund
IO	international organization
JHA	justice and home affairs
LI	liberal intergovernmentalism
MEP	member of the European Parliament
MFA	minister for foreign affairs (under Constitutional Treaty provisions)
NATO	North Atlantic Treaty Organization
NI	new institutionalism
NPM	new public management
OHIM	Office for Harmonization in the Internal Market (Trade Marks and Designs)
OJ	Official Journal of the European Communities
OLAF	Office européen de la lutte antifraude (fraud prevention office)
OMC	open method of coordination
OSCE	Organization for Security and Cooperation in Europe (formerly CSCE)
PES	Party of European Socialists
PSC	Political and Security Committee (also known as COPS)
QMV	qualified majority voting
RRF	rapid reaction force
SCA	Special Committee on Agriculture

SEA	Single European Act
SGCI	Secrétariat général du Comité interministériel pour les questions de coopération économique européenne
SGP	Stability and Growth Pact
SOA	statement of assurance (also known as DAS)
SRO	self-regulatory organization
TEC	Treaty of the European Community
TEU	Treaty on European Union
UCLAF	Unité de coordination de la lutte antifraude (anti-fraud unit)
UEN	Union for Europe of the Nations
UK	United Kingdom
UN	United Nations
US	United States
WEU	Western European Union
WTO	World Trade Organization

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(Names in brackets refer to abbreviations used in Chapter 7.)

Editors' Note

We have had to make decisions on a number of presentational issues and adopted the following conventions:

- the book follows the numbering of the Treaty articles that emerged from the Treaty of Amsterdam and was maintained in the Treaty of Nice;
- we use the initials 'TEU' to refer to articles in the Treaty on European Union, or those which lie outside the scope of the European Community Treaty (notably the provisions on a common foreign and security policy—and more recently the European security and defence policy—as well as police and judicial cooperation in criminal matters, the so-called second and third pillars). The initials 'TEC' are used to refer to first-pillar articles within the Treaty establishing the European Community;
- the book refers consistently to the 'Constitutional Treaty' rather than the 'Constitution'. The former title seems to us to correspond more correctly to the nature of what member state governments agreed to in 2004. Irrespective of its fate, the Treaty remains an important part of the analysis in most chapters. References are made to the different articles in the three main parts of the Constitutional Treaty's text, distinguished by 'I', 'II', or 'III' before the number of the article.
- shortly before publication we learned that from May 2006 the website addresses of all of the institutions will be changed (to take account of the adoption of the .eu domain). Each institution will have a new address based on that of the main portal *www.europa.eu*. The European Parliament's site, for example, will be renamed *www.europarl.europa.eu*. Internet users will, however, be redirected automatically from the addresses found throughout this book.

Chapter 1

The EU's Institutions

An Overview

John Peterson and Michael Shackleton

Contents

Summary

The European Union (EU) straddles accepted categories of political organization. It is neither a state nor an 'ordinary' international organization. What sets the EU apart, above all, is its unique institutions: they resemble no other bodies found at the national or international levels. Now, perhaps more than ever, Europe's institutions *are* Europe's politics. The point was illustrated dramatically in 2005 by the political crisis over the EU's Constitutional Treaty, designed to reform the Union's institutions to cope with the Union's enlargement, following its rejection in two referendums in France and the Netherlands. This chapter introduces contending definitions of 'institution' and approaches to studying them. It argues that understanding politics always begins with understanding institutions, not least in the EU.

Introduction

The EU remains one of the most elusive of all subjects of study in the social sciences. It is neither a state nor an 'ordinary' international organization (see Peterson 2001; W. Wallace 2005). Rather, it is a unique experiment embedding the national in the

European and the European in the national (Laffan *et al.* 2000). What distinguishes the EU above all is its institutions: they have no close analogues at either the national or international levels.

The EU exists to provide collective goods—such as an internal market, a single currency, and international power—which the Union's Member States cannot deliver (or not as well) on their own. The EU's institutional system is both the central mechanism for achieving those goals and the locus of disagreement about the future development of the Union, as was illustrated dramatically by the crisis that followed rejection of the EU's 'Constitutional Treaty' in referendums held in France and The Netherlands in 2005. Now, perhaps even more than when Ludlow (1992) first made the argument, Europe's institutions *are* Europe's politics: battles over the political direction of the EU are inevitably clashes about how its institutional system can and should work. For example, the Constitutional Treaty—a traditional Treaty between EU member states but meant to be more permanent than its predecessors—was portrayed by its supporters as simply a pragmatic attempt to rationalise the EU system to cope with its radical enlargement. Yet, it became a lightning rod for Eurosceptics opposed to closer European integration.

Most academic work on European integration highlights the highly variable capacity of the EU to govern effectively in the different phases of its development. The standard version of that development suggests that Europe integrated surprisingly rapidly in the 1950s and early 1960s. Then, in the 1970s and early 1980s, the Community became immobilized by economic crisis and a set of rules that made effective decision-making almost impossible. During this period of so-called Eurosclerosis, it seemed the Community could accomplish nothing very important. Then, dramatically, European integration was given fresh impetus by the so-called single market project, which sought to transform (then) twelve national economies into a single, seamless European one. Before the project's 1992 target date for completion, even more dramatic changes were unleashed by the collapse of the Warsaw Pact and Soviet Union in 1989–91. West European governments responded by agreeing the Maastricht Treaty, which contained bold commitments to economic and monetary union, a 'common' European foreign and security policy, and a political union. Suddenly, it seemed the EU could accomplish *anything* (Laffan *et al.* 2000: 4). Twelve years after Maastricht was ratified, the turmoil surrounding the Constitutional Treaty raised questions about whether the EU would again become immobilized, and perhaps as never before.

These perceptions of total breakdown and dramatic advance are both products of failed imagination: lack of it during the Eurosclerosis period, overactivity in the 1990s, and a failure to imagine that the EU might, as it always had in the past, eventually recover from its constitutional crisis of 2005. The EU has always been somewhere between inert and ideal. In the past decade, it has successfully introduced the euro, thus reinforcing the identity of the Union in the minds of millions of Europeans (if not always positively[1]). It has also negotiated the entry of ten new member states, thus exporting its liberal democratic habits to Europe's east and south. At the same time, it has made few strides towards the goal it set itself in Lisbon in 2000 to make the Union the most dynamic economy in the world. It was entirely unable to agree a common European response to the 2003 war in Iraq.

What spans the EU's successes and failures, its potential and shortcomings, its state-centrism and European-ness, is its institutions. There is no one single, uncontroversial definition of 'institution' but rather a variety of contending ones. Article 7 of the EU's Treaties follows the European tradition of defining institutions as organizations which enjoy special legal status, and designates five: the European Parliament (EP); the Council of Ministers; the European Commission; the European Court of Justice (ECJ); and the Court of Auditors. Article I-19 of the Constitutional Treaty also lists five but substitutes the European Council for the Court of Auditors. If we used either of these definitions, this book would be much shorter and narrower in focus than it is.

Yet, institutions are often defined in a far broader sense in the study of politics, as 'extending beyond the formal organs of government to include standard operating procedures, so-called soft law, norms and conventions of behaviour' (Bulmer 1994: 355). According to this perspective, 'institutions do not think, have preferences or act, but are sets of commonly accepted formal and informal norms that constrain political actors' (Marks 1996: 22). In this sense, virtually anything that is accepted as 'normal' could be considered institutionalized. Coverage of all that fits under this definition in the EU would result in a book far longer than this one.

This book takes a sort of middle way. First, we conceive of institutions as arenas where power and influence are exercised, regardless of the precise legal status of the organizations that preside over them. Second, we invite our readers to think of institutions not just in terms of specific people and premises but also as rules and practices.

We begin by explaining why the study of institutions has been brought 'back in' to the study of politics in recent years. We then develop the argument that the EU's institutions provide an essential and revealing window into Europe's politics (see Exhibit 1.1). Our next task is to consider how and why the Union's institutions have changed yet endured over time. Finally, we set out some of the book's major themes, and conclude with advice on how this book might be read.

Exhibit 1.1 Perceptions of the EU's institutions

Each man begins the world afresh. Only institutions grow wiser. They store up collective experience . . . From this experience and wisdom, men subject to the same laws will gradually find . . . not that their natures change . . . but that their behaviour does.

Source: Jean Monnet (1950)

The fusion of interests in the European Community is being achieved through a new mechanism of institutions which it is only slight exaggeration to call a constitutional framework.

Source: Walter Hallstein (1962)

What a model our institutions, which allow every country irrespective of its size to have its say and make a contribution, offer the nations of Eastern Europe.

Source: Jacques Delors (1989)

continues

Exhibit 1.1 continued

Supranational institutions—above all, the European Commission, the European Court, and the European Parliament—have independent influence in policy-making that cannot be derived from their role as agents of state executives.

Source: Gary Marks, Liesbet Hooghe, and Kermit Blank (1992)

All along [the] road, the European institutions—the Council, the European Parliament, the Commission, and the Court of Justice—have provided sterling service, to which we must pay tribute. At the same time . . . the process of European union is showing signs of flagging.

Source: Valéry Giscard d'Estaing (2002)

Like other reformers, political leaders in the EU try to make institutions more rational and efficient, more humane, representative, responsive, transparent and accountable . . . The motivations of EU reformers are complex and shifting. They want many, different and not necessarily consistent things.

Source: Johan Olsen (2003)

Why study institutions?

The social sciences came of age in the early twentieth century by focusing intensely, often exclusively, on institutions. In political science, the overwhelming emphasis was on formal structures of government and systems of law-making. Political analysis began—and often ended—by describing institutions in great detail. Methodology was generally not a matter for debate nor was the behaviour of political leaders, officials or citizens. As Rhodes (1995: 42) suggests, 'the focus on institutions was a matter of common sense, an obvious starting point . . . and therefore there was no need to justify it'.[3]

Everything changed in the 1950s and early 1960s. First, the so-called behavioural revolution was unleashed (see Sanders 1995). Behaviouralists condemned the traditional emphasis on institutions as too narrow, unscientific, and atheoretical. Traditional institutionalist analysis not only failed to explain policy or power. It also suffered from 'hyperfactualism': reverence for 'facts' amounted to theoretical malnutrition (Easton 1971).

For behaviouralists, institutions were relatively uninteresting compared to the *behaviour* of political actors. Institutions had no political interests or personalities of their own. In a sense, behaviouralism assumed that an institution was just a car waiting for a driver. What was far more interesting than studying the car was studying the behaviour of the agents—political leaders, parties, voters—competing to seize power, control institutions, or drive the car. Behaviouralists sought to make political science a true science, often through the use of statistics and quantitative analysis. Institutions—leaving aside some notable exceptions (see Allison 1971)—more or less disappeared from the radar screens of most political scientists.

The second big change was a shift in the study of international relations. Traditionally, scholarship had focused mostly on competition (especially military) between sovereign states in what was assumed to be a Hobbesian and anarchic international system (see Morgenthau 1948). However, the post-war creation of the United Nations (UN) and the Bretton Woods institutions (the General Agreement on Tariffs and Trade, the World Bank, and the International Monetary Fund, or IMF) led to a blossoming of scholarship on international cooperation. In time, Europe became the primary focus of this scholarship as the continent embarked on ambitious experiments in (especially economic) integration. 'Neofunctionalists' theorized that modest steps towards cooperation would lead to more ambitious moves in a process that was, in many ways, self-sustaining (see Haas 1958; Lindberg 1963).

Yet, the dawning of the so-called Second Cold War (Halliday 1983), a period of heightened international tension in the early 1980s, made most international organizations (IOs)—including the apparently Eurosclerotic Community—seem too weak to foster much meaningful cooperation. The focus shifted towards explaining renewed conflict, especially between the United States and Soviet Union (see Waltz 1979). Europe was politically and—along with institutionalism—academically marginalized.

Then, beginning in the mid-1980s, institutions began to be rediscovered. A groundswell of academic momentum developed behind the idea that institutions were important but neglected, and it was time to bring them 'back in' to the study of politics (see Skocpol 1985; March and Olsen 1989). In some respects, the 'new institutionalism' was a rebellion against behaviouralism. Neoinstitutionalists insisted that political behaviour was determined in fundamental ways by the nature of political institutions, how they are constructed and how power is distributed between them.

The basic neoinstitutionalist argument is that institutions matter. They define group loyalties in any political system and help determine how political debates are structured. They are *not* just cars waiting for drivers. In particular, institutions, even ones that are formally apolitical, can develop their own interests, agendas and priorities and act with considerable autonomy despite being formally controlled by political actors, such as governments. Actual policy outcomes can reflect the *agency*—the determined pursuit of favoured choices—of institutions more than of the preferences of governments. One reason why is that the policy priorities of governments are often disputed or vaguely defined, thus allowing scope for formally apolitical institutions to set the agenda.

The new institutionalism is more a *perspective* on politics than a fully developed theory. Still, neoinstitutionalism has emerged as a leading, even (arguably) dominant perspective on European integration and politics (Pollack 2004; Cowles and Curtis 2004). If nothing else, it is accepted as a viable alternative to state-centric or intergovernmental approaches derived from the study of international relations (see Grieco 1995; Moravcsik 1998). The latter assume, reasonably, that the EU has a strong intergovernmental backbone and that policy debates are mostly debates between national actors pursuing national interests. Yet, battles over EU policy are mostly fought out far from national capitals and governments. Nearly all actors in EU politics have multiple identities and mixed loyalties, to their member state, political party, or the interests of the policy sector in which they work. Institutional affiliations thus give actors a sort of anchor or orientation that may override others. Neoinstitutionalist treatments argue that EU politics have to be understood in terms of institutional competition (and cooperation) between, above all, the Council of Ministers, the European Commission, the European Parliament (EP), and the European Court of Justice (ECJ), and not just in terms of *intergovernmental* competition (and cooperation).

There are at least three main variants of institutionalism (see Hall and Taylor 1996; Peters 1999; Pollack 2004). Historical institutionalists focus on how EU governance has evolved over time (Bulmer 1994; Armstrong and Bulmer 1998; Lindner and Rittberger 2003). This work highlights the importance of emergent institutional norms, such as the Council's engrained habit of seeking unanimity on any measure regardless of whether qualified-majority voting (QMV) applies (see also Golub 1999). Such norms can constrain political decision-making and produce 'path dependence'—a concept central to all variants of institutionalism—because 'initial policy choices may restrict subsequent [policy] evolution' (Armstrong and Bulmer 1998: 55). Path dependence is particularly powerful when consensus is required to *change* an existing policy or institution. Historical institutionalists, as neofunctionalists before them, insist that European integration must be studied as a historical process, in which actors often apply a high 'discount rate' to the future. Thus, today's decisions often are taken with little regard for tomorrow's consequences. In these circumstances, member governments can become 'locked in' to policy paths on which they have set the Union, with its institutions becoming guardians of long-established policies and 'not simply passive tools of the member states' (Pierson 1996: 132; see also Pierson 2004).

A second, sociological variant of institutionalism shares with the historical version a preoccupation with the Union's 'uneven institutional history' (Fligstein and McNichol 1998: 88; see also Fligstein and Brantley 1995; Fligstein 1997). Yet, sociological institutionalists assign even greater weight to norms, conventions, and ideas. For example, Parsons (2003: 1) argues that the EU 'stands out as the major exception in the thinly institutionalized world of international politics' because certain ideas about how solutions could be connected to problems became institutionalized in postwar Europe. The political effects have been powerful, since the 'institutionalization of certain ideas gradually reconstructs the interests of powerful actors' (Parsons 2003: 6). Sociological institutionalists share important analytical assumptions with constructivists, who insist that preferences in EU policy debates are 'constructed' through the social interaction of actors in Brussels and Strasbourg as much (or more) than they are determined prior to such interactions (see Christiansen *et al.* 2001). More generally, sociological institutionalism holds that institutions matter because they determine what is considered appropriate behaviour by actors, which itself has powerful implications for political and policy outcomes.

A third variant of institutionalism builds on rational choice theory (see Farrell and Héritier 2005). Rational choice institutionalists argue that institutions matter most when they become subject to what economists call 'increasing returns'; that is, they generate sufficient benefits that member governments, who themselves rationally calculate their own interests, face disincentives to abandon or reformulate them. Thus, the European Court of Justice has been able to pursue legal integration even beyond the collective preferences of member governments because of the high costs to member states of seeking to overrule it or failing to comply with its judgments (Garrett 1995). Rational choice institutionalism sometimes draws on principal-agent theory, which seeks to explain how and why governments, or 'principals', solve collective action problems by delegating functions to international institutions which then act as their 'agents', although usually with a variety of mechanisms put in place to control or monitor their behaviour (see Majone 2000; Pollack 2003).[4]

The point here is not that neoinstitutionalism, in one or more of it variants, is the only, or even best, way to study the EU's institutions. In fact, the contributors to this volume deploy a range of different theoretical approaches. The point is rather that institutions are worth studying because, as is now widely acknowledged across all the social sciences, institutions matter.

Why study the EU's institutions?

If institutions matter, they may matter even more in the European Union than in other political systems. Why? We can think of at least eight reasons.

First, the EU is probably the most powerful non-state actor in the contemporary international world (see Josselin and Wallace 2001). Its institutions generate a wide array of policies that impact directly upon EU states and their citizens (as well as many beyond Europe) and in ways that are unmatched by any other international organization. Every day, EU citizens in 12 states use the currency that was adopted as a result of a series of decisions taken by EU leaders meeting in the European Council. Air passengers in Europe whose flights end up being cancelled are now often entitled to generous compensation mostly due to the stubborn insistence of the European Parliament (EP) that they should be. One of the largest proposed corporate mergers in history, between the *American* firms General Electric and Honeywell, was scuppered by a decision of the European Commission. In short, the European Union is enormously powerful, and not *only* because it combines the power of twenty-five (as of 2006) European states, including several major powers. Much of the EU's power is vested in its institutions.

Second, the EU's institutional structure has uniquely blended continuity and change. The institutions established in the 1950s (see Table 1.1) have retained many of their essential characteristics, revealing how deeply engrained established institutional norms and cultures have become. In most policy areas, the Commission retains to this day a monopoly right to present legislative proposals, a power it has held since the origins of the European Economic Community. For its part, the European Parliament has evolved from a mostly toothless body to an effective co-legislator with the Council in many areas. Meanwhile, there has been a remarkable burgeoning of new bodies starting with the European Council and European Court of Auditors in the 1970s and continuing with a seemingly endless array of decentralised agencies that have sprung up in the last decade (see Table 1.1).

Third, the EU's institutions matter because they are the vehicles used by the Union's member governments to enforce the terms of the bargains they make with each other (see Moravcsik 1998). But they are more than just passive instruments, or cars waiting for drivers. The powers they have accrued over time—arising from the *acquis communautaire*, or the full set of rights and obligations deriving from EU

[illegible]

	Start of activities	Title of institution	Location
1950			
	1952	**Council of Ministers**	Brussels/Luxembourg
	1952	**ECSC High Authority**	Luxembourg
	1952	**European Court of Justice**	Luxembourg
	1952	**ECSC Parliamentary Assembly**	Strasbourg/Luxembourg
	1958	**European Commission**	Brussels/Luxembourg
	1958	**Economic and Social Committee**	Brussels
	1958	**European Investment Bank**	Luxembourg
	1958	**Committee of Permanent Representatives (Coreper)**	Brussels/Luxembourg
1960			
	1962	European Parliamentary Assembly changes its name to **European Parliament**	Strasbourg/Luxembourg/ Brussels
	1965	Merger Treaties create a single **Commission**	Brussels/Luxembourg
1970			
	1974	**European Council** (formally established by Paris Summit)	
	1975	European Centre for the Development of Vocational Training	Berlin (since 1995 Thessaloniki)
	1975	European Foundation for the Improvement of Living and Working Conditions	Dublin
	1977	**European Court of Auditors**	Luxembourg
1980			
	1989	**Court of First Instance**	Luxembourg
1990			
	1994	European Environment Agency	Copenhagen
	1994	**Committee of Regions**	Brussels
	1994	Office for Harmonization in the Internal Market	Alicante
	1994	Translation Centre for the Bodies of the European Union	Luxembourg
	1995	**European Ombudsman**	Strasbourg
	1995	European Training Foundation	Turin
	1995	Community Plant Variety Office	Angers
	1995	European Agency for Safety and Health at Work	Bilbao
	1995	European Medicines Agency (EMEA)	London
	1995	European Monitoring Centre for Drugs and Drug Addiction	Lisbon
	1998	European Monitoring Centre on Racism and Xenophobia	Vienna
	1998	**European Central Bank**	Frankfurt
	1999	European Anti-Fraud Office (OLAF)	Brussels
	1999	Europol	The Hague
2000			
	2000	European Police College (CEPOL)	Bramshill
	2000	European Agency for Reconstruction	Thessaloniki
	2001	European Data Protection Supervisor	Brussels
	2002	Eurojust	The Hague
	2002	European Maritime Safety Agency	Lisbon (since 2004)

continues

Table 1.1 continued

Start of Activities	Title of Institution	Location
2002	European Aviation Safety Agency	Cologne (since 2004)
2002	European Food Safety Authority	Parma (since 2004)
2002	European Institute for Security Studies	Paris
2002	European Union Satellite Centre	Torrejon de Ardoz
2003	European Communities Personnel Selection Office (EPSO)	Brussels
2004	European Network and Information Security Agency	Heraklion
to be established	European Railway Agency	Lille, Valenciennes
	European Centre for Disease Prevention and Control	Sweden
	European Chemicals Agency	Spain
	Community Fisheries Control Agency	Helsinki

Note: (Institutions in bold are designated in the Treaties as 'EU institutions'.)

treaties, laws and regulations—give the Union's institutions substantial autonomy. For example, the ECJ has had an intensely powerful impact on the shape and direction of European integration both through its own judgements and its integration of national courts into a single system of judicial review (Weiler 1999; Alter 2001). More generally, the EU's institutions are an important reason why European states continue to respond to their interdependence by cooperating (while competing, sometimes fiercely, over the details).

Fourth, the Union's institutions not only manage but also provide direction. More than the international secretariats of any other IO, the EU's institutions possess rational-legal authority to make rules. They also create social knowledge in less formal ways: defining shared European tasks, creating new categories of actors (such as refugees or 'EU citizens'), forming new interests for actors or reshaping old ones, and transferring new models of political and administrative organization across Europe (see Barnett and Finnemore 1999). Of course, political direction comes mostly from member governments and is channelled via the European Council and Council of Ministers. But there is scope for agency by the Commission and Parliament, each of which has its own political agenda and priorities which cannot be reduced to the sum total of those of the EU's member governments.

Moreover, the Commission, Parliament and other EU institutions also act to integrate interests, including those of actors who either oppose or act independently of their 'home' government. Certainly, it is easy to overestimate the EU as a Brussels-based system of politics in which national interests or institutions are marginalized or blended together. As Helen Wallace (2000: 7) argues:

> much of EU policy is prepared and carried out by national policy-makers and agents who do not spend much, if any, time in Brussels. Rather what they do is consider how EU regimes might help or hinder their regular activities, and apply the results of EU agreements on the ground in their normal daily work. If we could calculate the proportions, we might

> well find that in practice something like 80 per cent of that normal daily life was framed by domestic preoccupations and constraints.

At the same time, the EU has given rise to a multi-level polity in which the boundary between politics in national capitals and Brussels has become blurred. The Union's institutions have aided and abetted this blurring by providing opportunities for interests, including ones that lack influence at the national level, to join their counterparts across Europe in pursuing common objectives. Many truly pan-European interests have been nurtured, sometimes manufactured, by the Union's institutions. Some lobbies have been energised by their perceived need to respond to agency on the part of the EU's institutions. Witness, for example, the resolute lobbying effort of the European chemicals industry in response to the Commission's proposed REACH (Registration, Authorization, and Restriction of Chemicals) Directive, which threatened the industry with significant new costs.

Fifth, the EU's institutions are worth studying because they are powerful yet often unloved or misunderstood by European citizens. Arguably, popular disillusion with the EU's institutions is no more severe—some evidence suggests less—than is disillusion with national institutions and politics.[5] Still, the EU's institutions are clearly not as accepted or respected as national institutions are by European citizens. Average voter turn-out in EP elections has fallen with each successive poll. After the French and Dutch voted against the Constitutional Treaty by surprisingly large margins in the 2005 referenda, one seasoned observer detected a 'collapse of self confidence and general morale in the EU institutions', and especially in the Commission which was 'close to an institutional nervous breakdown' (Palmer 2005; see also Tsakatika 2005). However, its President, José Manuel Barroso, fought back by urging member governments to break their habit of blaming all of Europe's ills on the EU: 'If you attack Brussels six days of the week, can you really expect citizens to support it on Sunday?'[6]

Sixth, the EU's institutions not only link Brussels to national EU capitals. They also link Europe to the wider world of international politics and, particularly, an extensive network of IOs. As the world's largest trading power, the EU is a crucial player in the World Trade Organization (WTO). The creation of a European Security and Defence Policy (ESDP) has required extensive interaction with the North Atlantic Treaty Organization (NATO). As the Iraq war illustrated, the EU continues to disappoint those who wish to see it become, in Tony Blair's memorable phrase, 'a superpower, not a super-state'. Yet, the Constitutional Treaty foresaw the transformation of the post held by Javier Solana, of 'High Representative' for the Common Foreign and Security Policy (CFSP), into an outright EU Minister for Foreign Affairs. Whatever the move's future prospects, political agreement on it by twenty-five member governments illustrated a remarkable depth of will in Europe to make the EU a more effective global actor.

More generally, the Union's institutions are increasingly more powerful actors in the so-called 'international community', a world once almost exclusively dominated by sovereign states. One effect is to allow Europe (sometimes, at least) to wield its formidable, collective power. Ironically, in an era when the US often seems unrivalled in international politics (Ikenberry 2002), and with the EU apparently at its weakest given the crisis over the Constitutional Treaty, a surfeit of works has piled up predicting that the twenty-first century will be one of European dominance (Kupchan 2003; Haseler 2004; Reid 2004; Rifkind 2004; Leonard 2005).

Seventh and somewhat paradoxically, EU politics are largely a product of competition between its institutions, but the Union's institutions are inescapably interdependent. The EU's decision rules are designed to foster collective responsibility for the Union's policies. Little of importance may be agreed without the joint consent of the Commission, EP and Council—with appeal to the ECJ always likely when such consensus is *not* achieved. Regardless of its fate, the Constitutional Treaty spells out far more explicitly than ever before aims that *all* of the EU's institutions share collectively: to advance the EU's objectives, promote its values, serve the interests of the Union, its citizens and member states, and ensure the consistency, effectiveness and continuity of its policies. It explicitly states that all EU institutions should work in 'full mutual cooperation'.

Thus, our understanding of the Union runs up against hard limits when we study them as separate and autonomous entities. In practice, they form a series of networks, differing in structure and membership in different policy sectors, with each bound together by both formal and informal rules (see Keohane and Hoffmann 1991). Even an institution that is formally designated as independent, such as the European Central Bank (ECB), cannot be understood without reference to the decisions taken by the European Council and the Council of (Economic and Finance) Ministers at its inception. In line with institutionalist assumptions, these decisions have heavily structured the kind of decisions the ECB can now take.

Institutional interdependence is clearly uneven across policy sectors. For example, the EP has little power to determine the CFSP. The Commission acts with considerable independence in competition policy. There exists no single mode of EU policy-making (see H. Wallace 2005), and the traditional Community method—which gives distinct and exclusive powers to the Commission, EP and Council—has often been found inappropriate for new policy tasks, such as freeing labour markets or creating the European Security and Defence Policy (ESDP). These and other objectives have been pursued via some variant of the so-called Open Method of Coordination (OMC), which usually involves peer review of national policies as a way to disseminate best practices, with policy change occurring voluntarily (as opposed to being imposed by new EU rules) when it occurs at all.

The early record of the OMC was, at best, mixed. More generally, it was easy to conclude that the EU is suffering from 'a crisis of governance' (Eberlein and Kerwer 2004: 135), given its radical enlargement, attempts to tackle problems that were not readily soluble by traditional methods, and the turmoil surrounding the Constitutional Treaty. Whether or not new policy modes such as the OMC are just stages on the way towards the embrace of the tried and true Communitarian model (see Wessels 2001), the trend is towards finding new, non-traditional ways to encourage collective action on the part of multiple EU institutions. Good examples include the EU Minister of Foreign Affairs who (if the post were ever created) would be a European Commissioner yet chair the Council when EU foreign ministers met, or the European data protection supervisor, who both oversees how the institutions apply the EU's own privacy rules and coordinates a network of data protection officers appointed by each EU institution.

Last but not least, the Union's institutions are worth studying because they are a testing ground: they will go far towards determining history's verdict on the EU's success in managing enlargement. Since the first edition of this book was published, 10 new states have joined the EU, bringing with them nine new official languages and increasing the number of language combinations from 110 to 380. No other IO has ever had to face this kind of challenge on this scale. To illustrate the point, trade officials stressed the gravity of China's accession to the World Trade Organization in 2001. Yet, even admitting a state with a market of 1.3 billion consumers whose language was not an official WTO working language did not come close to posing the challenges posed by the EU's 2004 expansion: mathematically, the WTO would have to have admitted around 90 new states alongside China to stand comparison to what the EU did on 1 May 2004. The possible institutional effects of EU enlargement are a central theme of this volume.

'Frustration without disintegration'—the persistence of the EU system

We have argued that the EU's institutions are both important and essential to understanding the European Union. It also must be acknowledged that the EU is home to considerable institutional weakness and dysfunction. By no means is the Union alone amongst international organizations in having institutions that sometimes appear obsessed with their own internal rules or neglectful of their missions (Barnett and Finnemore 1999). Yet, European citizens who express stronger support for a united Europe in the abstract than for the EU in practice[7] exhibit a sort of collective, common sense. It is perfectly plausible to be pro-European but to believe that the EU's institutional system does not work very well: apparently, the European Union flag was widely displayed at many 'non' rallies during the 2005 French referendum campaign on the Constitutional Treaty (Palmer 2005).

Part of the problem may be historical. Many of the EU's institutions were created for a Community of six states, not a Union of twenty-five plus. Even in the original EEC, very different ideas about what kind of polity the EU should be created scope for weak compromises and institutions that were dysfunctional almost from the moment of their creation (see Lindner and Rittberger 2003). In these circumstances, it could be argued that the EU's institutions have adapted remarkably well to successive enlargements. Yet, the 2004 enlargement clearly marked a step-level change. The Constitutional Treaty was intended to be a quasi-permanent solution to the problem of modernizing the EU's institutional system so that it could cope with enlargement. The Treaty's rejection by French and Dutch voters revealed that Europe remains far from a consensus about what kind of polity the EU should become. Arguably, it has relied for far too long on an institutional system that is long past its sell-by date.

Another part of the problem is political. Without a government (or opposition), the Union often seems unable to steer the European project. For one thing, the project has always depended for its sustenance on appearing to be apolitical, consensual, or uncontroversial. For another thing, the capacity of the EU's institutions—with the arguable exception of the European Council—to give political impulses to the Union are strictly limited. For all of the capacity of the EU's institutions for agency, political leadership of Europe must inevitably come mostly from national capitals.

A third and related problem is managerial. The 1980s saw the Commission under the Presidency of Jacques Delors show (unusually) genuine political leadership. However, Delors and his college of Commissioners took little interest in efficient management. Amidst charges of mismanagement and nepotism, the collective resignation of the Commission under Delors' successor, Jacques Santer, in March 1999 was a low point in the institutional history of the EU. It illustrated that the EU's lack of hierarchy and reliance on informal networks had serious costs. For students of public management, it was axiomatic that 'pluralistic policy networks are undermanaged because the constituent organisations do not invest in the capacities needed to manage their mutual interdependence' (Metcalfe 2000: 13). For students of the EU, it was hard to resist Metcalfe's (2000: 13) conclusion that 'the substandard performance of the system is everyone's problem and no-one's responsibility'.

Yet, there was little question that the Commission was far better managed (if not necessarily better led) by the end of Romano Prodi's Presidency in 2004. Prodi's Vice-President and Commissioner for Administrative Reform, Neil Kinnock, piloted an ambitious programme of reforms (see Spence 2000; Kassim 2004). Meanwhile, the Council was taking its own steps to better manage its agenda and make itself more transparent. The Court was revamping itself to cut down on its backlog of cases.

One view of these developments is that they reflect the steady maturation of the EU's institutions into modern, high-performance bodies as the Union itself slowly but steadily comes of age politically. This view focuses more on long-term process than short-term crises. It assumes that no Constitutional Treaty was ever going to be greeted with universal enthusiasm. It also reminds us that, after all, the version rejected by the French and Dutch in 2005 had been agreed within a broadly inclusive constitutional convention that produced the most transparent and readable European treaty in modern history (see Norman 2003). Implicitly, this view assumes that political consensus on institutional reforms, as reflected in the Constitutional Treaty, means that most of its provisions that advance or consolidate the position of the EU's main institutions will eventually be implemented. For example, the rotating Council Presidency system (a source of discontinuity in the work of the Council) will be abandoned. The Commission will keep its monopoly right of legislative initiative. One day, perhaps sooner rather than later, the European Council will have a sitting President.

These two portraits that we have painted—of institutional weakness and fresh dynamism—are less incompatible than they appear. First, consider how one of the primary functions of the EU's institutions, integrating political interests, has often *not* been abetted and sometimes has been actively resisted by member governments. Naturally, perhaps, EU governments wish to retain their own, favoured, primary relationships with voters and interest groups. The result is that the EP and Commission lack their own, independent sources of authority and support. They also lack resources. The EP has nothing approaching the resources of say, the US Congress (with its large Congressional Research Service, General Accounting Office, and so on). The Commission has one official per 10,000 EU citizens, while national civil services average 300 per 10,000 (Leonard 2005: 15). There are clear limits to the willingness of the Union's member governments to delegate control of the European project.

Second, the EU almost never makes a hard decision today that can be put off until tomorrow. Barroso was explicit in stating that making a success of the so-called Lisbon process of economic reform would be one of the priorities of his Commission. Yet, its fate clearly would be overwhelmingly determined by difficult decisions that had to be taken at the national level, most of which had been avoided thus far (see EU 2004).

Third and finally, it is impossible to banish path dependency from EU governance. Even after attempts to constitutionalize the EU seemed to go so badly wrong in the mid-2000s (Skach 2005), 'frustration without disintegration' remained an apt description for how the EU's institutional system remained sub-optimal but never stopped working (Scharpf 1999). The desire amongst European governments to make the Union work better, but to avoid a genuine process of state-building, were both time-honoured impulses, however contradictory they sometimes seemed to be.

The EU's institutions have always, from their earliest origins, operated in a highly contested environment. There is no universal agreement about what the European Union is or ought to be, and never has been. Is it a particularly elaborate IO that enables states to achieve certain goals more efficiently than they could otherwise do? Or does it now transcend the state, in some areas emerging as more than the sum of its parts? Since academics as well as practitioners (see Exhibit 1.1) give different answers to these questions, they inevitably disagree as to what the Union's institutions—individually and collectively—exist to do.

One thing should be clear from our analysis thus far: the EU's institutions cannot simply be seen as a purely functional set of bodies designed to achieve certain common purposes. If they were, they could be judged purely on the basis of efficiency. Yet, the EU's institutional system no longer rests 'on a single principle of legitimacy, but several' (Lord and Magnette 2004: 199). European integration has become a highly political exercise, and the EU's institutions have evolved into highly political animals. Arguments about how to make the EU more efficient often ignore widespread doubts about the legitimacy of the Union as a whole.

Thus, we encourage our readers to look beyond debates about what each institution should do. Can the EU withstand new demands to be more open and transparent even as it digests radical enlargement? Is the EU a model for the world or a one-off? Are its best days behind it? Answering each of these questions begins, inevitably, by understanding its institutions.

Conclusion

Most leading texts on the EU offer a straight review of what the Treaty designates as institutions, with one chapter each on the Council, Commission, EP, and so on. Less weighty institutions, such as the Court of Auditors and Committee of the Regions, are covered in a composite, 'lest we forget' chapter. This book does not present a simple, standard, one-institution-per-chapter dash across the EU's institutional landscape. Instead, after an overview (in Chapter 2) of the EU's, tortured attempts at institutional reform, we offer three grouped sections of chapters that examine how different institutions provide political direction, manage the Union, and integrate interests. Each of these chapters begins with an analysis of the origins and development of the institution specified, followed by an overview of its structure and functions. Each author then reflects on 'their' institution's powers, before considering how it fits into the EU's wider institutional system. All consider which theories of European integration and EU governance help us best to understand the institution. None ignores the crucial questions of how their institution is likely to be changed by enlargement or by the debate surrounding the Constitutional Treaty.

Some EU institutions—particularly the Commission, Council and EP—perform more than one function, and thus analysis of them is spread across more than one chapter. The reader who wants to understand the institutions 'one by one' (or teacher who wants to teach them that way) should not hesitate from reading, say, Chapter 5 on the college of Commissioners together with Chapter 8 on the Commission's services. But we encourage the reading of chapters together in the sections into which they are grouped. The effect, we hope, is to help our readers to come to grips with

[illegible]

An informal meeting was called at Ghent on 19 October 2001. Foreign ministers were not invited. Normal rules implied that no conclusions would be drafted, no statements issued. However, heads of government decided that they wanted to issue declarations on terrorism, the economic situation, and the introduction of the euro. These declarations are entitled 'Declarations by the Heads of Government and the President of the Commission', a formulation which acknowledges the fact that the composition of the meeting is not in conformity with Article 4 TEU (no foreign minister) and that therefore *it is not* legally a European Council. However in the text of these declarations it is the European Council that 'states, confirms, takes note, is determined, will continue, invites member states etc'. In other words, although the meeting should not issue declarations it does do so, and although it is not a European Council it takes positions and issues instructions as if it were one . . . And nobody complains!

institutions (Council, Commission, and Parliament) have to take into account and respect.

- **Informality**: The European Council has always attached the highest importance to the informality of its meetings. It works on the basis of restricted sessions where heads of government and foreign ministers sit alone, face to face, frequently addressing each other by their first names. In the seventies the Chancellor of West Germany, Willy Brandt, wanted summit meetings to be like a fireside chat (*Kamingespräch*). Roy Jenkins considered the European Council as 'a surprisingly satisfactory body, mainly because it is intimate' (Jenkins 1989: 74). With time, and as a result of enlargement, meetings have tended to become more structured and more formal. Specific papers are, in practice, actively debated. But the principle of privacy and direct contact, quite frequently confrontational, remains.
- **Flexibility**: Rules of procedure have been gradually adopted over the years, but the fact is that they remain highly flexible. European Councils do not hesitate to depart from rules they have themselves formulated, as indicated in Exhibit 3.2.
- **Unequal relationships**: In the abstract all heads of government are equal, just as their states have equal status in international law. But because the European Council is a locus of power, the fact that some participants have in fact more power (because they represent a bigger country) is immediately apparent and implicitly understood by all. Put simply, 'the intergovernmental nature of the European Council is more marked than that of the sectoral Councils' (Hayes-Renshaw 1999: 25).
- **Seniority**: Because participants are relatively few in number and personal relations important, the balance of power in the European Council is influenced by seniority. Newcomers will not be able to pull their full weight at first meetings. Heads of government of smaller member states can expect to exert more influence after several years of being present, particularly after they have led a successful Presidency. The case of Jean Claude Juncker, Prime Minister of Luxembourg since 1995, is an example of the representative of a small member state exercising

considerable influence, certainly due to his personal qualities but also because of his seniority.

- **Ambivalence**: Finally, viewing the European Council as a locus of power helps explain its ambivalence in institutional terms. Without the Constitutional Treaty its powers, procedures, and decision-making process are not determined by legal texts. It deals with whatever problem it wants to deal with, in the manner it judges most appropriate. Nowhere is its role clearly defined, yet that role is fundamental to the life of the Union. It can live with that ambivalence because it is bent on the exercise of power *de facto* and not on legally binding decision-making.

Because the European Council stood apart from the institutional framework of the Union it has generally been considered strictly intergovernmental, except when it acts formally as a Council. However, it has been known to vote (in Milan in 1985 to call the intergovernmental conference that was to lead to the Single European Act, with Britain, Denmark and Greece opposing). Moreover, the President of the Commission is *de jure* a member of the European Council and highly important decisions concerning the Community are taken at that level.

Perhaps because of this ambivalence, theories of European integration have some difficulty in accommodating the role of the European Council. Its composition and the power it wields would seem at first sight to confirm liberal intergovernmentalist (LI) theory, best developed by Andrew Moravcsik. LI explains European integration as a succession of bargains between the bigger member states, based on national interests, domestic politics, and the constraints of the world environment. According to this view, 'the creation of the European Council was explicitly designed to narrow rather than to broaden the scope for autonomous action by supranational actors' (Moravcsik 1998: 488). 'Its major consequence was to transfer policy initiative away from the more rule governed Commission and Parliament' (Moravcsik 1998: 310). 'Bargaining outcomes reflect the relative power of states rather than supranational entrepreneurship' (Moravcsik 1998: 485).

One may indeed consider, with Moravcsik, successive intergovernmental conferences as 'bargains' concluded by member states at the highest level. However the fact is that the Union has obviously more supranational elements today than it did in 1974. If supranational actors 'have only a rare and secondary impact' on negotiations (Moravcsik 1998: 485), how is this transfer of power to be explained?

Historical institutionalism, on the other hand, considers that institutions, by themselves, 'structure political situations and leave their own imprint on political outcomes' (Thelen and Steinmo 1992: 9). According to this view, actors are assumed not to be entirely aware of, or concerned about, the long term institutional consequences of the decisions they take. To explain in this way the integrative impact of the European Council over a quarter of a century presupposes, however, a lasting degree of political naiveté not normally associated with Heads of Government. The European Council, unlike other institutions, is not bound by strict rules and procedures. It is master of its own agenda and can quite easily change one of its own decisions if unforeseen consequences become apparent

The fact is that theoretical models have difficulty reconciling the different and sometimes contradictory aspects of the European Council. That difficulty might be settled by the Constitutional Treaty, if it came into force, as it includes the European Council in the institutional framework of the Union, thereby putting an end to thirty years of ambiguity.

Functions

According to the existing Treaty, the role of the European Council is defined as follows: 'it shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof'. It has a specific role in foreign and security policy, and in the definition of broad economic guidelines. The treaty reserves to the heads of government certain specific decisions in the field of economic and monetary union[6] and the appointment of the President of the Commission. These texts are partly based on a document adopted as a 'Solemn Declaration' (therefore not legally binding) at Stuttgart in 1983 (see Exhibit 3.3) which is, historically, the first tentative description of the role of the European Council.

The Constitutional Treaty would bring some clarification by saying that the European Council shall provide the Union with the necessary impetus for its development and shall define its general political directions and priorities. The formulation is certainly closer to political reality than the present one, but it still does not adequately reflect the role of ultimate negotiator and at times detailed decision-maker which is so frequently that of the European Council.

The fact is that functions of the European Council go well beyond the official texts. They are described hereafter under the following headings:[7]

Exhibit 3.3 Functions of the European Council, Stuttgart, June 1983

2.1.2 In the perspective of European Union, the European Council

- provides a general political impetus to the construction of Europe;
- defines approaches to further the construction of Europe and issues general political guidelines for the European Communities and European Political Cooperation;
- deliberates upon matters concerning European Union in its different aspects with due regard to consistency among them;
- initiates cooperation in new areas of activity;
- solemnly expresses the common position in questions of external relations.

2.1.3 When the European Council acts in matters within the scope of the European Communities, it does so in its capacity as the Council within the meaning of the treaties

Source: Bulletin of the European Communities, 1983 n° 6

- strategic guidelines;
- decision-making;
- open method of coordination;
- foreign policy;
- amending the treaties;
- simplified treaty revision.

Strategic guidelines

The most traditional function of the European Council is to provide political guidance and impetus across the whole spectrum of Union activities. This was indeed the main reason given for its creation. It is mentioned both by the Tindemans Report[8] (1976) and by the Stuttgart Declaration (1983) and is the sole function clearly described in the Treaty. In the early texts the accent was put on ensuring consistency between Community affairs and other forms of European activity. At a time (before the Treaty of Maastricht) when these branches were completely separated, the European Council was indeed the only place where some form of consistency could be ensured.

This task implies the right to launch new fields of activities. In Rome, in December 1975, the European Council decided to initiate cooperation in the fight against terrorism and organized crime. In Hanover in June 1988 it appointed a group to look into economic and monetary union. At Lisbon in March 2000 it opened up a new field of action in social affairs and economic policy. Gradually it has acquired a sort of monopoly in this respect: 'Nothing decisive can be proposed or undertaken without its authority' (Taulègne 1993: 481).

Basically, the European Council fixes the agenda of the European Union and is the place where strategic orientations are given. This is true for all fields of activity. It is the European Council which approves common strategies in the framework of CFSP, as it has done *vis à vis* Russia and Ukraine. As far as the Community is concerned, orientations leading to the completion of the internal market and to monetary union were defined at that level. One example of political guidance can be seen in the enlargement process. Momentous decisions were taken at Copenhagen in December 1993 on Central and Eastern European countries and in Brussels in December 2004 on Turkey (see Exhibit 3.4). They could not have been taken at any other level.

[illegible]

... The European Council welcomed the adoption of the six pieces of legislation identified by the Commission. It decided that, in the light of the above and of the Commission report and recommendation, Turkey sufficiently fulfils the Copenhagen political criteria to open accession negotiations provided that it brings into force these specific pieces of legislation. It invited the Commission to present to the Council a proposal for a framework for negotiations with Turkey, on the basis set out in paragraph 23. It requested the Council to agree on that framework with a view to opening negotiations on 3 October 2005.

Source: European Council, Presidency Conclusions, Point 22

Decision-making

It was certainly not the initial intention of the member states that the European Council should serve as ultimate decision-taker, a court of appeal for settling problems too complex, or too politically sensitive to be resolved at the Council level. Quite the contrary: both the Tindemans Report on European Union (1976) and the Dooge Report[9] on institutional reform (1985) stated that this should *not* be the case. Official texts, such as the Stuttgart Declaration (1993), steer clear of giving to the European Council a decision-making capacity. But in fact, over the years, that is exactly what it has acquired and exercised.

Examples abound. Successive European Councils wrestled in the early 1980s with the intractable British budgetary problem until a solution was finally found at Fontainebleau in June 1984. 'Virtually every decision that affected the development of the internal market since the early 1980s was taken by the European Council' (Sbragia 1991: 63). The 'packages' around the financial perspectives of the Union (Delors I, Delors II, Agenda 2000), which involve an element of distributive bargaining between member states, have always been settled at the top level (see Exhibit 3.5). The same is true of decisions concerning the seat of European institutions: Edinburgh

Exhibit 3.5 Decision-making in the European Council, Berlin, March 1999

The Berlin European Council settled the financial perspectives (Agenda 2000) for the period 2000–06. The following table (one of several) is indicative of the detailed decisions such an exercise implies.

11. An indicative financial framework for EU-21 as set out in Table B attached should accompany the financial perspective. It should include additional own resources resulting from the accession of 6 new Member States, and set out in an additional heading 8 (enlargement) the total cost of enlargement for each of the years 2002–2006, expressed as maximum amounts in appropriations for commitments for agriculture, structural operations, internal policies and administration, as follows:

Heading 8 (Enlargement) (appropriations for commitments) (Million £1999 prices)					
	2002	**2003**	**2004**	**2005**	**2006**
Heading 8 (Enlargement)	**6.45**	**9.03**	**11.61**	**14.20**	**16.78**
Agriculture	1.600	2.03	2.450	2.930	3.400
Structural op.	3.750	5.83	7.920	10.00	12.08
Internal policies	730	760	790	820	850
Administration	370	410	450	450	450

Source: Berlin European Council, Presidency conclusions, Part I in December 1992; Brussels in October 1993; and December 2003. It also applies to the appointment of the President of the Commission.

The reason generally given for this evolution is the incapacity of the General Affairs Council to coordinate the activities of other Councils. This failure compels the European Council to step in as arbiter. However, it is also the case that heads of government, though accepting in principle that their role should be one of mere guidance, have not in practice refused to deal in substance with the growing number of problems coming on to their agenda. After all, decision-making is a sign of power, and power is not something successful politicians tend to eschew.

Open method of coordination

This process was established by the European Council at Lisbon in March 2000 (and is generally known as the 'Lisbon process'). In essence it aims at generating agreement among governments to move together towards tackling a range of socio-economic challenges, where the policy powers remain located at the level of national or sub-national government in the member states, and where the scope for agreement depends on soft prescriptions rather than hard law. The approach adopted lies somewhere between classical intergovernmental cooperation and the Community method, and provides for a central role of the European Council. It has been called intensive transgovernmentalism in which 'the primary actors are leading national policy-makers, operating in highly interactive mode and developing new forms of commitment and mutual engagement' (H. Wallace 2002: 341). As far as questions of economic reform are concerned, the European Council should become a forum, even a kind of 'seminar', for comparing different national experiences and experiments, with the detailed work to be taken forward over the year. It should make use of guidelines, timetables, indicators, benchmarks, periodic monitoring, and peer review to exercise a strong guiding and coordinating role.

The process is not limited to activities at the highest level: it implies significant work at Council and committee levels. Nevertheless the centrepiece is the Spring meeting of the European Council which, as indicated above, should (but does not always) concentrate on the Lisbon process. There is no doubt that the European Council has thereby deliberately undertaken a new responsibility and that it is in fact exercising a new role, if not a new type of competence. Appreciation of the results of the Lisbon process lies outside the institutional framework of this book but it is worth mentioning that doubts persist as to the ability of the Union to reach, through this new process, the ambitious goals defined at Lisbon.

Foreign policy

Formulation of foreign policy has always been one of the primary tasks of the European Council. Its very first meeting in Dublin in March 1975, approved a declaration on Cyprus and one on the Conference for Security and Cooperation in Europe (CSCE). The present Treaty says that the European Council shall define the principles of and general guidelines for the common and foreign and security policy including for matters with defence implications. This is rephrased in the Constitutional Treaty: the European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy and the President of the European Council shall ensure, at his or her level, the external representation of the Union in the field of CFSP.

Over the years European Councils have approved a great number of statements on foreign policy, covering events in all parts of the world and developments in all fields of diplomacy. Some of these statements are made at a time of existing or impending crisis, such as the one made in Berlin in March 1999 on the eve of NATO air strikes in Yugoslavia. Similarly, invitations addressed to high-ranking personalities for a meeting in the margins of a European Council underline the importance attached to a specific international issue : President Trajkovski of Macedonia (Stockholm, March 2001) and, as mentioned above, Prime Minister Iyad Allawi of Iraq and UN Secretary-General Kofi Annan attended European Councils in 2004.

It can be argued that some Presidency Conclusions contain an excessive number of foreign policy declarations and that this proliferation diminishes the impact of such statements. There is no doubt however that member states have used the European Council effectively as a means of expressing forcefully common positions on international affairs. It is clear, for example, that the message demanding that the siege of Sarajevo be lifted, sent by the Cannes European Council in June 1995, would be taken seriously precisely because it was sent, in no uncertain terms, at the level of authority which might, if necessary, decide the use of force (see Exhibit 3.6).

When acting in this external capacity the European Council operates in fact like a 'collective head of state' and this has been used as an argument in favour of a semi-permanent presidency of that body, to avoid the disadvantages of a six month rotation. As indicated above, that argument prevailed in the Convention. The President of the European Council would have an important foreign policy role according to the Constitutional Treaty.

Amending the treaties

As we have seen, heads of government have always played some role in treaty negotiations, including in the negotiation of the Treaty of Rome. But over time that role has become predominant: the European Council has become 'the key forum for determining treaty reforms' (Wallace and Wallace 2000: 20).

In the negotiation of the Single European Act (1985–86) the input of heads of government was limited. The main top level decision was that the Act would indeed be 'single', that it would incorporate in one document articles relating to political co-operation *and* Community activities, which had been negotiated separately. This was an important decision in terms of political symbolism, and it was appropriate that it should be taken by heads of government. But the texts themselves had been negotiated and largely finalized at the level of officials or foreign ministers.

In the Maastricht negotiations (1990–91) several important points of substance were only decided at the highest level and at the last minute. The contribution of heads of government was therefore more significant than had previously been the case. Nevertheless a large amount of work had been done both by finance ministers, on the articles on monetary union, and by foreign ministers, notably on the second pillar relating to CFSP.

Exhibit 3.6 Foreign policy statement by the European Council, Cannes, June 1995

Meeting in Cannes on 26 and 27 June 1995, the European Council sends the following message to the leaders and peoples of former Yugoslavia:

... The European Union strongly advises all the parties in the conflict to refrain from placing obstacles in the way of the freedom of movement and action of UNPROFOR and of the humanitarian organizations bringing aid to the civilian population. It warns them that the peace forces are determined to overcome such obstacles. The siege of Sarajevo must be lifted. The European Union demands freedom of access to Sarajevo, its enclaves and the safe areas.

Source: Cannes European Council, Presidency Conclusions

In the Amsterdam negotiations (1996–97), and again in the negotiations leading to the Treaty of Nice, foreign ministers had little impact. Practically all the problems not resolved at the level of personal representatives went to the European Council. Its direct contribution was not limited to basic issues: it included points such as the status of public credit institutions in Germany or crisis meetings of the Political Committee.

The Intergovernmental Conference leading to the Constitutional Treaty gives us a more balanced example. It is true that important modifications were made to the draft treaty submitted by the Convention on issues such as majority voting, reinforced cooperation or defence, and that these modifications were largely decided at head of government level. Nevertheless by far the largest part of the Constitutional Treaty is to be found in the Convention draft.

Simplified Treaty revision

The Constitutional Treaty would give the European Council a new and potentially important competence in allowing it, in certain cases and following certain procedures, to modify treaty articles without going through the process of an intergovernmental conference (see Exhibit 3.7). Article IV-444 would allow the European Council to modify the decision-making procedure (qualified majority instead of unanimity) or the legislative procedure (ordinary procedure instead of special procedure). The proposal would first have to be communicated to national Parliaments, each one of which would have six months to veto it. In the absence of such a veto, the decision could be taken by unanimous decision of the European Council and would enter into force if it received the consent of the European Parliament given by a majority of its component members. Specific clauses for foreign policy decisions and the multiannual financial framework would allow modifications of the decision-making procedure without having to refer to national parliaments or the European Parliament. The European Council, acting by unanimity, would also be able to modify the provisions concerning the internal policies and actions of the Union (Title III of Part III) but in that case amendments would have to be approved by member states according to their respective constitutional procedures.[10]

Clauses of a similar nature, known as *passerelles* in Community jargon, have existed in various forms since the Treaty of Maastricht, but have never been used. The widening of their scope in the new text reflects the conviction, widely shared by members

[illegible]

Art. I-20 §2: composition European Parliament *
Art. I-24 §4: configurations of the Council * *
Art. I-24 §7: rotation of presidencies * *
Art. I-26 §6: composition of the Commission *
Art. I-27 §1 and 2: proposal for President and appointment of the Commission * *
Art. I-28 §1: appointment of the Minister for Foreign Affairs * *
Art. I-40 §6: CFSP decisions (see also III-295 §1) *
Art. I-40 §7: *passerelle* clause for CFSP (see also III-300 §3) *
Art. I-55 §4: *passerelle* clause for multiannual financial framework *
Art. I-59 §2: persistent breach of Union values *
Art. III-136 §2: emergency brake for social security
Art. III-258: strategic guidelines for the area of freedom and justice
Art. III-270 §3 and 271 §3: emergency brakes for judicial cooperation in criminal matters.
Art. III-274 §4: powers of the Public Prosecutor's Office. *
Art. III-293 §1: strategic objectives and interests of the Union *
Art. III-295 §1: general guidelines for CFSP.
Art. III-341 §3: rules of procedure of the European Council * * *
Art. III-382-2: appointment of the board of the Central Bank * *
Art. IV-440 §7: amending the status of overseas territories *.
Art. IV-443 §2: convening a Convention or an intergovernmental conference * * *
Art. IV-444 §1 and 2: general *passerelle* clause (simplified revision procedure). *
Art. IV-445 §2: simplified revision procedure for internal policies and actions *
Protocol on the statute of the European Central Bank—Art. 40 §2: amending the voting rules of the Governing Council of the Bank. *

(References: * means unanimity, * * means qualified majority, * * * means simple majority.
Where no procedure is indicated, Art. I-21 §4 applies, i.e. consensus)

of the Convention, that future treaty revisions will become increasingly difficult because of enlargement. The fact that Part III of the Treaty was examined only very cursorily by the Convention because of lack of time also played a role. It remains to be seen whether these procedures, which are not as simple as the title of the articles suggests, will in fact be used.

Strengths and weaknesses

For over a quarter of a century the European Council has been the guiding force of the European integration process: 'the primary source of history making decisions' (Peterson and Bomberg 1999: 33). Time and time again, the most difficult problems have been debated, and solutions have been found, at that level. The European Union would not be what it is if heads of government had not been systematically involved in major decisions.

But top-level decision-making has of course its limits and its dangers. Dangers relate to the irretrievable character of mistakes; limits to the nature and the quantity of decisions to be taken. Negotiation at the highest level is risky: miscalculations or tactical errors occur and cannot, in most cases, be corrected. It is clear, for instance, that in Rome in December 1990 Mrs Thatcher's insistence on having a separate paragraph for Britain in the Presidency Conclusions enabled the other member states to define monetary union as they wished, which was not her intention (see Exhibit 3.8).[11]

When considering the limits of the decision-making capacity of the European Council, two points are significant:

- **The number of meetings**: It is reasonable to assume that, in view of their other obligations, it would be impossible for heads of government to meet more frequently than four or five times a year on a regular basis. But on the other hand it is far from clear that such a limited number of meetings, however intense, are sufficient to deal effectively with the governance of an increasingly complex multinational entity. European Councils are frequently short of time.
- **Consensus**: Some modifications have been introduced but decision-making in the European Council remains, in general, based on consensus, that is on a relatively inefficient procedure. European Councils frequently fail to reach decisions, creating 'left overs' which means postponing decisions to a future date.

In practical terms, the limits of the European Council are particularly apparent when it is amending the treaties. The important point, not always well understood even by participants, is that the work of the European Council as treaty negotiator is different in nature from its other functions. When it gives political guidance or impetus, when it makes foreign policy statements or debates economic policy, decisions are political, not legal. When necessary, these political decisions receive legal form *ex post*, by a Council directive or regulation (such as for the structural funds) or by an interinstitutional agreement (for financial perspectives). 'The input of the European Council, which takes the form of a political decision, only has legal force once it has been adopted by the Council according to the relevant legislative procedures' (Hayes-Renshaw and Wallace 1997: 164). But when it acts as negotiator, the European Council is directly modifying the Treaty, the basic law of the Community. It is in fact legislating. That is a completely different task.

The structure and the *modus operandi* of the European Council are well adapted to collective bargaining, to the definition of general guidelines, even to the drafting of political statements. It is not well adapted to a legislative function. Hectic night sessions with no assistants in the room, multilingual debate on texts which appear and disappear from the negotiating table without having been studied in depth, and across-the-board compromises on unrelated issues at the break of dawn cannot lead to clear legal texts. The complexity and confusion of the treaties (with numerous protocols and declarations annexed to the Final Act of each Intergovernmental Conference) must be partly attributed to the way in which they are negotiated. It regularly takes legal and linguistic experts, under the guidance of Coreper, several weeks to establish in legal terms what has been decided. The fact is that no civilized nation legislates in such an uncoordinated and risky way. As Tony Blair famously remarked at the end of the Nice European Council: 'We cannot go on working like this.'

Although this, and other weaknesses, have been apparent for a number of years, there had been, until quite recently, very little criticism of the functioning of the European Council. At Helsinki in December 1999 heads of government approved welcome and substantial changes in the working methods of the Council but barely mentioned the European Council. Two years later, the Laeken Declaration included

[illegible]

The main point on the agenda was the state of preparation of the IGC and in particular monetary union. A major point in the debate was whether the future currency (then called the ECU) should be:

- A common currency, that is a currency circulating in parallel with, but not supplanting, national currencies (pounds, francs, marks and so on);
- A single currency, that is a currency taking the place of national currencies.

On this fundamental point no agreement was reached on the first day of the European Council. The draft Presidency Conclusions, circulated early on the second day, were based on the principle of a *common* currency. When questioned before the meeting started, the Presidency answered that it had reluctantly come to the conclusion that the British Prime Minister would in no circumstance accept conclusions based on a *single* currency. Given the previous day's discussions, it was difficult to question that judgement.

At the beginning of the meeting Mrs Thatcher declared that the Presidency Draft Conclusions on monetary union were unacceptable, the United Kingdom would not be party to conclusions based on that draft, and would need a separate paragraph in which the British point of view would be described.

This changed the deal completely. Frantic activity was noted in the corridors, with several delegations putting pressure on the Presidency. The Italian Prime Minister, Giulio Andreotti, who was in the chair, stated in the course of discussion that the Presidency had changed its mind and would propose conclusions based on the principle of a *single* currency. When Mrs Thatcher protested, he answered (with a Sicilian smile) that since the UK would not be party to that part of the conclusions, and would have a paragraph of its own, it could hardly expect to influence the formulation preferred by other member states.

The European Council conclusions were as follows: 'The Community will have a single currency which will be an expression of its identity and unity.' A separate paragraph notes British dissent. If, as seems to be the case, the strategic objective of the British Government at the time was to prevent the birth of a single currency, Mrs Thatcher made a serious tactical error. At this level tactical errors are irretrievable. Today, the euro is a single currency.

a variety of institutional points for consideration by the subsequent Convention but was silent on the European Council. It was not before 2002 that critical voices began to be heard, in the Convention, in academic circles[12] but also in the institution itself. In March of that year the Barcelona European Council heard strong words from the Secretary-General of the Council. Solana considered that for some years the European Council had been sidetracked from its original purpose, it spent too much time on low level drafting work and its meetings had been reduced to 'report-approval sessions or inappropriate exercises in self congratulation'. This led to the rules of procedure adopted at Seville in June 2002, described above, and which have had a substantial positive effect.

The Convention and the Constitutional Treaty proposed several measures which would further strengthen the European Council: recognizing it as a full fledged institution, reducing the number of participants, giving it a semi-permanent Presidency, bringing some clarification to its competences and its decision-making process. Moreover treaty modifications would henceforth be amended by way of a

Convention, which, on the basis of our single experience, seems to reduce the number of issues that need to be addressed at the top level.

Conclusion

In many ways 'the whole European Union system revolves round the European Council' (Ludlow 2000: 15). The dates of its meetings, announced well in advance, mark the rhythm of the Union's various activities in the way religious feast days marked the rhythm of daily life in medieval Christendom. Foreign governments, the press, and business organizations study Presidency Conclusions to gauge the health, the dynamics, future orientations, and potential actions of the Union.

In successive meetings over the years, the European Council has largely fashioned the Union as we know it today. And the fact is that, even if the European Council is basically intergovernmental in nature, the system it has so largely contributed to is not mainly intergovernmental. At the beginning of a new century the Union is much larger, much more integrated and more supranational than it was in 1974. With hindsight it is clear, therefore, that Monnet was justified in advocating its creation. Those who feared, at the time, that it would lead to an intergovernmental system dominated by a *directoire* of major partners were proven wrong. 'The European Council worked its way into the Community decision making process without deeply undermining the institutional balance' (Werts 1992: 295).

What are the underlying reasons which have led to this result? For most of the time since 1974, France and Germany have been governed by leaders strongly committed to their mutual cooperation and to furthering European integration. They found enough support for this ambition in the Benelux, in Italy, sometimes in Spain and Portugal, more recently in Finland, to push the Union forward, even in the face of winds of scepticism blowing from Britain or Scandinavia. Monetary Union is a typical example. Moreover, for a long time, from 1985 to 1995, the Commission was chaired by Jacques Delors, a man who had developed a real talent for harnessing the power of the European Council to further the dynamics of integration (see Chapter 5). In the absence of any of these conditions the results would have been very different.

Efforts have been made, both by the European Council itself and through the Convention, to adapt to an enlarged Union. Time will tell whether those adaptations can be adopted and will be sufficient. There is no doubt that an increased number of participants weighs on the working of the European Council as it does on the other institutions of the Union. The informality, direct contact, and personal confidence, characteristic of the institution, are difficult to maintain in a larger body. Unofficial preparatory caucuses or other forms of *directoire* may become more tempting, and cause dismay.

Two conclusions seem appropriate:

- management of the Union could not be assured without a top-level institution of this type: the European Council has played a fundamental role in European integration and will continue to do so;

- top-level meetings have their limits and are not a panacea: they will certainly play a significant role in resolving the problems of European governance. But they will only be a part of the solution to that most difficult problem.

Notes

1 This results from declaration 4 annexed to the Final Act of the Maastricht Treaty.

2 This results from declaration 22 annexed to the Final Act of the Nice Treaty: 'When the Union comprises 18 members, all European Council meetings will be held in Brussels.'

3 This group, which plays an important role in the coordination of Coreper II activities, is named after Massimo Antici, an Italian diplomat who was, in 1975, its first chairman.

4 It is worth noting that European Council deliberations are in fact recorded, but only the Secretary-General of the Council has access to the recording. In exceptional cases he will verify a specific point at the request of one or more delegations. This is particularly important when there is wide disagreement as to what was agreed at a European Council, as was the case after the meeting in Nice in December 2000.

5 See Arts. 4 and 13 TEU.

6 Arts. 112, 121, and 122 TEC.

7 These distinctions are somewhat arbitrary and they frequently tend to overlap. Some authors identify no less than nine different functions (Bulmer and Wessels 1987: 76-80). Elsewhere they are counted as three (Dinan 2000: 190), six (Nugent 1999: 201) or even twelve (Werts 1992: 120-2). This variety is, of course, a consequence of the absence of clear legal texts but basically the ground covered is the same.

8 Leo Tindemans was Prime Minister of Belgium in December 1974 when he was asked by the Paris Summit to draft a report on European Union, which he presented in early 1976.

9 James Dooge, a former Irish Foreign Minister, was asked by the Fontainebleau European Council in June 1984 to chair a group to draft a report on institutional reform. The report, presented in 1985, prepared the negotiation of the Single European Act.

10 See Arts. I.40 §7 (and III.300 §3), I.55 §4, and IV.445 of the Constitutional Treaty.

11 Information is provided mainly by a series of interviews conducted in 1997 by the British Broadcasting Corporation (BBC) for the preparation of a documentary on monetary union called 'The Money Makers'.

12 See, for instance, Grant (2002) and de Schoutheete and Wallace (2002).

Further reading

Peter Ludlow (2002; 2004) has set himself the task of making a book-length commentary on every formal meeting of the European Council. His analyses have created a better understanding of the role and importance of an institution which had been neglected by academic research. De Schoutheete and Wallace (2002) makes a critical analysis of the functioning of the European Council at the beginning of the Convention. Older publications are now dated because of recent change in the working of this institution. The debate in the Convention is described in de Schoutheete (2003) and Norman (2003).

Ludlow, P. (2002), *The Laeken Council* (Brussels: EuroComment).

Ludlow, P. (2004), *The Making of the New Europe: The European Councils in Brussels and Copenhagen 2002* (Brussels: EuroComment).

de Schoutheete, P. (2003), *Die Debatte des Konvents über den Europäischen Rat* (Berlin) Integration Nr 4/03.

de Schoutheete, P., and Wallace, H. (2002), *The European Council* (Paris: Notre Europe), available on *http://www.notre-europe.asso.fr*

Norman, P. (2003), *The Accidental Constitution: the Story of the European Convention* (Brussels: Eurocomment).

Web links

The Commission website 'Europa' (*http://europa.eu.int*) gives in all Community languages the full text of Presidency Conclusions since the Corfu meeting in 1994.

Chapter 4

The Council of Ministers

Fiona Hayes-Renshaw

Contents

Summary

In the Council, national interests are articulated, defended, and aggregated by ministerial representatives of the member governments, who then adopt European Union (EU) legislation, increasingly in tandem with the European Parliament (EP). Each member state exercises the Presidency of the Council in turn, supported by an international secretariat at the Council's headquarters in Brussels. Most decisions are taken by consensus. But when the Council votes by qualified majority, the larger member states are just as likely as the smaller ones to be out-voted. Enlargement has provided the impetus for changes to the Council's organization and working methods. Further changes contained in the Constitutional Treaty regarding the Council's Presidency and voting rules are on hold following negative referendum results.

Introduction

The builders are at work in the Brussels headquarters of the Council of Ministers. They have added new meeting rooms and adapted old ones in the Council's Justus Lipsius building to cater for increased numbers of national delegates. They are covering over the central courtyard at the front of the building to provide additional space for journalists covering European Council meetings in a wing of the adjacent Résidence Palace building, once it too has been adapted. Further along the street they are constructing an entirely new edifice, the Lex Building, with additional meeting rooms and office space for translators. The Council is expanding along with the EU, and the extension and adaptation of its buildings is the most obvious outward manifestation of this trend.

This chapter examines the inhabitants of, and some of the visitors to, the Council's Justus Lipsius building. First, the present-day Council is traced back to its origins in the 1951 Treaty of Paris. Second, the structure of the institution is explored, in order to identify those individuals who together constitute the various layers of the Council hierarchy. As this volume contains separate chapters on the European Council (Chapter 3) and the Committee of Permanent Representatives or Coreper (Chapter 14), this chapter will concentrate on the remaining layers of the Council hierarchy—the ministerial Council, the preparatory bodies (the working parties and senior committees apart from Coreper), the Presidency and the Council Secretariat. The third section describes the formal and informal powers of the Council and its members, the ways in which its work is coordinated and the means available to its members to exert influence and affect its output. The Council's relationships with the Commission and the EP are examined in the next section, as is the frequently vexed question of the Council's accountability. In the final section, the Council's role in the context of the EU as a whole is analysed, as are the challenges posed to the Council by enlargement. Changes affecting the Council contained in the Constitutional Treaty are mentioned in the relevant sections of the chapter.

The origins of the Council

The Council of the European Union can trace its origins back directly to the (Special) Council of Ministers provided for in the 1951 Treaty of Paris, which established the European Coal and Steel Community (ECSC). The creation of a body representing the governments of the member states was a direct and rather obvious attempt to temper the powers of the ECSC's innovative supranational High Authority (later the European Commission). When the founding treaties of the two new European Communities were negotiated and adopted six years later, a slightly altered version of the ECSC blueprint was agreed, and the Council of the European Communities was born.

Despite the shared name, the powers of the old and new Councils could not have been more different. The ECSC's Special Council was required merely to exchange information with and consult the High Authority, while the 1957 Treaties of Rome provided that their Council should 'ensure coordination of the general economic policies of the member states and have power to take decisions'.

This enhanced role derived from the increased assertiveness of member governments *vis-à-vis* the more supranational elements of the European Communities, a confidence that has become still more marked in recent years. It is reflected not only in the additional formal and informal powers acquired by the Council but also in the changes that have been made to its structure and working methods (documented in successive treaties and in the Council's internal rules of procedure).

The Council hierarchy

The Council may be envisaged as a layered triangle, composed of the European Council at the top, followed by the ministers, then by Coreper and a number of other senior preparatory bodies and, at the base, a large number of working parties. Heading each of these levels is the Presidency, and the entire hierarchy is underpinned by a General Secretariat. As mentioned above, this chapter will deal directly with all levels except the European Council and Coreper.

The ministers

Although we speak of 'the' Council of Ministers, in practice it meets in a number of different configurations, each dealing with a distinct policy area (see Exhibit 4.1). Every Council is composed of the relevant minister(s) from each of the member states, and is chaired by a representative of the member state currently holding the Presidency. The Commission is invited to attend, and is represented by one or more Commissioners. Officials from the member states, the Commission services, and the Council Secretariat accompany the ministers, the Commissioners, and the Presidency to advise and assist them in their deliberations.

About 75 formal Council meetings are convened every year, usually in the Council's Brussels headquarters. However, in April, June, and October every year they are held in Luxembourg, the grossly inefficient result of a 1965 political agreement on the seat of the institutions, and most recently confirmed in the 1997 Treaty of Amsterdam. Each Presidency is also entitled to schedule five informal ministerial meetings, which normally take place in the Presidency member state.

The preparatory bodies

Council meetings are prepared by committees and working parties, composed of officials from each of the member states and a representative of the Commission. Coreper, the most senior of these committees, is formally responsible for preparing

Exhibit 4.1 Council configurations and frequency of meetings [illegible]

The Council currently meets in nine configurations. In practice, the General Affairs and External Relations Council (GAERC) and the Economic and Financial Affairs Council (Ecofin) both meet in two distinct parts, while the agenda items of the others may be grouped according to policy sector, thereby enabling ministers with distinct portfolios to attend separate parts of the session.

Configurations	No. of meetings in 2004
General affairs and external relations (GAERC) (including European security and defence policy and development cooperation)	26
Economic and financial affairs (Ecofin) (including the budget)	11
Agriculture and fisheries (AgFish)	10
Justice and home affairs (JHA) (including civil protection)	9
Transport, telecommunications, and energy (TTE)	5
Employment, social policy, health, and consumer affairs (EPSCO)	4
Competitiveness (Comp) **(Internal market, industry, and research)** (including tourism)	4
Environment (Env)	4
Education, youth, and culture (EYC) (including audiovisual affairs)	3
TOTAL 2004	76

Source: Council Secretariat

the work of the entire Council and fulfils an important horizontal coordination function (see Chapter 14). Other senior bodies coordinate work in particular policy areas, such as the Economic and Financial Committee (EFC), the Special Committee on Agriculture (SCA), the Political and Security Committee (COPS—*Comité politique et de sécurité*) and the Article 36 Committee (CATS—*Comité article trente-six*,—which operates in the field of justice and home affairs (JHA)).

Officials from the national ministries represent their governments in the 160 or so specialized working parties and 100 or so sub-groups that constitute the base of the Council hierarchy. Some of these officials are based in Brussels in their national permanent representations (see Chapter 14), while others travel to Brussels from their national capitals for meetings. All are experts in their policy field, operating on the basis of instructions from their home ministries. The Commission is represented by officials from the relevant Directorate-General (DG) in the 4,000 or so working party meetings that take place every year.

The Presidency

The Presidency of the Council rotates every six months among the member states according to a pre-established order, which also determines the place their representatives occupy at the table in meetings throughout the Council hierarchy (see Fig. 4.1). A new order of rotation comes into effect on 1 January 2007 (see Exhibit 4.2).

Taking on the Council Presidency directly affects large numbers of civil servants from the member state in question. A chairperson and a national spokesperson must be provided for every meeting at each level of the Council, a particular challenge for smaller member states with limited personnel. A coordinating unit is normally created in the Presidency capital that, with the Council Secretariat, is responsible for ensuring coherence and consistency across the entire range of issues being discussed in the Council hierarchy. The national permanent representation in Brussels becomes the operations centre for all Brussels-based activity during that member state's Presidency.

Figure 4.1 Seating arrangements in the Council of Ministers, 2006 [illegible]

Bulgaria and Romania were granted observer status in the Council and its preparatory bodies following the signature of their Accession Treaty on 25 April 2005. At the same time, seating arrangements were modified to reflect the new order of Presidency rotation due to commence on 1 January 2007. While observers, Romania and Bulgaria occupy the seats immediately to the left of the Presidency. Following their accession, they will take their designated seats according to the agreed order of rotation (see Exhibit 4.2). All delegations move one place to the left at the beginning of a new presidential term (on 1 January and 1 July every year).

January-June 2006
Presidency
(Austria)

Austria	Romania
Finland	Bulgaria
Germany	Estonia
Portugal	UK
Slovenia	Malta
France	Slovakia
Czech Republic	Netherlands
Sweden	Luxembourg
Spain	Latvia
Belgium	Italy
Hungary	Greece
Poland	Lithuania
Denmark	Ireland
Cyprus	

Commission

July-December 2006
Presidency
(Finland)

Finland	Romania
Germany	Bulgaria
Portugal	Austria
Slovenia	Estonia
France	UK
Czech Republic	Malta
Sweden	Slovakia
Spain	Netherlands
Belgium	Luxembourg
Hungary	Latvia
Poland	Italy
Denmark	Greece
Cyprus	Lithuania
Ireland	

Commission

Exhibit [illegible] Order of Presidency rotation, 2007 [illegible]

The Constitutional Treaty provided for a system of team presidencies, whereby groups of three member states would exercise the Presidency over a period of eighteen months, each one chairing meetings for a period of six months and offering material support to its team colleagues during their turn in the chair. The new order of rotation (agreed in December 2004) provides for such teams by dividing the member states into groups of three, intended to reflect a balance of geographical situation, economic weight and 'old' and 'new' members. Since the idea does not require treaty change to be implemented, an embryonic version of team presidencies is likely to emerge from 2007 onwards.

Germany	January-June	2007
Portugal	July-December	2007
Slovenia	January-June	2008
France	July-December	2008
Czech Republic	January-June	2009
Sweden	July-December	2009
Spain	January-June	2010
Belgium	July-December	2010
Hungary	January-June	2011
Poland	July-December	2011
Denmark	January-June	2012
Cyprus	July-December	2012
Ireland	January-June	2013
Lithuania	July-December	2013
Greece	January-June	2014
Italy	July-December	2014
Latvia	January-June	2015
Luxembourg	July-December	2015
Netherlands	January-June	2016
Slovakia	July-December	2016
Malta	January-June	2017
United Kingdom	July-December	2017
Estonia	January-June	2018
Bulgaria	July-December	2018
Austria	January-June	2019
Romania	July-December	2019
Finland	January-June	2020

The Council Secretariat

The General Secretariat of the Council (to give it its official title) is a relatively small and ostensibly politically neutral body. It has undergone a period of profound change over the past decade. Enlargement has provided the necessary impetus for implementing reforms to the Secretariat's structure and working methods, the avowed aim being to create a slim-line secretariat capable of taking on the extra tasks resulting from increased numbers and extensions to the Council's (and the Secretariat's) scope of activities.

The Council Secretariat is headed by a Secretary-General who (a novelty under the 1997 Treaty of Amsterdam) combines this role with that of the High Representative for the common foreign and security policy (HR/CFSP). A Deputy Secretary-General (a role also introduced by the Treaty of Amsterdam) is responsible for the day-to-day running of the Secretariat. Both the Secretary-General and the Deputy Secretary-General are appointed by agreement of the Council. The current incumbents (Javier Solana and Pierre de Boissieu respectively) were first appointed in 1999, and both had their mandates renewed for another five years in 2004.

The main body of the Secretariat is divided into eight DGs, the largest of which is responsible for personnel and administration. Six DGs are organized on a functional basis, according to the Councils they serve, and the eighth is responsible for press, information, and protocol. A horizontal Legal Service serves all levels of the Council hierarchy, and a number of specialized units, including military personnel, are directly answerable to the Secretary-General and/or his Deputy.

The Secretariat is staffed by independent, international civil servants (some 2,800 in 2005), recruited by open competition from among the nationals of the member states. In addition, a number of national officials, experts and military personnel are seconded to the Secretariat from the member states (about 210 in 2005). The Secretariat has virtually doubled in size since the early 1980s, a direct result of extensions in the scope of the Council's activities and successive enlargements.

What does the Council do?

The Council is responsible for decision-making and coordination. As such, it:

- passes laws, legislating jointly with the EP under co-decision;
- coordinates the broad economic policies of the member states;
- constitutes, together with the EP, the authority that agrees the Community's budget;
- defines and implements the CFSP and the related European security and defence policy (ESDP), based on guidelines set by the European Council;
- coordinates the actions of the member states and adopts measures in the area of police and judicial cooperation in criminal matters; and
- concludes international agreements on behalf of the Community or the EU with one or more third states or international organizations.

The Council fulfils these functions mainly by reference to formal rules laid down in the treaties and in its internal rules of procedure. These formal rules have been supplemented over the years by informal conventions and rules of the game that govern the work of the Council, the Presidency, and the Secretariat, as well as their relations with the Commission and the EP.

Formal and informal powers

The ministers and preparatory bodies

The Council is the EU's principal legislative and policy-making institution, being formally charged with decision-making across the three pillars that constitute the Union. Specific decision-making procedures and voting rules apply to the different areas of Council activity, entailing a greater or lesser role for the EP, and unanimity or some form of majority voting in the Council itself.

In fulfilling its decision-making functions, the Council as a body represents and attempts to aggregate the interests of all the member governments. The reconciliation of conflicting interests within the Council is achieved through a continuous process of negotiation, in the course of which the Commission proposal on the table is discussed in detail, national positions are articulated and defended, coalitions are formed and compromises advanced. In addition to these internal deliberations, the Council must also negotiate with the other institutions involved in the legislative process, in particular the EP (see Chapter 6).

The ministers' deliberations are prepared first by one or more working parties of national officials and finally by Coreper or another senior committee. At their meetings, the ministers adopt without discussion those items on the agenda that have been the object of agreement at Coreper or working party level (the so-called 'A points'), and engage in detailed discussions on those still requiring agreement (the so-called 'B points'). Following discussion in the Council, an agenda item may be adopted, referred back down to a senior committee or a working party for further discussion, or sent up to the European Council for a higher-level political input.

Legally speaking, there is only one Council. In effect, this means that any grouping of ministers may legally take a decision on any issue coming within the scope of the Council as a whole. Thus, the Fisheries Council of 21–22 December agreed the fishing quotas for 2005, but also approved without discussion a large number of items regarding external relations, ESDP, development cooperation, JHA, trade policy, and economic and financial affairs. Generally speaking, though, each Council configuration discusses issues within its own field of competence, and has its own idiosyncratic ways of conducting its business (see Westlake and Galloway 2004).

Most of the detailed negotiation and much of the actual agreement tends to occur at various levels below that of the ministerial Council itself. Insiders estimate that, in some Council configurations, the ministers actively discuss only between 10 and 15 per cent of all the items on their agendas. Implicit indicative voting may occur in senior preparatory bodies or even in some working parties, but it is the ministers themselves who take (and they alone who are legally authorized to take) the final decision in the name of the Council, whether by consensus or by actual voting.

Ministers vote in the Council on the basis of simple majority, qualified majority or unanimity, depending on the rules governing the issue in question laid down in the treaties. Under simple majority voting, which is normally used for procedural issues, each member state has a single vote, and thirteen votes in favour are required to adopt a measure in the EU of 25. (The Commission representative and the Council President do not vote.) Unanimity is required in some specific policy areas (such as taxation) and for most questions concerned with the CFSP and JHA. Under unanimity voting rules, an unhappy member state can exercise a veto by voting against, or can choose to abstain from voting without preventing agreement by the others (an abstention, in effect, counts as a 'yes').

Qualified-majority voting (QMV) is fast becoming the most usual voting rule in the Council, accounting for some 70 per cent of all its definitive legislative decisions. Under QMV, each member state is allocated a set number of votes in approximate relation to its size, and specific thresholds have to be attained in order to adopt or block a measure (see Table 4.1). A member state has the right to abstain from voting, thereby making the construction of a qualified majority or a blocking minority more difficult to achieve.

The threshold for the achievement of a qualified majority has always been set at about 70 per cent of the total number of votes, implicitly also requiring a majority of the member states. The 2001 Treaty of Nice added a possible third requirement, namely that the member states constituting the qualified majority should represent at least 62 per cent of the total population of the EU. Official population figures are agreed on an annual basis in order to facilitate the calculation of this latter figure. This requirement was deemed likely to increase the leverage of the larger member states in general and Germany in particular. The Constitutional Treaty, on the other hand, provides that a qualified majority would be made up of at least 55 per cent of the member states representing at least 65 per cent of the total population of the EU.

Much time and effort has been expended over the years on the details of the Council's voting rules, and the implications for individual member states' voting strength and possible winning coalitions. Yet voting in the Council does not always occur (even under QMV), and does not often take the form of a show of hands. Instead, the President may allow all delegations to have their say on the point under discussion, then sum up and conclude the debate by asking whether any delegation is opposed to the decision reached. If no one objects, the measure is deemed to have been adopted in line with the President's conclusions.

Since the late 1990s, the Council has been obliged under new transparency rules to publish the results of any votes taken, and to identify those Council members that contest them. Consequently, a growing body of firm data is available against which to test hypotheses and anecdotal evidence. It is now possible to demonstrate, for example, that less than one in five agreed decisions is contested, that only about one-fifth of decisions technically subject to QMV are explicitly contested at ministerial level, and that even when decisions are contested, the number of 'no-sayers' normally falls far short of a blocking minority (see Hayes-Renshaw and Wallace, 2006, forthcoming).

The Presidency

Exercising the Presidency of the Council has always been an important task, but the list of duties has increased in recent years, in line with the Council's expanded scope of activities (see Exhibit 4.3). In addition, more member states mean that negotiations have become more time-consuming and can be very much more conflictual. Exercising the Presidency today can therefore be a rather daunting prospect, particularly for small or new member states.

[illegible]

Member state	**Votes under QMV**
Germany	29
France	29
Italy	29
United Kingdom	29
Spain	27
Poland	27
Netherlands	13
Belgium	12
Czech Republic	12
Greece	12
Hungary	12
Portugal	12
Austria	10
Sweden	10
Denmark	7
Ireland	7
Lithuania	7
Slovakia	7
Finland	7
Cyprus	4
Estonia	4
Latvia	4
Luxembourg	4
Slovenia	4
Malta	3
Total	**321**
Qualified majority	232
Blocking minority	90

Exhibit [illegible] Duties of the Presidency

The main formal task of the presidency is the management of the Council's business over the duration of its six-month period in office. This involves a number of different duties:

- convening formal and informal meetings at ministerial and official levels;
- providing chairpersons for all meetings held at all levels of the Council hierarchy;
- ensuring the businesslike conduct of discussions at all meetings;
- hosting one or more European Council meetings;
- acting as spokesperson for the Council within and outside the Union;
- acting as the main point of contact for the Commission, European Parliament, and other bodies involved in decision-making;
- speaking on behalf of the Council in the trialogues and conciliation meetings scheduled under the co-decision procedure;
- managing the CFSP in close association with the High Representative;
- ensuring that all the Council's legislative and other obligations are met;
- aiding the reaching of agreement in negotiations within the Council (with the help of Coreper, the Council Secretariat, and the Commission).

In fulfilling all these tasks, the Presidency is assisted by the Council Secretariat, and works closely with the Commission services.

Arguably, the main task of the Presidency is to be (and, more importantly, to be seen to be) neutral. Specifically, this is achieved by the Presidency member state fielding two delegations for each meeting: one to chair and manage the meeting, the other to articulate and defend the national position. This can place a heavy burden on national resources, particularly when a small member state is in the chair. The introduction of 'compromises from the chair' (often with substantive input from the Council Secretariat) when negotiations get bogged down is further evidence of the neutrality of the Presidency, as is the fact that the President does not vote.

The Presidency can and does play a critical role in shaping the Council's agenda (Talberg 2003), but its ability to impose its own interests on the rest of the EU is limited by the fact that Council activities are now programmed on a multi-annual basis, in close cooperation with preceding and succeeding presidencies. A Presidency member state needs to tread carefully in attempting to highlight certain issues, since its colleagues will not look kindly on a Presidency which appears to use (or abuse) the office too flagrantly for its own ends. The French Presidency in the second half of 2000, for example, was widely criticized for manifestly pushing the interests of the larger member states in discussions on institutional reform (Talberg 2004: 1013–19).

It has become a point of pride for outgoing office-holders to be viewed by their colleagues as having conducted a 'good' presidency. Such judgements are obviously subjective, but a number of objective criteria can be employed as measuring devices. For example, it is possible to gauge whether Council business was dealt with efficiently and impartially; whether the main objectives outlined in the Presidency programme (presented to the EP at the beginning of the six-month period) were achieved; whether European Council meetings (particularly the 'rounding-off' one at the end) were well managed and productive; and whether unpredictable events were dealt with calmly, efficiently, and effectively.

Anecdotes abound to support the suggestion that smaller member states tend to run more effective Presidencies. The smaller member states are generally perceived (rightly or wrongly) as having fewer interests to pursue than their larger partners, and stronger incentives to seek consensus—a good trait in a Presidency! There is general agreement that the most successful Presidencies in recent years have been small state ones, the Danish Presidency in the second half of 2002 and the Irish Presidency in the first half of 2004 being good examples.

The Council Secretariat

The changing role of the Council Secretariat is evident in the description of its basic formal functions contained in the earliest and most recent versions of the Council's rules of procedure. Originally charged with 'assisting' the Council, it is now required to be 'closely and continually involved in organizing, coordinating and ensuring the coherence of the Council's work and implementation of its annual programme. Under the responsibility and guidance of the Presidency, it shall assist the latter in seeking solutions'.

Some 85 per cent of the Secretariat's staff is engaged in the technical and logistical organization of the Council's work. This involves convening meetings, preparing meeting rooms, and producing and distributing documents (including their translation, photocopying, and archiving). The remainder of the Secretariat's staff is engaged in the substantive preparation of the Council's work—drawing up agendas, preparing briefing notes for the Presidency, advising the Presidency on questions of substance, procedure and legality, helping to draft amendments, and producing reports, minutes or press releases regarding meetings held within the Council hierarchy. In addition, a small number of Secretariat officials have taken on a new (for the Secretariat) executive role in the planning and organization of military and civilian crisis management operations. In fulfilling all of these functions, the Secretariat is at the service of the Presidency, but is independent both of it and of the member governments.

Coordinating the work of the Council

From the outset, the General Affairs Council (GAC), composed of the national ministers for foreign affairs, was given overall responsibility for coordinating the work of the Council as a whole—a relatively easy task when the number of policy areas (and member states) involved was small. However, the gradual expansion in the scope of the European Communities and then the EU resulted in the creation of a large number of specialized Council configurations and an increasing fragmentation of Council activity.

Some of these specialist Councils took on the leading role in important policy discussions, thereby undermining the central coordinating function of the GAC and its position as the most 'senior' of the Council formations. The most notable example is the Economic and Financial Affairs Council (Ecofin), whose powerful national ministers have come to play a central role in discussions (and rather meaty decisions) on such important issues as economic and monetary union (EMU) and taxation.

The GAC was also responsible for foreign affairs, and this part of its agenda expanded rapidly, particularly in the 1990s following the formalization of the CFSP and the greater representational role *vis-à-vis* third countries attributed to the GAC by the 1992 Treaty on European Union (TEU). The foreign ministers were less inclined to spend time on coordinating the work of a growing number of technical Councils, preferring instead to focus on the foreign policy questions on which they were better qualified to speak. Consequently, the European Council frequently found itself debating issues that, in an ideal world, would have been settled by the foreign ministers. It was also the European Council that increasingly set the EU's agenda, with the GAC frequently being reduced to the position of a senior organ of execution for the decisions of the heads of state or government.

Over the years, the need to ensure proper coordination of the work of the various Council configurations became more obvious and pressing. This was merely one aspect of a more general discussion on Council reform that took place at various levels between the Helsinki European Council of December 1999 and the Seville European Council of June 2002. The Seville conclusions attempted to facilitate coordination by, *inter alia*:

- creating a General Affairs and External Relations Council (GAERC), which would hold separate meetings, possibly on different dates, with separate agendas, in order to distinguish its coordinating from its foreign policy responsibilities;
- explicitly making the general affairs formation of the GAERC responsible for preparing and ensuring the follow-up of meetings of the European Council (including the coordinating activities necessary to that end); and
- reducing the number of Council configurations from sixteen to nine.

The effect of the Seville reforms as regards the preparation of European Council meetings is generally viewed as positive. But more general coordination by the GAC of the work of the other Council configurations is still criticized, and described by some insiders as 'rather ritualistic'.

Exerting influence in the Council

The Council's central position in the EU in general and in EU decision-making in particular endows it with a large degree of influence over other institutions and authorities. But the Council is not a monolithic body. It is composed of the representatives of twenty-five very different governments, whose member states differ according to size, economic weight, length of EU membership, administrative culture, negotiating style, and attitude to European integration (*inter alia*). Despite these differences, they continue to reach agreement. So who wields influence within the Council, and what form does this influence take?

Where unanimity is the rule, influence is shared equally among the Council members. Any national representative can block agreement, so the interests of all have to be taken into account. Under QMV, numbers matter, and those member governments with the largest number of votes could be expected to wield the largest amount of influence. However, safeguards have been built into the system to ensure that the smaller member states, working together, have as much chance as the larger ones to exert influence over the final outcome. Indeed, the big member states are frequently out-voted in the Council, as Table 4.2 demonstrates.

A detailed analysis of Council voting records since 1993 (Hayes-Renshaw and Wallace, 2006) supports the institutionalist view of the EU, which maintains that the rules of the game are devised to ensure that it is not only the big member states that win. The analysis confirms that there is no enduring solidarity between the larger member states (or, for that matter, the smaller ones), or between the northern member states or the southern member states. Nor is there any systematic evidence of old or new members voting together consistently. Rather, coalitions in the Council emerge as constantly shifting, and tending to be issue driven rather than power driven, with consensus and compromise being, by and large, the name of the game. Certain member governments may have common or complementary goals or aspirations which may drive the Union for a period of time, but attempts to create and sustain a type of *directoire* at the heart of the Union fail to endure when they attempt to move from questions of the overall direction of EU policy to the minutiae of the policies themselves (or *vice versa*).

Influence can be exerted by large and small member states alike in more informal (and less easily quantifiable) ways, by putting forward compromise proposals acceptable to a majority of the member governments, by forming coalitions with like-minded states, and by making their point of view known to the Commission, the Presidency, and the Council Secretariat. Yet, the number of votes attributed to a member state continues to matter, as the rather unedifying scramble for votes at Nice in December 2000 amply demonstrated. The decisions on QMV that emerged from the Nice summit did so only after some of the most heated and bitter exchanges ever witnessed in the EU, fuelled by real concerns on the part of the individual member governments about future influence in an enlarged Council. The long-term effects of enlargement on voting behaviour in the Council remain to be discerned, but it is unlikely that decades of commitment to consensus will be ditched overnight. Indeed, one year into enlargement, there was no evidence of increased contestation. However, new dynamics affecting relative weight and influence in the Council can be expected to emerge in time.

Dealing with the other institutions

The Council and EP

The Council-EP relationship is based on the natural rivalry or tension that exists between all executives and legislatures, even though neither institution closely resembles the European national model of such bodies. A large part of the inter-institutional tension in the EU setting is a result of the EP's unremitting and largely successful campaign to wrest increasing amounts of legislative and budgetary power from the reluctant grasp of the Council. Following years of divisive disputes, the

Table [illegible] Taking the vote in the Council of EU [illegible]

Legislative acts adopted by qualified-majority voting (QMV) with abstentions and votes against, 1996–2003

Abstentions										Votes against								
1996	1997	1998	1999	2000	2001	2002	2003	Total	Member states	Total	1996	1997	1998	1999	2000	2001	2002	2003
1	1	0	0	0	4	0	2	8	Austria	17	2	2	3	1	2	1	1	5
1	1	3	0	5	1	1	3	15	Belgium	14	5	0	4	2	1	2	0	0
0	1	1	0	2	1	3	2	10	Denmark	33	2	6	7	4	3	3	2	6
0	0	0	0	1	0	2	0	3	Finland	10	1	4	0	0	1	1	2	1
1	3	2	0	0	3	6	1	16	France	19	3	3	3	3	1	3	0	3
4	2	7	1	0	5	3	1	23	Germany	50	14	9	11	2	4	3	2	5
0	0	2	0	0	0	0	1	3	Greece	17	2	4	2	1	3	1	2	2
0	1	0	0	0	0	0	1	2	Ireland	10	2	1	2	1	0	1	0	3
1	1	5	1	3	3	0	2	16	Italy	36	6	6	8	8	1	2	2	3
2	1	2	0	0	2	1	1	9	Luxembourg	7	0	1	0	2	0	0	1	3
2	0	1	1	1	1	1	1	8	Netherlands	28	2	2	12	4	2	1	5	0
2	2	4	1	0	1	3	0	13	Portugal	13	1	2	2	1	0	0	1	6
0	1	7	2	0	2	1	2	15	Spain	17	4	2	1	1	0	3	1	5
0	0	0	0	0	0	4	3	7	Sweden	31	4	7	3	0	2	4	6	5
0	3	0	3	1	2	4	5	18	United Kingdom	25	7	7	2	0	2	2	1	4
14	17	34	9	13	25	29	25	166	Total	327	55	56	60	30	22	27	26	51

Source: Statistics supplied by the Council Secretariat

Council–EP relationship in the budgetary field is now 'more predictable, consensual and rule-bound' (Laffan 2000: 733), thanks mainly to successive inter-institutional agreements (IIAs) on budgetary discipline, and the introduction of multi-annual financial packages.

In contrast, the EP had to fight harder and longer for legislative powers, which it won in increments via court cases, IIAs, and treaty reform. The introduction and simplification of the co-decision procedure in the 1990s transformed the Council–EP relationship from one of permanent confrontation to one of both formal and informal cooperation. The EP is now a real co-legislative authority with the Council on a large number of issues, even if the cooperation between the two institutions is subject to complicated procedures that can result in tensions between them. The fact that these tensions rarely flare up into full-scale inter-institutional battles is a testament to the new spirit of interdependence that prevails between them. It is perceptible in the increased contacts between the two institutions at all levels, not least the very visible presence of Council officials in the EP's corridors and committees.

If it is to operate smoothly and efficiently, the co-decision procedure requires constant contact between the main protagonists. Initially, the Council concentrated its resources and attention on the final, conciliation phase of the process, but following changes in the co-decision procedure introduced by the Treaty of Amsterdam, the Council's attention shifted to the earlier stages of the process. Its strategy now is to reach agreement as swiftly as possible whenever feasible, thereby reducing the number of issues that end up in formal conciliation (currently less than 20 per cent of co-decision dossiers). Great efforts are now made to ensure that the work of both institutions proceeds in parallel, and much informal negotiation goes on behind the scenes in advance of trialogue meetings, bringing together representatives of the Council, Commission, and Parliament at presidential and official levels (see Chapter 6). The effect on decision-making speed has been positive: EP officials have calculated that, whereas the average length of a co-decision procedure was 23.3 months in the period from November 1993 to April 1999, it fell to 20.3 months during the period from May 1999 to April 2004.

Despite a small number of sometimes spectacular failures, there is now a growing and rather positive balance-sheet of agreements reached between the Council and the EP under the co-decision procedure, proof of the greater cooperative spirit that now underpins their entire relationship. This should not be interpreted as evidence of the Council and the Parliament being hand in glove on all issues, however; rather it is a case of the Parliament choosing its battles more judiciously than in the past. There is still some resistance within the Council to EP-inspired suggestions for greater collaboration, often entailing increased availability of the Presidency (as the representative of the Council) at EP plenary sessions and committee meetings. This resistance is a direct result of the private reservations of some member governments regarding the EP's current and future role and powers.

The Council and Commission

Council–Commission relations have always been typified by a complex mixture of cooperation and competition. Observers who view the EU as a unique supranational experiment tend to talk up Council–Commission skirmishes, presenting them as battles for dominance. Others point to the very reduced role played by the Commission in the areas of CFSP and JHA (arguably the areas of greatest and most innovative activity in the Union today). Some member governments, for whom 'keeping the Commission in its place' is a deliberate if not always explicitly articulated policy, have taken comfort from the perception that the Commission has yet to recover fully from the debilitating effects of the resignation of the Santer Commission in 1999.

The day-to-day reality of Council–Commission relations is much more mundane and reassuring, bearing in mind that the relationship differs between policy arenas and between the three pillars. One area of structural tension is the external representation of EU policies, with policy competence sometimes being clearly attributed to the EU level (and therefore the Commission) and sometimes shared between the Commission and the member states. The result of this fluidity and complexity is a tricky division of labour, necessitating constant liaison between the Commission, on the one hand, and the Council Secretariat and Presidency on the other. This is the case, for example, as regards external trade negotiating mandates and representation *vis-à-vis* third countries or other international bodies, and also on the important negotiations with candidates for accession.

As regards issues subject to the so-called 'Community method', the two institutions are required to cooperate because they are so clearly interdependent. Thanks to its right of initiative, the Commission is responsible for producing the proposals on which most Council debates are based, but it is reliant on the Council (increasingly in tandem with the Parliament) to adopt the measures it has proposed. Accordingly, it attends meetings at all levels of the Council hierarchy in effect as the 26th delegation, acting both as protagonist and mediator in an attempt to have its proposals adopted. As one of the potential architects of compromise between conflicting positions in the Council, the Commission delegation is frequently regarded by beleaguered member governments in the Council as their greatest ally on particular issues under discussion.

There is a direct correlation between the desire of the member governments to engage in greater integration and the degree of influence wielded by the Commission, in the sense that the latter's hands are tied if one or more member governments are determined to block a legislative proposal. This is clearly the case where unanimity is required, but given the consensual instinct that informs decision-making in the Council, the Commission can be more influential in shaping the policy process when QMV applies. Like a pair of horses pulling a carriage, both institutions need each other in order to fulfil their respective functions properly.

The altered Council–EP relationship under the co-decision procedure has had a knock-on effect on the Commission's dealings with both institutions. The EP can now approach the Council directly rather than being dependent on the Commission as its interlocutor with the member governments. However, this should not be interpreted as the Parliament no longer needing the Commission (even if the EP sometimes behaves as if this were the case). Indeed, the support of the Commission can be helpful for both the Parliament and the Council in their dealings with each other, and the Commission is well placed to play a brokerage role between them.

At least two of the institutional provisions in the Constitutional Treaty would require new types of Council–Commission cooperation. The proposed EU Foreign Minister is intended to be both a member (indeed, a Vice-President) of the

Commission and the President of the Foreign Affairs Council. He or she would be assisted by a European External Action Service, composed of permanent officials from the Commission and the Council Secretariat and seconded officials from the national foreign ministries. The future of both of these experiments in merged institutional roles is now uncertain.

The Council and accountability

The democratic accountability of the Council has always been an issue of concern to both proponents and detractors of European integration. Whereas the members of the EP are directly elected, the members of the Council take their seats *ex officio* in their capacity as national ministers, elected on issues often unrelated to those they discuss and decide upon in the Council. While the Commission can be voted out of office by the EP, the Council as a body has permanent tenure, although the individuals who make it up may (and frequently do) change following elections or cabinet reshuffles in their national capitals.

The Presidency, on behalf of the Council, is accountable to the EP. Presidency representatives attend the EP's plenary sessions during their term of office, where they answer questions put to them by members of the European Parliament (MEPs). The member state in question, represented by its prime minister or foreign minister, presents its Presidency programme to the EP in advance of taking office, and sums up its achievements to the Parliament when it hands on the mantle to the next incumbent. Between plenary sessions, MEPs may address written questions to the Council via the Presidency, and ministers and officials from the Presidency state sometimes attend EP committee meetings, where they inform the MEPs about ongoing negotiations in the Council. The EP would prefer such appearances to be much more regular and the discussions to be more in depth.

The Council is regularly charged with being an over-secretive body, operating far from the public gaze. Arguably, this is a central reason for its success, but there is general agreement that more needs to be done to increase the institution's transparency. Some measures were introduced in the early 1990s, but many were subsequently criticized for merely paying lip service to the notion of transparency.

One area where a good deal of progress has been made, however, is on public access to the Council's documents. Interested outsiders can download the majority of the documents on the Council's register from its website (*www.consilium.eu.int*), and can apply to the Secretariat in writing regarding those not directly available. In most of the latter cases, full or partial access is granted (see Exhibit 4.4).

The Council in context

The Council and the larger 'EU system'

In this chapter, the Council has been presented as a club of member governments, and as the locus of persistent competition among them for relative influence. The

Exhibit 4.4 Public access to Council documents

A higher percentage of EU documents was supplied to those who requested them from 2001 onwards, after a decision taken at the end of that year to allow partial access to some documents. In effect, this meant that documents could be released with certain sections deleted, or with the names of delegations (and any content that would make it possible to identify them) blocked out. The percentage of documents released wholly in 2002, 2003, and 2004 was 76.1 per cent, 76.2 per cent, and 81.3 per cent respectively.

	1997	1998	1999	2000	2001	2002	2003	2004
Number of requests	282	338	889	1,294	1,234	2,394	2,830	2,160
Number of documents reviewed	2,431	3,984	6,747	7,032	8,090	8,942	12,565	12,937
Percentage of documents supplied	78.3	82.4	83.7	83.9	88.2	88.8	87.3	85.3

Source: Council Secretariat

Council is regarded as the central body by those who stress the importance of national interest as the factor explaining outcomes in the EU. Indeed, the Council as it exists and operates today may be viewed as the living symbol of the continuing power of the member states in the EU, and of the desire of the national governments to remain at the centre of the process of European integration. Since it is also representatives of the member governments who constitute the intergovernmental conferences (IGCs) that initiate constitutional reform in the EU, we can expect the Council to endure and to continue to play a central role in the larger EU.

Despite being the EU's intergovernmental institution *par excellence*, however, this chapter has also attempted to show that, in reality, the Council is a unique blend of the intergovernmental and the supranational. It represents member state interests that are aggregated under conditions frequently owing more to supranationality than to intergovernmentalism, and it is not necessarily the interests of the larger member states that determine the final outcomes. The Council as an institution works closely with the Commission and the EP, both of whose views inform its work and impinge in important ways on its output.

Coping with enlargement

Enlargement is no novelty for the EU, or indeed for the Council which, by 2005, had had to adapt to new members on five separate occasions. An increase in numbers has always necessitated adjustment in the Council and elsewhere, both in terms of socialization (of old and new members alike), and in terms of adaptation of working methods, systems, and structures. The prospect of the 2004 enlargement had given rise to some disquiet and much discussion regarding the capacity of the Council physically to deal with such an unprecedented number of new arrivals. Consequently, the Seville reforms agreed in 2002 were supplemented by a code of conduct on working methods in an enlarged Council, agreed in March 2003 and now incorporated into the Council's rules of procedure (as Annex IV).

In early 2005, most insiders were of the opinion that the full impact of enlargement had yet to be experienced in the Council. The task of instructing a large number of new recruits about the Council's formal (and perhaps more importantly, informal) procedures had been facilitated by the participation of representatives of the new member states as observers throughout the Council hierarchy for more than a year in advance of their accession. However, some negative effects of enlargement were already evident in the Council. Discussion and negotiation were hampered by a lack of full interpretation and translation facilities, informal gatherings were larger resulting in a change in the *esprit* in certain long-standing groupings, and the workload was greater because of the need to take an increased number of positions and interests into account. That said, there was an acknowledgement that the newcomers were adapting well, and showing a growing understanding of the 'rules of the game' governing Council activity. Where problems arose, it was felt that they were normally a consequence of poor coordination in the national system rather than a lack of socialization on the part of participants in Brussels.

Theorizing the Council

Spanning as it does the supranational and intergovernmental camps, the Council embodies the enduring tension between the two approaches as explanatory tools for understanding the construction of the EU. The behaviour of the ministerial and official representatives who comprise the Council may be better explained by sociology and anthropology than by regional integration theory, but the outcome of their conduct is a testimony to 'collective purpose, collective commitment and collective ideas' (Hayes-Renshaw and Wallace 1997:2).

Yet realist observers such as Hoffmann (1966) and more recently the liberal intergovernmentalist (Moravcsik 1993) school could neatly put paid to this cosy picture by pointing to the 2000 Nice Summit as an instance where national governments, when the chips are down, continue to rely on 'state interests' to inform their negotiating preferences. Indeed, it remains to be seen whether the Nice Summit will, in retrospect, prove to have been merely the first, overt skirmish in a much larger battle for both intergovernmental and inter-institutional dominance in an enlarged EU. It is possible that, in future, the skills of sociologists and anthropologists rather than regional integration theorists will be required to predict possible outcomes.

Two opposing suggestions for the Council linger in the debate over EU institutional reform. One advocates that it should become an explicitly representative and legislative rather than an executive institution. The other asserts that the Council should be made even more explicitly dominant, as the core of executive power within the EU. The Constitutional Treaty did not resolve this argument, and its rejection by referenda in 2005 did nothing to clarify the situation. In the continued absence of agreement in the tussle between supranationalism and intergovernmentalism, it is likely that the Council will have to continue to serve both camps: that is, to constitute the vehicle through which member governments exercise leverage on the uncertain process of collective governance, both representational and executive, with the constitutional and operational ambiguities that this implies. Much is therefore left to be played for and much to be settled by evolving practice, not least in the context of an EU enlarged in membership from fifteen to twenty-five, twenty-seven, or even more member states.

Further reading

There are two recently updated books on the Council: Hayes-Renshaw and Wallace (2006) and Westlake and Galloway (2005). Sherrington (2000), which analyses different Council configurations, is now somewhat dated but contains useful historical information. The Presidency's powers are addressed in Talberg (2003; 2004), while Norman (2005) and Milton and Keller-Noëllet (2005) have detailed descriptions of the discussions on Council reform that took place during the negotiation of the Constitutional Treaty.

Hayes-Renshaw, F., and Wallace, H. (2006), *The Council of Ministers* (Basingstoke and New York: Palgrave).

Milton, G., and Keller-Noëllet, J. (2005), *The European Constitution: its origins, negotiation and meaning* (London: John Harper).

Norman, P. (2005), *The Accidental Constitution*, 2nd edn. (Brussels: Eurocomment).

Sherrington, P. (2000), *The Council of Ministers: Political Authority in the European Union* (London: Pinter).

Talberg, J. (2003), 'The Agenda-Shaping Powers of the EU Council Presidency', *Journal of European Public Policy*, 10/1: 1–19

Talberg, J. (2004), 'The Power of the Presidency: Brokerage, Efficiency and Distribution in EU Negotiations', *Journal of Common Market Studies*, 42/5: 999–1022.

Westlake, M., and Galloway, D. (2004), *The Council of the European Union*, 3rd edn. (London: John Harper Publishing).

Web links

The Council's website (*www.consilium.eu.int*) contains a wealth of information on its structure, output, and day-to-day activities, including direct access to most of its documents. It also contains a link to the website of the current Council Presidency.

Chapter 5

The College of Commissioners

John Peterson

Contents

Summary

No other institution closely resembles the European Commission. It is a distinct hybrid: the EU's largest administration and main policy manager, but also a source of political and policy direction. This chapter focuses on the Commission's most 'political' level: its college of Commissioners. Yet, Commissioners are unelected, independent (in theory) of member governments, and often portrayed as unaccountable technocrats. The Commission seemed to be in a permanent state of decline after 1999, after being headed by Presidents who were perceived as weak, ineffective, or both. The appointment of José Manuel Barroso as President in 2004 at least spurred debates about whether and how the Commission could be revived. However, the rejection of the Constitutional Treaty in the 2005 referenda, alongside bruising political rows over the EU's budget and economic policy direction, revealed how the Commission's fate remained largely determined by factors over which it had little or no control.

Introduction

The European Commission may be the strangest administration ever created. Despite brave attempts to compare it to other bureaucracies (Page 1997), the Commission is in many respects a *sui generis* institution. Legally, the Commission is a single entity. In practice, it is a unique hybrid. It is given direction by a political arm, or college, of Commissioners. But the College is unelected. Its members act independently of the states that appoint them (at least in theory) and even swear an 'oath of independence' when appointed. The College exists alongside a permanent, formally apolitical administration, made up of what are known as the Commission's services or Directorates-General (DGs). This book squarely confronts the Commission's duality by focusing here on the college and devoting a separate chapter (Chapter 8) to the services.

Even if they are unelected, Commissioners 'are appointed via a highly politicised process . . . are almost invariably national politicians of senior status, and are expected to provide the Commission's political direction' (Nugent 2001: 3). At times, the College—the President, Commissioners, and their advisers—has provided political direction to European integration, particularly during the earliest days of the EEC and again in the 1980s. More recently, it has become almost accepted wisdom that 'the decline of the Commission . . . has continued . . . and there seems little possibility that the situation will be reversed' (Kassim and Menon 2004: 102; see also de Schoutheete and Wallace 2002; Hill and Smith 2005*b*: 399). The Commission has always been powerful as a designer and manager of EU policy. But its role has never been uncontested (Lequesne 1996; Spence 2005). The central theme of this chapter is that the Commission and most of what it does is highly politicized, despite its ambitions to be an 'honest broker' and independent guardian of the EU's treaties.

The origins and history of the College

The forerunner of today's European Commission was the High Authority of the European Coal and Steel Community (ECSC). Its first President was the legendary Jean Monnet (1978; see also Duchêne 1994). Provisions in the 1951 Treaty of Paris that gave the High Authority significant independent powers to regulate markets for coal and steel bore Monnet's own fingerprints. The ECSC thus established that common European policies would be managed, and European integration given political impulse, by a non-partisan, central authority.

The High Authority was headed by nine senior officials—two from France (one of whom was Monnet) and West Germany and one from all other Member States (plus a co-opted ninth member). Thus, a precedent was set for national representation in what was meant to be a supranational administration. Over time, the High Authority became much less nimble and more bureaucratic than Monnet wanted it to be (Nugent 2001: 21–2). Partly in protest, Monnet resigned before the end of his term.

The design of common institutions for the new European Economic Community was one of the most difficult issues in negotiations on the Treaty of Rome. A Dutch proposal sought to give the EEC a supranational administration that would be even more independent of member governments than the ECSC's High Authority. However, it ran into opposition, particularly from France, and ended up being 'almost the reverse of what was finally decided' (Milward 1992: 217–18). Compared to the High Authority, the new European Commission (the label 'High Authority' was discarded as too grandiose) was subject to considerably tighter political control by a Council of (national) Ministers.

The Treaty assigned three basic functions to the Commission: overseeing the implementation of policies, representing the Community in external trade negotiations, and—most importantly—proposing new policies. The Commission's monopoly on the right to initiate policies, along with its prerogative to 'formulate recommendations or deliver opinions on matters dealt with in this Treaty' gave it licence to act as a sort of 'engine of integration', or a source of ideas on new directions the Community might take. Alongside the European Court of Justice (ECJ), the Commission was also designated as a guardian of the Treaty, and tasked with ensuring that its rules and injunctions were respected.

The early Commissions were small (nine members) and united by a 'dominating sense of team spirit' (Narjes 1998: 114). Between 1958 and 1967, only fourteen different men[1] served as Commissioners, supported by two *cabinet* advisers (with four advising the President). Walter Hallstein, Foreign Policy Adviser to the first West German Chancellor, Konrad Adenauer, became the Commission's first President. Hallstein was both a political heavyweight and a forceful leader, repeatedly referring to himself as the equivalent of a 'European Prime Minister'. The Commission achieved considerable policy success during this period, laying the foundations for the Common Agricultural Policy (mere agreement on the CAP was considered a 'success'), representing the Community in the successful Kennedy Round of world trade talks, and convincing member governments to accelerate the timetable for establishing the EEC's customs union.

A watershed in the history of the Commission was reached in 1965. A year away from a scheduled extension of qualified-majority voting (QMV) as a decision rule in the Council, the Hallstein Commission proposed a new system of financing the CAP through 'own resources', or revenue directly channelled to the Community rather than cobbled together from national contributions. The plan proposed to give new budgetary powers both to the Commission and the European Parliament (EP). It became a pretext for the French President, Charles de Gaulle, to pull France out of nearly all EEC negotiations for more than six months. De Gaulle's hostility to Hallstein's federalist rhetoric and actions, which included receiving foreign ambassadors to the EEC with a red carpet, was highly personal but also reflected deep-seated French anxiety about a resurgent Germany (see de Gaulle 1970: 195–6).

The so-called 'empty chair' crisis ended and France returned to EEC negotiations after the Luxembourg compromise was agreed in 1966 (with Luxembourg holding the Council Presidency). The agreement, made public only in the form of a press release, stated that 'where very important interests are at stake the discussion must be continued until unanimous agreement is reached'. Any member government could invoke the compromise in any negotiation if it felt its 'very important interests' were

[illegible]

Presidents (nationality*)	Period of tenure
Walter Hallstein (D)	1958-67
Jean Rey (B)	1967-70
Franco Maria Malfatti (I)	1970-72
Sicco Mansholt (N)	1972-73
François Xavier-Ortoli (F)	1973-77
Roy Jenkins (UK)	1977-81
Gaston Thorn (L)	1981-85
Jacques Delors (F)	1985-95
Jacques Santer (L)	1995-99
Romano Prodi (I)	1999-2004
José Manuel Barroso (P)	2004-present

* Note that the Presidency has been held by a non-national of one of the original EEC-6 only twice.

at risk. The upshot was to give political blessing to unanimous decision-making in the Council, and generally to hobble the Commission.[2]

De Gaulle insisted that Hallstein be replaced as President of the Commission, which itself became a single, integrated administration for all three previously distinct 'Communities'—the EEC, the ECSC, and the European Atomic Energy Community—in 1967. Headed by the low-key Belgian, Jean Rey, the new Commission initially contained fourteen members (reduced to nine in 1970). The next decade was a lean time for the Commission, both because of weak Presidential leadership (see Table 5.1) and the EEC's more general lack of dynamism. In retrospect, the Community may have actually achieved more in the 1970s than it appeared at the time (see Nugent 2001: 35-8). Still, Western Europe suffered through a series of economic crises, and the Community itself was widely seen as dilapidated.

By the late 1970s, a critical mass of member governments was persuaded that the Commission should be led by a political figure, or one who was a potential Prime Minister in their own country. Thus, Roy Jenkins, a senior member of the United Kingdom's governing Labour Party, was appointed as President in 1977. Jenkins was the first President to be nominated in advance of the college as a whole, thus giving him scope to influence the composition of his team.

Jenkins' record was ambiguous. On one hand, member governments frequently disregarded his advice. There is little dispute that he 'was not a great success at running or reforming the Brussels machine' (Campbell 1983: 195). On the other, Jenkins raised the external policy profile of the Commission by insisting (against

French resistance) that the Commission President should attend Group of Seven economic summits. Jenkins also worked tirelessly with the German Chancellor, Helmut Schmidt, and French President, Valéry Giscard-d'Estaing, to build a consensus behind the European Monetary System (EMS). The EMS helped keep European currency values stable in the 1980s after enormous exchange rate turbulence in the 1970s. It was an important forerunner both to the 'freeing' of the Community's internal market and, later, monetary union.

Before the 1979 election of Margaret Thatcher as UK Prime Minister, Jenkins seemed a candidate to be the first Commission President since Hallstein to be reappointed to a second four-year term.[3] However, reappointing Jenkins became politically untenable when Thatcher doggedly pursued the so-called 'British budgetary question' (arising from the size of its net EU budgetary contribution), which preoccupied the Community for no fewer than five years. It cast a dark cloud over the Commission Presidency of the former Luxembourg Prime Minister, Gaston Thorn, whose tenure marked a retreat in the direction of the lacklustre, post-Hallstein Commissions.

Thorn was replaced in 1985 by the former French Finance Minister, Jacques Delors. Thatcher accepted the nomination of Delors, a French Socialist, on the strength of his role in France's economic policy U-turn of the early 1980s, when it abandoned protectionism and increased public expenditure in favour of market liberalism. Delors carefully reflected on how the Community could be relaunched via a headline-grabbing political project. Working closely with the former British Trade Minister and Commissioner for the 'internal market', Lord (Arthur) Cockfield, Delors opted for an integrated programme to dismantle most barriers to internal EU trade by the end of 1992. Seizing on converging preferences among the EU's largest member states for economic liberalization (Moravcsik 1991), as well as the strong support of the European business community, the 1992 project gave European integration renewed momentum (see Cockfield 1994). A substantive overhaul of the Community's founding Treaties was agreed in the 1986 Single European Act, which gave the Commission significant new powers, notably by extending the use of QMV in the Council.

Delors then convinced European leaders, despite the scepticism of many, to allow him to chair a high-level committee of (mostly) central bankers and relaunch long-dormant plans for economic and monetary union (EMU). Progress towards EMU was uninterrupted by the geopolitical earthquakes that shook the European continent in late 1989. German unification was handled with skill and speed by the Delors Commission (Spence 1991; Ross 1995), which also stepped forward to coordinate Western economic aid to the former Warsaw Pact states. By Spring 1990, with a round of Treaty revisions to create EMU on course, the French President, François Mitterrand, and German Chancellor, Helmut Kohl, threw their combined political weight behind the idea of a separate, parallel set of negotiations to create a 'political union'. By this point Delors was accepted by Kohl, Mitterrand, and even Thatcher as a political equal in the European Council.

The second half of Delors' ten-year reign was a far less happy time for the Commission. Member governments agreed mostly intergovernmental mechanisms for making new internal security and foreign policies via the (Maastricht) Treaty on European Union, denying the Commission its traditional Community prerogatives in these areas. Delors also shouldered some of the blame for the 1992 Danish rejection of the new Treaty, after suggesting that the power of small states would inevitably be weaker in a future EU (Nugent 2001: 46–7). By the time Delors left Brussels in 1995, a critical mass of member governments wanted a less visionary successor.

After a tortured selection process,[4] Jacques Santer, the Prime Minister of Luxembourg, was chosen to replace Delors. Santer promised that his Commission would 'do less but do it better'. Yet, it inherited a full agenda, including the launch of the Euro, eastern enlargement, another round of Treaty reforms, and negotiations on the Union's multi-annual budget and structural funds for regional development. The Santer Commission generally handled these issues well. Its stewardship of the launch of EMU in particular seemed 'enough to earn any Commission President a proud legacy' (Peterson 1999: 61).

In fact, Santer's legacy was hardly a proud one. For all of the dynamism of the Delors era, the Commission had become far more focused on policy initiation than on effective management. Presiding over an administration which had become inefficient and sometimes chaotic, the Santer era culminated in the dramatic mass resignation of the college in March 1999 after the publication of a report of a Committee of Independent Experts (1999), convened by the EP, on charges of fraud, mismanagement and nepotism (see Exhibit 5.1).

Exhibit 5.1 The fall of the Santer Commission

Jacques Santer's troubles began in earnest in late 1998 after the publication of a damning Court of Auditors' report, which suggested that large amounts of EU funding had gone missing. Around the same time, press reports appeared alleging that the Research Commissioner (and former French Prime Minister), Edith Cresson, had given plum advisers' jobs in the services to unqualified personal cronies. Characteristically, Cresson dismissed them as part of an Anglo-German 'conspiracy'. A motion of censure tabled under the EP's Treaty powers to sack the entire Commission was defeated (by 293 votes to 232) after Santer accepted that a Committee of Independent Experts would investigate charges of fraud and mismanagement within the Commission. At this point, according to Leon Brittan (2000: 10), a veteran of the Delors and Santer Commissions, the Commission began 'to sleepwalk towards its own destruction'. Santer told the EP that the college would implement the recommendations of the Experts' report, regardless of what they were, in a clear sign of the Commission's political weakness.

The Experts had exactly five weeks to investigate the Commission, yet produced a report that was painstaking in detail. Its most serious charges—leaving aside those against Cresson—concerned improprieties that had occurred during the Delors years. Bitter animosity between Delors and the Experts' chair, the former head of the Court of Auditors, André Middlehoek, was palpable in the report, which drew conclusions that seemed to go well beyond the evidence it contained. The report built to a crescendo with the devastating charge that it was 'becoming difficult to find anyone who has even the slightest sense of responsibility' for the work of the Commission (Committee of Independent Experts 1999: 144). The EP's largest political group, the Socialists, announced that it would vote to sack all twenty Commissioners, thus making the outcome of any vote all but inevitable.

A series of efforts were mounted by individual Commissioners to isolate Cresson, including a bid by Santer to convince the French President and Prime Minister, Jacques Chirac and

continues

Exhibit 5.1 continued

Lionel Jospin, respectively, to ask her to step down. None succeeded. Thus, Santer insisted that the entire Commission, as a collegial body, had to resign. The President was defiant in a subsequent press conference, claiming that the Experts' report was 'wholly unjustified in tone'.[5] Whether or not Santer's combativeness was ill judged, his fate was sealed by a stroke of bad luck: an English interpreter mistakenly communicated Santer's claim (in French) that he was *blanchi*, or exonerated, from personal charges against him in the Experts' report, to the non-French press as a claim that he was 'whiter than white'. It became widely seen as a political necessity that Santer had to go, and quickly.

Ironically, the Commission under Santer had undertaken a series of reforms that made it—on balance—better managed than it had been under Delors (see Peterson 1999; Cram 1999; Metcalfe 2000; Nugent 2000: 49–50). But the efforts were far from enough to cure the Commission of pathologies that had festered under Delors. The Experts' report exposed the Commission as everyone's favourite scapegoat in Brussels. More generally, the fall of the Santer Commission showed, in the words of one of its members, that 'in economic and monetary terms Europe is a giant in the world. But politically we are very young'.[6]

Santer's resignation in Spring 1999 came at a particularly difficult moment. The Berlin Summit, at which a series of major decisions needed to be made on the EU's seven-year budget, structural funds, and agricultural reform, was about a week away. A political crisis over Kosovo was deepening. The German Council Presidency thus undertook a whirlwind tour of national EU capitals to seek a swift decision on replacing Santer. In Berlin, after ten minutes of discussion, the European Council agreed that the new Commission President should be the former Italian Prime Minister, Romano Prodi.

Prodi was by no means free to choose his own College. Nevertheless, armed with new powers granted to the Commission President by the Amsterdam Treaty (see below), Prodi had more influence over its composition than had most of his predecessors over theirs. He ended up with a less charismatic College than Santer's, but one in which expertise was matched to portfolio to an extent unseen in the Commission's history.

One EU ambassador spoke for many in Brussels in claiming that Prodi's economic team was 'collectively the best the Commission has ever had'.[7] One of two Vice-Presidents, Neil Kinnock, was charged with implementing an ambitious series of internal reforms of the Commission (Kassim 2005). Prodi himself helped shift the debate on eastern enlargement to the point where EU governments—at the 1999 Helsinki Summit—decided to open accession talks with no fewer than twelve applicant states on a more or less equal basis.

Yet, Prodi's weakness as a political communicator was probably his Commission's most glaring liability (Peterson 2004). Kinnock's administrative reform programme encountered bitter resistance in the services, where morale seemed to sink ever lower. The Commission was marginalized first in the negotiations that yielded the Treaty of Nice and then in the Convention on the Future of Europe that drafted a new Constitutional Treaty (Exhibit 5.2). The most charitable comments that could be made about Prodi himself were that he mostly avoided interference in the work of a highly competent College.

Exhibit 5.2 The Commission and the Convention on the Future of Europe

Most accounts of negotiations on the 2000 Treaty of Nice concur that the Commission had little impact on the outcome (see Gray and Stubb 2001; Peterson 2002: 81). At the Nice Summit itself, Prodi was bullied mercilessly by the summit's Chair, Jacques Chirac, revealing how low the Commission President's standing in the European Council had sunk. Two participant-observers concluded that Nice marked the end of a decade when the Commission never managed to agree a unified position on its own composition in four different rounds of debate (Gray and Stubb 2001: 19).

A rather different version of events starts with the observation that the Commission—leaving aside Delors' influence on the Single European Act and blueprint for EMU—never contributed much before to what were, after all, revisions of Treaties between member states (not EU institutions). The Treaty of Nice was not unkind to the Commission, giving future Presidents more authority to reshuffle portfolios, ask for resignations, and 'ensure that [the college] acts consistently, efficiently and on the basis of collective responsibility'. One seasoned observer insisted that Nice showed that European leaders 'agree[d] that a more efficient Commission, including in particular a more powerful President, is highly desirable' (Ludlow 2001: 18).

Still, deep dissatisfaction with the Treaty of Nice was revealed in the Laeken Declaration, agreed only a year later and which put the EU on the road to its grandiosely-titled Convention on the Future of Europe. Decision-making within the Convention quickly became dominated by its thirteen-member Praesidium, a inner circle steering group, two of whose members were Commissioners under Prodi: Michel Barnier and Antonio Vitorino. Most of its other members were committed pro-Europeans who could be counted as 'natural allies' of the Commission and backers of the EU institution that most purely 'represented the European interest' (Norman 2003: 161).

At the end of the Convention—as well as the subsequent intergovernmental conference (IGC)—it was (again) possible to come to very different conclusions about how well the Commission had fared. Both Vitorino and Barnier contributed significantly to the Convention. In particular, Barnier surprised many with his successful chairing of a working group on defence, perhaps because he assumed the classic role of honest broker, with the Commission having 'no realistic aspirations to get involved in defence policy' (Norman 2003: 116). The Commission's basic legislative and watchdog roles were preserved in the Constitutional Treaty, which even extended its powers (particularly over justice and home affairs policies). A late political compromise in the IGC meant that the college would comprise one Commissioner per member state until at least 2014. But a leaner, more cohesive Commission (equalling two-thirds of the number of states or, say, eighteen in an EU of twenty-seven) was in prospect eventually on the basis of equal rotation between member states. Finally, a proposal backed by the Commission was accepted to make the Union's new Minister of Foreign Affairs a Vice-President in the College (as well as chair of the Foreign Affairs Council), with responsibility for all of the Commission's external activities.

A less generous interpretation was that the Convention revealed the Prodi Commission at its worst. Divisions sprouted within the college about what the Commission's strategy should be. Little or no attempt was made to ensure that Commission staff put to work on the Convention—numbering considerably more than the Convention's own secretariat—worked together (Norman 2003: 267). Most damagingly, the Commission produced two very different contributions to the Convention at a crucial stage in late 2002: one an official communication and the other a maximalist, full draft Treaty prepared in secret

continues

Exhibit 5.2 continued

by Prodi's own hand-picked operatives and code-named 'Penelope'. In presenting the Commission's official paper, Prodi downplayed Penelope as a 'feasibility study, a technical working tool' for which his college had 'no political responsibility' (Norman 2003: 167).

Still, Prodi instructed (the visibly infuriated) Barnier and Vitorino to push for language on several Treaty articles that conformed with Penelope. In the end, when consensus emerged within the Convention in June 2003 on the resolution of outstanding issues, the Commission was almost entirely marginalized. Norman's (2003: 267) verdict was that it 'marked an unhappy end to an unhappy Convention for the Commission President'.

The leading candidate to replace Prodi in 2004, Belgium's Prime Minister Guy Verhostadt, received powerful Franco-German backing, but was opposed intractably by the UK, thus reawakening divisions over the previous year's invasion of Iraq. Eventually, the Portuguese Prime Minister, José Manuel Barroso, emerged as a consensus candidate to lead a new, expanded college, with each member state in an EU of twenty-five appointing one member. Barroso's allocation of powerful economic portfolios to liberals (see Table 5.2) and previous support for the Iraq war were both controversial. Barroso, as Santer before him, also found himself on the sharp end of muscle-flexing by the EP, which threatened to vote to reject his Commission after the initial Italian nominee, Rocco Buttiglione, outraged MEPs by airing his conservative views on gay people and women (see Exhibit 5.3 below). By most accounts, Barroso handled the affair badly, before finally securing the EP's approval of a redesigned college. Hopes that Barroso could restore the Commission's position sank, and fell further when the Constitutional Treaty was rejected by French and Dutch voters in May 2005 referenda. Meanwhile, political rows blazed over the EU's budget and economic policy direction. The early Barroso years showed that the Commission's position serves as a barometer of European integration but also that its ability to influence the process is determined by broad political and economic forces over which it has little or no control.

The structure of the College

Basic norms established over fifty years govern appointments to the college and the relationship between its three basic elements: the President, the College itself, and Commissioners' *cabinets*.

The President

A biographer of Roy Jenkins starkly concluded that:

> The Presidency of the . . . Commission is an impossible job. Indeed it can hardly be called a job at all—the President has a number of conflicting responsibilities, but no power. By no stretch of the imagination does it resemble the Prime Ministership of Europe (Campbell 1983: 181).

Table [illegible] The Barroso Commission [illegible]

Commissioner (nationality)	Portfolio(s)	Relevant previous post(s)	Party affiliation in home country (EP party group*)
José Manuel Barrosso (Portugal)	President	Prime Minister	Social Democratic Party (EPP)
Margot Wallström (Sweden)	Vice-President, Institutional Relations and Communications Strategy	Social Affairs Minister; EU Environment Commissioner	Social Democratic Party (PES)
Günter Verheugen (Germany)	Vice-President, Enterprise and Industry	Minister for Europe; EU Enlargement Commissioner	Social Democratic Party (PES)
Jacques Barrot (France)	Vice-President, Transport	Labour and Social Affairs Minister	Union for a Popular Movement (EPP)
Siim Kallas (Estonia)	Vice-President, Administrative Affairs, Audit, and Anti-Fraud	Estonian Prime Minister	Estonian Reform Party (ELDR)
Franco Frattini (Italy)	Vice-President, Justice, Freedom, and Security	Foreign Affairs Minister	Forza Italia (EPP)
Viviane Reding (Luxumbourg)	Information, Society and Media	MEP	Christian Social People's Party (EPP)
Stavros Dimas (Greece)	Environment	Industry, Energy, and Technology Minister	New Democracy (EPP)
Joaquín Almunia (Spain)	Economic and Monetary Affairs	Employment and Social Security Minister	Socialist Workers' Party (PES)
Danuta Hübner (Poland)	Regional Policy	European Affairs Minister	None
Joe Borg (Malta)	Fisheries and Maritime Affairs	Foreign Affairs Minister	Nationalist Party (EPP)
Dalia Grybauskaite (Lithuania)	Financial Programming and Budget	Finance Minister	None
Janez Potocnik (Slovenia)	Science and Research	European Affairs Minister	None
Ján Figel (Slovakia)	Education, Training, Culture, and Multilinguilism	Research Scientist, Chief Negotiator on EU accession	Christian Democratic Movement (EPP)
Markos Kyprianou (Cyprus)	Health and Consumer Protection	Finance Minister	Democratic Party (EPP)

continues

Table 5.2 continued

Commissioner (nationality)	Portfolio(s)	Relevant previous post(s)	Party affiliation in home country (EP party group*)
Olli Rehn (Finland)	Enlargement	MEP; Adviser to Finnish Prime Minister	Centre Party (ELDR)
Louis Michel (Belgium)	Development and Humanitarian Aid	Deputy Prime Minister and Foreign Affairs Minister	Reformist Movement (ELDR)
László Kovács (Hungary)	Taxation and Customs Union	Foreign Affairs Minister	Socialist Party (PES)
Neelie Kroes (Netherlands)	Competition	Transport, Public Works and Communications Minister	People's Party for Freedom and Democracy (ELDR)
Mariann Fischer Boel (Denmark)	Agriculture and Rural Development	Agriculture Minister	Liberal Party (ELDR)
Benita Ferrero-Waldner (Austria)	External Relations and European Neighbourhood Policy	Foreign Affairs Minister	People's Party (EPP)
Charlie McCreevy (Ireland)	Internal Market and Services	Finance Minister	Fianna Fáil (UEN)
Vladimír Spidla (Czech Republic)	Employment, Social Affairs and Equal Opportunities	Prime Minister	Czech Social Democratic Party (PES)
Peter Mandelson (UK)	Trade	Trade and Industry Minister	Labour (PES)
Andris Piebalgs (Latvia)	Energy	Finance Minister	Latvian Way (ELDR)

Note: * Here we show the affiliation of national parties to party groups within the EP to give a sense of the political balance — especially between Commissioners with ties to centre-right (EPP), socialist (PES) or liberal (ELDR) parties — within the College. See also Chapter 15.

This claim initially seemed to be challenged by the appointment of Prodi, a former Prime Minister of a large member state. Yet, less than a year after his appointment, Prodi was forced to deny rumours that he was considering leaving the Commission to fight a forthcoming Italian domestic election. The only other Italian to have been Commission President, the barely remembered Franco Maria Malfatti, had done precisely that and left Brussels early in the 1970s. Had the Commission gone back to the future?

In a sense, the legacy of Delors continued to haunt Brussels, both in terms of the political aversion of many member governments to a powerful Commission *and* the reality of a Commission that was irreversibly powerful. The internal market was, if by no means complete, at least a political fact. The Commission was responsible for policing it, representing the EU in international trade diplomacy, and suggesting steps towards its full realization. The enormously powerful market forces unleashed by open commerce in the world's largest single capitalist market were often able to overwhelm public power unless it was wielded collectively, with the Commission usually in the lead (see Pollack 1997; Peterson and Bomberg 1999: 67). The freeing of the internal market truly did transform the Commission's institutional position.

Moreover, the EU was increasingly powerful as a player in international politics (see Hill and Smith 2005*b*). Over time, the Council Secretariat became a formidable institutional rival and clear superior to the Commission on most questions of foreign policy. Still, the Commission packed a punch as purveyors of the EU's programmes for development aid and humanitarian assistance and, particularly, through its lead role in international economic diplomacy. After becoming Commissioner for External Trade under Barroso, Peter Mandelson could plausibly be considered more powerful than perhaps twenty or so Prime Ministers of the EU's smaller states.

Finally, the Commission remained an honest broker between many diverse and competing interests in a system that relied fundamentally on consensus. Arguably, the Commission stood to be empowered in an expanded EU of twenty-five or more member states, around three-quarters of which were small states (with 16 million or fewer citizens), since the Commission had always been the traditional defender of the 'smalls'. Pointedly, Barroso vowed to defend the newest EU countries—all small states besides Poland—from protectionist pressures from long-time member states, some of whom Barroso claimed had 'not yet changed their chip to an enlarged Europe'.[8]

The days when Barroso's job could 'hardly be called a job at all' may be gone, but no Commission President ever makes his own luck. How much any President can accomplish is determined by a variety of factors over which they have little or no control. Even Delors was successful only because of three propitious contextual variables: national receptivity to European solutions, international changes (especially German unification), and a favourable business cycle from 1985 to 1990 (Ross 1995: 234–7). These factors helped Delors exert 'pull' within the European Council, in which the Commission President is the only member who does not head a state or government. Crucially, Delors (and perhaps Jenkins, at least on EMS) was viewed as a political equal in the European Council. There is no evidence that either Santer or Prodi—former Prime Ministers themselves—ever were.

Regardless, the Commission has become more *presidential* over time. Successive Treaty revisions have given the Commission President—considered only 'first among equals' during Delors' time—a progressively stronger grip over the college. Prodi tried to focus on broad political themes, giving himself no specific policy portfolio (unlike Santer, who retained overall responsibility for EMU and external policy) while also seeking to expand his own influence by inserting many of his 'own people' into key positions of authority within the Commission's services. The collective identity of the college seemed a secondary consideration, with Prodi declaring 'I want each Commissioner to be a star, a big star, in his or her own policy area'.[9]

Yet, few argued that it was also more effective or cohesive. Prodi's political misjudgements were frequent and his communication skills poor. His inability to form coalitions with (especially large state) European leaders led to charges that he had failed to reverse 'the weakness of a Commission that ha[d] not fully recovered from the trauma of the Santer resignation' (de Schoutheete and Wallace 2002: 17).

For his part, Barroso insisted that his would be a dynamic, reform-minded Commission subject to a strong Presidential lead. Promising that his college would be more policy focused and team oriented, Barroso argued that any effort to restore the position of the Commission had to respect the premise that 'the basic legitimacy of our union is the member states'.[10] Yet, even after recovering from the Buttiglione affair (see Exhibit 5.3), Barroso came under attack from the political Left, particularly in the European Parliament where he was accused of pursuing a 'neo-conservative agenda' and privileging a 'liberal Atlantic' clique within the Commission.[11] Barroso's

Exhibit 5.3 The Rocco Buttiglione affair

Views on José Manuel Barroso's prospects fluctuated wildly in the first days after his nomination. Barroso was no one's first choice for the job. Immediately after he was chosen, he was lobbied hard by France and Germany to designate their nominees as 'super-Commissioners', provoking fears of another weak Commission President.

Barroso's surprise, early announcement of the distribution of jobs in his college, and his wry comment that he needed twenty-four 'super-Commissioners', temporarily silenced his critics. After first offering the powerful justice and home affairs (JHA) portfolio to the French nominee, Jacques Barrot (who was firm in wanting an economic job), Barroso designated the Italian nominee, Rocco Buttiglione, as JHA Commissioner. An arch-Catholic and close confidante of the Pope, Buttiglione aired ultra-conservative views on homosexuality (calling it a 'sin') and women (who 'belonged in the home') at his EP confirmation hearing, leading the Parliament's civil liberties committee to vote to recommend his rejection. Barroso tried to appease MEPs by delegating Buttiglione's responsibilities for civil liberties to a committee of other Commissioners. Yet, opinion within the EP did not measurably shift. Barroso then made things worse, stating that he was 'absolutely convinced' that his Commission would be approved since only 'extremist' MEPs could possibly vote against it.[12] Ultimately, he had no choice but to withdraw his team from consideration by the EP in order to avoid a humiliating rejection.

Barroso's political instincts seemed to return in subsequent weeks. He was helped by Buttiglione's decision to stand down, as well as Latvia's withdrawal of its original nominee, Ingrida Udre, who was dogged by allegations of corruption. Fresh nominations by both states—particularly Italy's choice of its Foreign Minister, Franco Frattini, to replace Buttiglione—allowed Barroso to propose a new-look college, which was overwhelmingly approved by the EP. Afterwards, Barroso could claim that 'we have come out of this experience with strengthened institutions',[13] including a stronger Commission and, of course, an emboldened EP.

For their part, religious organizations were outraged, with one insisting that the affair showed 'how little trust there is at the heart of the EU'.[14] Supporters of the Parliament accused Barroso of going too far to try to appease European leaders, particularly Italy's Prime Minister, Silvio Berlusconi. A more mundane, but inevitable conclusion was that as long as each state in an EU of twenty-five or more nominates one Commissioner, any nominee for President will find themselves trying to build a team from a large group that includes many (a majority in Barroso's case) they have never met before. In Barroso's own words, 'it is like a blind date'.[15]

defence of small and new EU states provoked the French President, Jacques Chirac, to respond to rising Euroscepticism in France (in advance of the failed 2005 referendum on the Constitutional Treaty) by repeatedly attacking the Commission. One analyst accused Barroso of being an 'intergovernmentalist at heart' and predicted that his Commission would continue on a steady path of decline (Munchau 2005: 17).

The College

The appointment of the College is often a fraught and highly politicized exercise (see Peterson and Bomberg 1999: 40–1). The compositions of the Jenkins and Prodi Commissions were shaped in important ways by the nominees for President himself. Still, provisions in the Amsterdam Treaty[16] that lent weight to Prodi's own preferences in 1999 still 'did not prevent governments from having the upper hand over "their" nomination(s)' (Nugent 2001: 83). Barroso did not appear to influence many choices about who was nominated to his Commission until he was forced to ask for fresh nominees following the Buttiglione affair (see Exhibit 5.3).

The institutional design of the EU is intended to create collective, inter-institutional responsibility for what the Union does. It has given rise to a gradual strengthening of the EP's right to vet the choice of member governments' nominees to the College. The Santer, Prodi, and Barroso Commissions (after the reconfiguration of the latter) all were ultimately confirmed by large margins (of around 300 votes). Yet, if provisions in the Constitutional Treaty were ever implemented, the formal powers of the EP would be reinforced: it would officially elect the Presidential nominee and member states would be legally obliged to take account of the results of the most recent EP election in choosing a nominee for President. Even these changes would pose no threat—in advance of any move to a smaller Commission—to the basic principle that 'each national government is free to select a national Commissioner' (Devuyst 2005: 53).

Collective responsibility is not only built into the EU's institutional system generally. It is also a cardinal principle *within* the College. All members must publicly support all decisions and actions of the Commission. The principle is often difficult to uphold. In contrast to cabinet governments, the college is never united by shared party political, national, or ideological affinities. In fact, no one has ever really explained what is meant to hold it together besides a commitment to 'Europe' (see Coombes 1970).

Formally, the College decides by simple majority votes. In a college of twenty-five, as many as twelve Commissioners could vote against a motion but then have to support it publicly. Our knowledge about how often the College votes is primitive, and frequent voting cannot necessarily be equated with more division in the college. However, when the College votes it is usually an admission that the majority view must be forced on at least a few Commissioners. By most accounts,[17] voting was more frequent in the Santer Commission than in Delors', perhaps because the latter was more clearly dominated by its President. In the Prodi Commission, insiders noted 'a culture of avoiding votes' in a College whose members were 'very focused on their own responsibilities and relatively unconcerned with some larger "big vision" '.

The single most important factor in determining the cohesiveness of the College remains the strength of Presidential leadership. The Prodi Commission was the first in which, according to the Amsterdam Treaty, the college worked 'under the political direction of the President'. Nevertheless, one of its members denied ever having a single substantive discussion with Prodi on any issue related to his own (economic) portfolio, adding: 'Prodi got out of the way, but we needed a sort of control tower. We only avoided a lot of plane crashes at the last minute, and some we did not avoid' (quoted in Peterson 2005*b*).

Barroso appeared to think that his College needed more of a collective identity and more teamwork on actual policy. He thus announced the formation of five 'clusters' of Commissioners in key areas: the Lisbon agenda, external relations (both chaired by Barroso himself), communications, equal opportunities, and competitiveness. Yet, in an early indication of how such devices do not guarantee a cohesive College, Barroso's Commissioner for the internal market, Charlie McCreevy, publicly attacked the Commissioner for Enterprise, Günter Verheugen, dismissing the latter's doubts about the proposed services directive as a case of 'some Commissioners ... who like to speak out of both sides of their mouth ... from one day to the next'.[18]

Collective responsibility has become more difficult to enforce as the College has become, over time, a more politically weighty group of individuals. The Santer Commission reinforced the trend towards 'increasing politicisation of the college' (MacMullen 2000: 41), with its inclusion of six former prime ministers, foreign ministers, or finance ministers. Prodi's College contained more policy specialists, with a majority coming to the Commission after being national ministers for agriculture, finance, European affairs, and so on. The Barroso Commission pushed back in the direction of high-powered generalists, with its three former prime ministers, five former foreign ministers, and three former finance ministers. Notably, nearly all who had held such high-level posts hailed from small states, and the early verdict on Barroso's College was that it lacked 'big stars', as Pascal Lamy, Chris Patten, and Antonio Vitorino had been considered to be in their policy areas under Prodi. Nevertheless, even Barroso's line-up seemed to defy any notion that the College consists of mostly grey, apolitical technocrats (see Peterson 1999; 2002).

The *cabinets*

One of the Commission's most vexed problems has always been the proper role of *cabinets*. In principle, *cabinets* are meant to act as a bridge between the college and the services, and thus between the political and apolitical. Most national civil services contain some analogue in the form of party political, temporary appointees to civil services. Yet, members of *cabinets* in the Commission have tended to be particularly vilified as agents of their member state, as opposed to the Commission as an institution. In the past, *cabinets* were usually (not always) packed with officials—often quite young—who shared their Commissioner's nationality, leaving aside a few non-nationals. Many were hand-picked by governments in national capitals. Tensions between the *cabinets* and services were rife, especially during the Delors years. One abiding complaint about *cabinets* was that they intervened aggressively in personnel decisions, acting as lobbyists for national capitals in securing senior posts in the services.

Prodi himself was widely accused of violating the spirit of new meritocratic rules on appointments by placing his own hand-picked operatives in powerful posts. Still, Prodi instituted major changes at the level of *cabinets*, which were reduced in size to six officials from as many as nine previously (Prodi's own *cabinet* numbered nine). Each Commissioner was required to appoint a head (*chef*) or deputy head (*adjoint*) who hailed from a member state other than their own. Leading by example, Prodi chose as his own *chef* an Irishman, David O'Sullivan (later to become Secretary-General).

Under Prodi, a significant number of new faces appeared in the *cabinets*, with only about one-third having previous *cabinet* experience.[19] The Commission trumpeted the fact that all *cabinets* had officials of at least three different nationalities, and that almost 40 per cent were women (a big increase on past totals). *Cabinets*, along with their Commissioners, were moved out of a central office in Brussels by Prodi and into the same buildings as the services for which their Commissioner was responsible, thus making Commissioners more like national ministers.

Barroso brought Commissioners and *cabinets* back together when the Commission's Berlaymont headquarters were reopened in 2004 after being refurbished and cleared of asbestos. The move was widely expected after complaints that separating Commissioners' office made it harder for them to strike deals and build coalitions. However, Barroso stuck with Prodi's rules on *cabinet* appointments, and the influx of (ten) Commissioners from post-accession states made for an unusually large influx of fresh faces at this level. How much the traditional role of *cabinets* changed in the process was open to question, with one EU ambassador observing that 'the *cabinets* still channel impulses from national capitals, and they probably always will'.

The Commission's powers

The main source of the Commission's power has always been its monopoly right to propose legislation. The Commission also has significant independent powers within the CAP and on external trade and (especially) competition policy. In the latter case, the college often acts as judge and prosecuting attorney—and sometimes jury—on cases of state aids to industry, mergers, and anti-competitive practices by firms. The Commission has considerable powers to set the agenda for policies that 'flank' the internal market, such as cohesion or research policies.

Two important sources of Commission influence—as opposed to power—are its prerogative to deliver opinions on any EU matter, and its obligation to publish an annual report on the activities of the EU. Both give the Commission scope to influence policy debates or steer the EU in specified directions. Generally, however, the Commission must earn its respect by the quality of its analysis, and particularly its judgement of what will play in national capitals and with relevant policy stakeholders (including industry and non-governmental lobbies). For example, the Barroso Commission was challenged in its first months in office by a revolt by some member states over the services directive it inherited from its predecessor, forcing a highly unusual redrafting of its proposal.

Over time, the Commission has become increasingly accountable to the EP. Besides its powers to confirm the College (and its President) and to sack the Commission, the

EP retains the informal right to scrutinize the activities of the Commission, with individual Commissioners expected to appear regularly before its policy-specialized committees. The emergence of the co-decision procedure (see Chapter 6) as the default legislative procedure has had the effect of upgrading the institutional position of the EP at the expense of the Commission. When the EP and Council cannot agree, the Commission risks being marginalized unless it is sensitive to the positions of both of the other institutions, and acknowledges their dominance of the procedure. More generally, the Parliament has 'gained a greater ability not only to hold the Commission more accountable, but also to get the Commission to do things it would not otherwise do' (Stacey 2003: 951).

Historically, the European Court of Justice has usually ruled in the Commission's favour when it has been asked to settle competence disputes. Several underpinnings of the 1992 project became doctrine as the result of individual ECJ decisions, which the Commission then used in the design of new policies (see Armstrong and Bulmer 1999). However, a landmark case in early 1994 saw the Court rule against the Commission in a dispute with the Council over competence on new external trade issues such as services and intellectual property. The Commission also suffered a series of painful court defeats on its competition policy judgements under Prodi, leading to a sweeping overhaul of the EU's regime for state aids to industry under Barroso.

The Commission's most important power may be its right of initiative, but increasingly the Commission's most important role is that of a *manager* of policies set by other institutions. The twenty-first century has found the Commission sharing responsibility for more EU policies, often acting as a broker and facilitator within organizational networks linking the member states and other EU institutions. To cite a prominent example, the launch of the Lisbon agenda of economic reform in 2000 granted few significant new competences to the Commission. However, it allowed just enough room for the Commission to catalyse new initiatives to convince Barroso (five years later) that a revamped Lisbon strategy focused on 'jobs and growth' should be his Commission's top priority. It was also indicative that the Barroso Commission welcomed the proposals of a UK-convened 'Better Regulation Task Force' (2004) to create an informal body composed of officials from the Commission, EP, and Council which could fast-track moves to simplify legislation or adjust it to suit changing circumstances without formally changing it. More than ever, the Commission's work was concerned with advocacy and persuasion within horizontal policy networks, rather than hierarchical compulsion or coercion.

The College in context

The mass resignation of the Santer Commission was clearly a defining event in the life of the institution. Afterwards, one former Commissioner lamented the Prodi Commission's 'astonishing weakness'. A senior official in the services claimed, 'no one is defending the Commission in any major national capital. The Commission as a whole is losing heart'. After its first year, Peter Mandelson claimed that the Barroso college was finding its feet but had found its position eroded by a 'pincer movement':

a loss of leadership to the Council and loss of the internal Commission agenda to the services, which had become more autonomous in the void created by the demise of the Santer Commission.[20]

If the Commission was really so weak, intergovernmentalist accounts of EU politics—which tend to make three arguments about the Commission—could be marshalled to explain why. First, it makes little difference who is Commission President. Second, the Commission is only powerful when and where national preferences converge. Third, the Commission is empowered only to the extent that member government want to ensure the 'credibility of their commitments' to each other (Moravcsik 1998: 492). There is little dispute, among scholars as well as practitioners, that the Commission has traditionally had little influence over most 'history-making' decisions about the broad sweep of European integration.

In contrast, institutionalist theory—now firmly established as 'the leading theoretical approach in EU studies' (Cowles and Curtis 2004: 305)—paints a portrait of a Commission that is often powerful in day-to-day policy debates (see Pierson 1996). According to this view, policy decisions in complex systems such as the EU are difficult to reverse, and policy often becomes locked into existing paths and 'path dependent'. Thus, even as the Stability and Growth Pact, the economic rulebook governing EMU, was rewritten in 2005 amid frustration over the Commission's reprimands of governments running profligate budget deficits, the Commission lost none of its existing mandate or authority over EMU.

Some variants of institutionalism combine insights from rational choice and principal-agent theories (see Pollack 2003). They hold that the principal authorities in EU politics—the member government themselves—make rational choices to delegate tasks to the EU's institutions, which then become their agents in specific policy areas. This body of theory sheds light on the tendency for the EU to make policy by means other than the traditional 'Community method' of legislating (see Devuyst 1999), according to which only the Commission can propose. One of the least flattering features of the Prodi Commission was its frequent insistence that the Community method was the only legitimate path to making EU policy (see Peterson 2005a), even in areas such as the common foreign and security policy where its use was politically unthinkable. There was little dispute that some new policy modes, particularly the so-called 'open method of coordination' (OMC), relying on bench-marking, league tabling, and designating the Commission as a scrutinizer of national policies rather than a proposer of EU policies, produced few tangible, early results (see Borràs and Jacobsson 2004; Dehousse 2004). Yet, EU principals (national governments) were clearly moving towards new kinds of delegation, with the Commission cast as a different kind of agent. By 2005, Verheugen was launching a drive to reduce regulatory burdens on industry and promised to use voluntary codes and other 'soft' forms of regulation in preference to actual legislation.[21]

Increased affinity for new policy modes is also reflected in the creation of a variety of new regulatory agencies, some of which have assumed some of the traditional roles of the Commission (see Chapter 10). EU governments increasingly seem to want new kinds of agents—not just the Commission—to whom they can delegate cooperative policy tasks. Usually, however, the Commission retains the job of identifying and seeking to solve coordination problems within policy networks of (*inter alia*) private actors, consumer and environmental groups, and national and European agencies.

Advocates of multi-level governance as an approach to understanding the EU have long contended that the Commission enjoys a privileged place at the 'hub of numerous highly specialized policy networks of technical experts', even retaining 'virtually a free hand in creating new networks' (Marks *et al.* 1996: 355, 359). Metcalfe (2000: 838) argues that 'the Commission will have to be reinvented as a network organization adept at designing the frameworks of governance and developing the management capacities needed to make them work effectively'. There is little doubt that, insofar as the Commission provides direction to the EU of the future, it will largely do so as a coordinator of networks that seek to make national policies converge (see Héritier 1999; Kohler-Koch and Eising 1999; Peterson 2005*b*), as opposed to replacing them with EU policies.

The College after enlargement[22]

Barroso's College reflected a new political reality in an EU of twenty-five. That is, even if all Commissioners are formally equal, the idea that no Commissioner is more powerful than another is now a practical fiction. If Commissioners from large member states tend to be more successful or powerful, it may be less because of blatant political activism by their national capitals than because they operate in wider networks of contacts (Joana and Smith 2002). Commissioners from small states can 'punch above the weight' of their home country if their performance earns them the respect of their peers and EU member governments. Still, no one pretends that Commissioners from, say, Germany and Malta start out as equals.

To their credit, member governments in the 2004 accession states mostly appointed top members of their political classes to the college. Of the first thirteen appointed by new EU states, six were former prime, foreign, or finance ministers, and several others had been European affairs ministers or national ambassadors to the EU. Thus, most had in-depth knowledge of how Brussels worked from their involvement in negotiating their own state's accession.

Early signals from Barroso's Commission suggested that the President's reformist agenda would be backed by Commissioners whose states had undergone radical, and often painful, reforms to enter the EU. Moreover, Barroso's pledge to defend 'new' EU countries seemed part of a strategy to challenge the *status quo* on key EU issues. For example, (Lithuanian) Budget Commissioner Dalia Grybauskaite raised eyebrows with her assessment that inherited proposals on the structural funds, which targeted more than half of regional funding for the pre-2004 EU-15, were 'difficult to defend'.[23]

The institutional effects of the 2004 enlargement on the Commission, as well as the rest of the EU, will only be revealed years after the event. Yet, there were reasons to think that enlargement might be digested more easily by the Commission than other EU institutions, whose numbers were swelled by a relatively larger influx of new and inexperienced members.[24] At the level of the College, and possibly even more so within the services, enlargement at least held out the prospect of revitalizing and renewing the Commission with a new breed of reform-minded Europeans.

Conclusion

Any analysis of the Commission must consider the normative question of what kind of organization the College should be. A policy entrepreneur? An honest broker? A manager of decisions taken by others? Or an 'engine of integration'?

Increasingly, the Commission seems to have outgrown the last of these roles. It might be argued that there is no other institution that has the independence to identify new directions that European integration needs to take. Moreover, there is historical evidence suggesting that the Commission's declining fortunes can be reversed: after all, it appeared entirely moribund after Hallstein and before Delors.

The Commission spent much of the Prodi era focused on its own institutional position. With its basic role mostly preserved, it can be argued that the Commission now needs to focus on *policy*, as opposed to grand designs. Yet, it has become increasingly difficult, especially in an EU of twenty-five, to design single, EU level policy solutions. As a top former Commission official suggested in 2005, 'most of Europe's worst problem are now micro-level problems. They need to be solved at that level'.

In this context, the EU's added value is mostly as a laboratory for policy learning and transfer. Logically, the new EU will have to adopt new policy modes, and particularly more, and more intensive, exchange and cooperation within networks of national or even sub-national agencies (see W. Wallace 2005). The Union's institutions—including the Commission—will need to embrace more collective types of leadership and advocacy of new policy ideas. Regardless of its eventual fate, the Constitutional Treaty (in Art. 18) gave a clear political signal that the EU's institutions must 'practice full mutual cooperation' if the Union is to thrive.

In an enlarged EU, the Commission may be even better placed than in the past to act as a truly honest broker. It may rarely exercise control over new cooperative networks or reclaim its old function as an 'engine of integration'. But it will logically remain at the centre of many EU policy networks. In any event, it will often find itself in a unique position to steer debates in ways that serve collective European interests, as difficult as they may be to identify clearly in the new EU.

Notes

1 The College remained a men-only club for a shockingly long time. The first women Commissioners were Christiane Scrivener (France) and Vasso Papandreou (Greece), who were appointed to the Delors Commission in 1989.

2 The Luxembourg Compromise was accompanied by a range of new restrictions on the Commission, including a bar on making proposals public before the Council could consider them and the requirement that the Commission could only receive the credentials of non-EEC ambassadors to the Community alongside the Council.

3 It is not clear that Jenkins ever wished to serve another term. His 1979 Dimbleby

Lecture (half-way through his term as Commission President) foreshadowed his ambition to form a new British political grouping—eventually, the Social Democratic Party—of which he became co-leader three years later. By 1980, even Belgium—which originally favoured his reappointment—decided that the 'gap between [Thatcherite] Britain and the rest of the Community was so great that the time had not arrived when any Englishman could be President of the Commission indefinitely' (Jenkins 1989: 601). The Commission's term in office was later extended to five years by the Maastricht Treaty so as to align its tenure with that of the EP.

4 Santer was literally no one's first choice but was chosen after the nominations of Ruud Lubbers (Prime Minister of the Netherlands), Leon Brittan (Commissioner under Delors), and Jean-Luc Dehaene (Prime Minister of Belgium) were all rejected, with the UK under John Major prominently vetoing Dehaene.

5 Santer was not alone in making this claim. The respected Belgian Commissioner for Competition Policy, Karel van Miert, attacked the Experts' report as 'unjust and incorrect' (Santer and van Miert both quoted in *Financial Times*, 17 March 1999). For his part, Brittan (2000: 11) insisted that the Experts had added 'unnecessary and crude journalistic icing . . . to what was a perfectly well-baked and freestanding cake'.

6 Unattributed quote in *Financial Times*, 17 March 1999.

7 This quote (and all others not referenced as otherwise in this chapter) is taken from interviews conducted as part of the research for this chapter in November/December 2000, March 2001, November 2003, June 2004, and January-April 2005. The interviewees included two Commissioners, two former Commissioners, one national ambassador, a former Secretary-General, *cabinet* officials (eight in the Prodi Commission, including three *chefs* and two *deputy chefs*), and a diverse range of senior officials in the services.

8 Quoted in *Financial Times*, 15 March 2005, p. 8.

9 Quoted in *Financial Times*, 19 July 1999, p. 9.

10 Quoted in *Financial Times*, 7 February 2005, p. 17.

11 The President of the EP Socialist group, Poul Nyrup Rasmussen, and veteran French MEP, Jean-Louis Bourlanges, quoted (respectively) in *Financial Times*, 2 March 2005, p. 6 and *EurActiv.com*, 3 September 2003 (available on *http://www.euractiv.com*).

12 Quoted in *Financial Times*, 22 October 2004, p. 1.

13 Quoted in BBC News, 'MEPs approve revamped Commission', available on *www.newsvote.bbc.co.uk* (accessed 19 November 2004).

14 See commentary by the European Evangelical Alliance (available on *http://www.europeanea.org/TheButtiglioneAffair.htm*); see also Catholic Educator's Resource Centre, 'The New Europe: Catholics no longer need apply' (available at: *http://www.catholiceducation.org/articles/persecution/pch0071.html* (both accessed 25 March 2005)).

15 Quoted in *Financial Times*, 19 December 2004, p. 8.

16 The Amsterdam Treaty promised that members of the College would be chosen 'in common accord' with the nominee for President—not just 'in consultation' with them as in the past.

17 One former Commissioner interviewed for this chapter insisted that there were 'far more votes under Delors and tight votes'. Another indicated that 'voting wasn't very frequent' in the Delors Commission. Previous interviewees with experience of successive Commissions estimated that there were

more votes taken under Santer than Delors (see Peterson 1999: 62).

18 Quoted in *Financial Times*, 4 March 2005, p. 6.

19 As is generally the case in the Commission, personnel records on *cabinet* members are incomplete, thus making precise comparisons impossible. However, using data presented in Hill and Knowlton (2000), a total of 34 (out of all 123 *cabinet* officials) had previous experience working in *cabinets*, or 28 per cent of the total, compared to 74 with no previous *cabinet* experience, or 60 per cent of the total. The data showed no previous information on the former positions held by 15 *cabinet* officials.

20 Peter Mandelson, 'The Idea of Europe: Can We Make it Live Again?', UACES Future of Europe Lecture, Crowne Plaza Hotel, Brussels, 20 July 2005 (available on *http://www.uaces.org*).

21 Quoted in *Financial Times*, 17 March 2005, p. 3.

22 This section and the one that follows both draw heavily on Peterson 2005a.

23 Quoted in *Financial Times*, 24 February 2005, p. 10.

24 By mid-2005, more than 1,000 officials had been recruited to the Commission from the ten accession states, but a number of recruitment targets had been missed. At the same time, pre-enlargement fears that accession state administrations would haemorrhage their top staff to the Commission appeared to be unfounded.

Further reading

The most useful and comprehensive of recent works on the Commission are Spence (2006) and Dimitrakopoulos (2004). Nugent (2001) is still very good on the history of the Commission and Delors (2004) offers an insider's view. Coombes (1970), Ross (1995), and Metcalfe (2000) rank as classics that are always worth revisiting. A typically downbeat assessment of the recent and present position of the Commission is Tsakatika (2005), while Peterson (2005) offers a (very preliminary) view of the likely impact of enlargement on the Commission.

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Tsakatika, M. (2005), 'The European Commission between continuity and change', *Journal of Common Market Studies*, 43/1: 193–220.

Web links

The Commission's own website (*http://europa.eu.int*) is a treasure trove which handles something like two million 'hits' per month. The sites of the *European Voice* (*http://www.european-voice.com*) and European Policy Centre (*http://www.theepc.be*) offer insiders' insights from Brussels. It is often useful to see how the Commission's delegations in EU member states (for example, *www.cec.org.uk*) and non-EU member states (see *www.eurunion.org*) present the Commission's line in capitals beyond Brussels.

Chapter 6

The European Parliament

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Contents

Summary

The European Parliament (EP) is the European Union's only directly elected institution. For much of its history it has been relatively weak but since the first direct elections in 1979 its powers and status have grown with remarkable speed. It has acquired the right to decide the contents of most EU legislation jointly with the Council and has come to play a major role in the appointment of the Commission and its President, thereby significantly altering the structure of relations between the institutions. The crisis over the Constitutional Treaty has called into question whether the EP's powers will continue to expand. Nevertheless, the issue of the 'democratic deficit' in the EU cannot be addressed without an understanding of how the Parliament has evolved, how it is structured, what influence it exercises and what kind of body it is becoming within an enlarged Union of twenty-seven or more states.

Introduction

On 27 October 2004, EU Commission President, José Manuel Barroso came to the European Parliament in Strasbourg to say that he needed more time before asking for a vote of approval for his new Commission. He knew that following the hearings of the individual Commissioners held earlier that month, he was unlikely to gain the support of the Parliament for the appointment (or 'investiture') of his college as required by the Treaties. Within a matter of days he had reshuffled its composition, paving the way for the Parliament to give its approval by a large majority on 18 November (see Chapter 5, p. 93).

It was a dramatic moment, underlining the conversion of the European Parliament from an arena of discussion to a place where important decisions about the overall direction of the European Union are taken. The change had not come overnight. It was the result of developments stretching back over the whole history of the Parliament but especially during the 1990s when empowering the EP was widely seen as a natural step in the creation of a true 'political union'. The uncertainty in 2005 surrounding the fate of the EU's Constitutional Treaty, which proposed to add to the EP's powers, called into the question the future direction of the Parliament.

This chapter confronts three issues. First, how and why has the Parliament been able to acquire additional powers? Second, what difference has the inclusion of such a directly elected institution made to the evolution of the EU? Third, what kind of institution is the EP becoming and how far can it resolve the so-called 'democratic deficit'? In relation to the first issue, it has proved easier to agree a gradual extension of the institution's role than to say no to the claims of a representative institution with democratic credentials based on direct elections. On the second, the EP has changed the direction of many EU policies. It has also opened up a debate about whether the EU meets the standards of representative democracy. As for the third question, successive decisions taken to develop the Parliament have above all strengthened its role as a legislator. This strengthened role reinforces its position in relation to the other institutions in Brussels, notably the Council of Ministers, but cannot by itself resolve the broader issue of the legitimacy of the EU. The debate about the democratic nature of that system depends on the kind of political structure European governments and citizens want the Union to become and whether they want the same things, an issue that has moved to the centre of EU politics.

Historical evolution

The story of the Parliament has been told as a transition from 'fig-leaf to co-legislature' (Corbett *et al.* 2005: 1). This change is reflected symbolically in the Parliament's physical surroundings. It has moved from renting premises in Strasbourg that it shared with the Parliamentary Assembly of the Council of Europe to becoming the effective owner of two substantial building complexes in Brussels and Strasbourg,

Table 6.1 Main treaty changes affecting the European Parliament

	Election of MEPs	Legislative and budgetary role	Appointment and scrutiny of executive
ECSC Treaty (1950)	Choice between direct elections or national parliaments to select members		Right to dismiss High Authority
Rome Treaty (1957)	Specific provision for direct elections (implemented in 1979)	Right to be consulted and to give its opinion to the Council	
Budgetary treaties (1970 and 1975)		Right to reject budget, modify level of expenditure and approve/disapprove accounts ('discharge')	
Single European Act (1985)		'Cooperation procedure' providing right to a second reading of legislation and 'assent procedure' to approve enlargement and some international agreements	
Maastricht Treaty (1992)		'Co-decision procedure' with conciliation to apply to 15 legal bases, Right to invite Commission to present a legislative proposal	Right to approve Commission as a whole + Committees of Inquiry, Appointment of Ombudsman and ECB President to report to EP committee
Amsterdam Treaty (1997)		Simplification and extension of co-decision to 32 legal bases	Right to approve Commission President
Nice Treaty (2000)		Extension of co-decision to 37 legal bases	
Constitutional Treaty (2004)		Extension of co-decision to 90 legal bases and to be called 'ordinary legislative procedure' (Art. III-396), Possibility to revoke delegated legislation (Art. I- 36)	Commission President to be elected by EP on basis of proposal of European Council that takes into account the elections to the European Parliament (Art. I-27)

both of them with parliamentary chambers (known as 'hemicycles' because of their shape) equipped to seat 750 members. At the same time, the formal powers of the EP have undergone much more significant growth than those of any other institution. Table 6.1 indicates the main Treaty changes affecting the Parliament between 1951 when the original six signed the ECSC Treaty and 2004 when the twenty-five states of the European Union signed the Constitutional Treaty.

When the ECSC was established, a parliamentary body was far from the centre of discussion (Smith 1999: 27–44). The crucial institution was the High Authority, given supranational powers in the management of coal and steel. The creation of a parliamentary institution, called the Common Assembly, was something of an afterthought, perceived as the least imperfect way to address the issue of accountability. The Assembly's only significant power was that of supervising the Authority, with the right to dismiss the entire body by a two-thirds majority of the votes cast, representing an absolute majority of its members. However, the future evolution of the institution towards something more influential was reflected in the provisions governing its election. Member states could choose whether to have direct elections to the Assembly or to allow its national parliament to select Members. Such a potential direct link to the electorate distinguished the institution from the outset from other international parliamentary bodies, such as the Council of Europe's Parliamentary Assembly.

The Rome Treaty saw significant change in the powers of the Assembly. Specific provision was made for direct elections: it was no longer a matter for each member state to decide. No timetable was laid down, but the commitment to abolish the system of nominated Members was made legally binding. The Assembly was also given advisory as well as supervisory powers and thus was given its first glimpse of legislative power. These two changes did not have an immediate effect. It took over twenty years for direct elections to be organized and Parliament's formal legislative powers were not altered for nearly thirty years. Nevertheless, a trajectory for further development in Parliament's powers was laid down.

Subsequent changes in Parliament's role were closely linked with other modifications to the EU's structure. Treaty revisions introduced in 1970 and 1975 gave the Parliament budgetary powers, including the right to reject the budget (a right it was to exercise in 1979 and 1984), to amend it within certain fixed limits, and to approve (or not) the annual accounts. The essential source of these changes was the decision to alter the basis for financing the European Community. It was agreed to move away from a system of national contributions linked to each country's gross national product (GNP) to a system of 'own resources', whereby the revenue available for financing European policies legally belonged to the Community. Under these circumstances, there was a strong body of opinion among governments, notably the Dutch, that national parliaments could no longer exercise effective control over Community finance and that the task should be passed on to the European Parliament. Already at this stage, the idea of the EP enjoying the kind of rights at EU level traditionally exercised at national level by parliamentarians was proving difficult to resist, with sceptics faced with the task of suggesting a convincing alternative.

However, the Parliament was still composed of national parliamentarians, working there on a part-time basis. The attempt to give life to the provisions of the Rome Treaty on direct elections confronted the institution with a vicious circle, well described in the Vedel report on the enlargement of Parliament's powers:

> [I]f one cannot imagine a Parliament with real powers which does not draw its mandate from direct universal suffrage, it is even more difficult to imagine the election through direct universal suffrage of a Parliament without extended powers. In this way, two equally desirable objectives are making each other's implementation impossible (Vedel 1972: 59).

This dilemma persisted until the election of Valéry Giscard d'Estaing as President of France and Helmut Schmidt as West German Chancellor within five days of each other in May 1974. The subsequent Paris Summit agreed to hold direct European elections after 1978, thereby effectively resolving the dilemma posed by Vedel.

Direct elections paved the way for an extension of the Parliament's legislative powers. A critical moment was the 1980 Isoglucose judgment of the European Court of Justice. This judgment annulled a piece of Community legislation adopted by Council on the grounds that Parliament had not yet given its opinion. The Court made it clear that Council could not adopt Community legislation before receiving Parliament's opinion. Moreover, the Court made a link between the democratic character of the Community and the Parliament's right to be consulted, which the Court described as:

> the means which allow the Parliament to play an actual part in the legislative process of the Community. Such a power represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level *the fundamental democratic principle* (emphasis added) that the peoples should take part in the exercise of power through the intermediary of a representative assembly.

The right to be more than simply consulted came with the Single European Act (SEA) which provided the Treaty base for the establishment of a single European market by 1992. To accelerate the process, member states created a new procedure, with more majority voting, under which Parliament was entitled to two readings of proposed legislation, rather than one. Moreover, providing the Commission was persuaded to back Parliament's amendments, the Council could only overrule the EP by unanimity.

The precise form of Parliament's involvement in the legislative procedure was not pre-ordained. The Vedel Report had argued against the idea that the Parliament be given the right to amend legislation and instead suggested giving it the right to say yes or no to legislation presented to it by the Council. In fact, such a power of 'assent' was granted to the Parliament in the SEA for non-legislative issues. Though restricted to the accession of new member states and the conclusion of certain agreements with non-EU countries, the Parliament was called to give its assent to international agreements thirty times within the first two years of the SEA being ratified. It subsequently was asked to vote on new accessions in 1995, 2003, and 2005.

The Maastricht Treaty ushered in a new and transformational procedure, now generally known as co-decision (though the term is not found in the treaties). It provides for joint decision-taking and direct negotiations between Parliament and Council as well as the possibility for the Parliament to reject draft legislation if such negotiations fail. Supporters of stronger EP powers argued, successfully, that with more majority voting in Council, the position of national parliaments was weakened. A greater role for the EP would improve the democratic legitimacy of EU legislation, by ensuring it had the support of European citizens as well as governments.

Maastricht also gave the EP the right to approve (or not) the Commission before it took office, extended its formal powers of control by providing for the establishment of committees of inquiry, empowered it to appoint a European Ombudsman and made formal provision for the Parliament to invite the Commission to present a legislative proposal, thereby giving it a limited form of legislative initiative. Member states thereby proved receptive to the argument that the broader agenda set for the EU at Maastricht should be matched by a reinforced role for the Parliament.

The process of parliamentarization was still only partial. The role of the Parliament in the second and third pillars (CFSP and JHA) was limited to consultation. The first pillar's provisions for EMU offered a variable role to the Parliament: no co-decision but only 'cooperation' on four articles, alongside a consultative role in the appointment of the board of the ECB. At the same time, the Treaty required the ECB President to report four times a year to the competent Parliament committee (see Chapter 9).

The ongoing process of Treaty revision was used by the Parliament to continue pressing for an expansion of its role and it did so with considerable success. Under the Amsterdam Treaty, co-decision was extended from fifteen to thirty-two Treaty legal bases and simplified to make it possible to reach agreements more quickly. This development can be partly explained by the Parliament proving more 'responsible' than some in EU national capitals had imagined or predicted it would be, readily accepting the obligations imposed by the Treaty. At the same time, the direct negotiations provided for under co-decision proved remarkably successful in facilitating agreement. As a result, more reticent member states, such as the United Kingdom and Denmark, became less nervous about extending Parliament's prerogatives and accepting the arguments of those, such as Germany, who argued that its powers needed to be expanded to increase the democratic legitimacy of the Union.

Amsterdam also legitimized existing practice by giving Parliament the formal right to approve the European Council's nominee as Commission President. Thus by 1999 the Parliament possessed a set of rights to influence the nomination of the Commission which complemented the power of dismissal that originated in the ECSC Treaty, nearly fifty years earlier.

The negotiations over the Nice Treaty were dominated by the dispute over the relative weight of member states in the Council and Commission in an enlarged Union, with a related but less central argument about the number of seats each member state should have in the Parliament. However, there was agreement to extend co-decision (slightly) to thirty-seven Treaty legal bases, with the possibility of limited further extension thereafter by unanimous Council decision. This extension, agreed in November 2004, applies to parts of the JHA pillar that had been explicitly excluded from the scope of co-decision under Maastricht.

In the meantime, the position of the Parliament was subject to major debate and revision in the course of the European Convention (see Chapter 2) and the subsequent IGC that agreed the Constitutional Treaty in June 2004. The most significant change for the Parliament was the effective acceptance of the link between qualified-majority voting in the Council and the application of co-decision. The procedure was extended to ninety legal bases, including the common agricultural and fisheries policies, the common commercial policy and JHA. The centrality of this way of making EU laws was recognized by calling it the 'ordinary legislative procedure'.

Hence the crisis over the ratification of the Constitutional Treaty represented a major brake on the Parliament's ambitions as a legislator. Further widening of co-decision cannot take place without a revision of the Treaties. On the other hand, the proposal in the Constitutional Treaty that the Commission President be elected by the Parliament on the basis of a European Council proposal, 'taking into account the elections to the European Parliament and after having held the appropriate consultations' does not require Treaty revision. It would not give the Parliament the right to elect the Commission President on its own but would mean that the suitability of a candidate could be judged in the light of the political composition of the Parliament after direct elections. Such a link was effectively established in 2004 when the largest group in the Parliament argued successfully that the new President should come from a party represented in its ranks, thereby establishing a precedent that may prove as significant as the formal provisions of the Treaty. Nevertheless, the crisis over the Constitutional Treaty has halted the regular expansion of the Parliament's powers and reopened the question of how the democratic credentials of the EU can be reinforced.

Aggregating interests

It is one thing to be granted significant powers; it is another to use them effectively. More than any other EU institution, the Parliament faces difficulties in aggregating interests in an extraordinarily heterogeneous environment. Before the first direct EP elections there were 198 MEPs, from nine states; by 2004 the number of members had more than tripled to 732, from twenty-five states, with the prospect of two more member states joining by 2007-08.

How can such a large, heterogeneous institution take effective decisions? The European Parliament does not contain a government, and cannot rely on those parliamentarians who belong to the party or parties of a government to ensure that a particular political programme is enacted. What it does have are established leadership structures designed to manage the centrifugal forces at work within it. It elects a President every two-and-a-half years whose task it is to chair the plenary (with the help of fourteen Vice-Presidents), to represent the institution *vis-à-vis* other institutions and the outside world, and to oversee the Parliament's internal functioning. The President also chairs two leadership bodies, the Conference of Presidents and the Bureau. The former, composed of the chairs of all the political groups, agrees, *inter alia*, the draft agenda of plenary sessions, settles conflicts of competence between committees and determines whether or not to send delegations outside the EU. The latter, composed of the Parliament's fourteen Vice-Presidents, deals with internal financial, organizational and administrative matters.

The Parliament's leadership structures ensure that it functions properly but do not guarantee that the institution can use its powers effectively in influencing policy. In fact the EP is very successful in overcoming the clash between efficiency and diversity. It succeeded, for example, in negotiating agreements with Council on more than eighty, often controversial, conciliation procedures under co-decision between 1999 and 2004. Only relatively rarely does it fail to adopt a position for lack of any clear majority, as, for example, on the Iraq war, when divisions present across European society were reflected in the EP itself.

Table [illegible] Composition of the EP in a Union with [illegible]

A	B	C	D	E	F
Germany	82,038	17.1	99	99	829,000
United Kingdom	59,247	12.3	78	72	823,000
France	58,966	12.3	78	72	819,000
Italy	57,612	12.0	78	72	800,000
Spain	39,394	8.2	54	50	788,000
Poland	38,667	8.0	54	50	773,000
Romania	22,489	4.7	—	33	681,000
Netherlands	15,760	3.3	27	25	630,000
Greece	10,533	2.2	24	22	479,000
Czech Republic	10,290	2.1	24	22	468,000
Belgium	10,213	2.1	24	22	464,000
Hungary	10,092	2.1	24	22	459,000
Portugal	9,980	2.1	24	22	454,000
Sweden	8,854	1.8	19	18	492,000
Bulgaria	8,230	1.7	—	17	484,000
Austria	8,082	1.7	18	17	475,000
Slovakia	5,393	1.1	14	13	415,000
Denmark	5,313	1.1	14	13	409,000
Finland	5,160	1.1	14	13	397,000
Ireland	3,744	0.8	13	12	312,000
Lithuania	3,701	0.8	13	12	308,000
Latvia	2,439	0.5	9	8	305,000
Slovenia	1,978	0.4	7	7	283,000
Estonia	1,446	0.3	6	6	241,000
Cyprus	752	0.2	6	6	125,000
Luxembourg	429	0.1	6	6	72,000
Malta	379	0.1	5	5	76,000
Total EU 27	481,181	100.00	732	736	657,000

Note: A: Member states.
B: Population (thousands).
C: Population of each member state as a percentage of total EU population.
D: Seats per member state at present (2006).
E: Seats per member state under Nice Treaty (from 2009).
F: Number of inhabitants represented by each MEP in each member state under the Treaty of Nice provisions.

Political groups

The key agents in the aggregation of interests are the EP's political groups (see also Chapter 15). Since 1952, Members have sat not in national groups but in groups created to reflect shared political affiliation. This structure serves to counteract the logic of the Council where political differences are constructed on national lines. It is also a structure that has proved remarkably stable with members from new member states normally being assimilated into existing groups rather than forming completely new ones. In 2005 there were seven political groups, only one more than in 1979 before direct elections.

Within the group structure there is a mix of competition and cooperation. On the one hand, there is evidence of high levels of group cohesion, with members eager to find agreement with their colleagues in the same group. Hix (2002) has drawn attention to the substantial increase in left-right competition in the EP. He has shown that party allegiance is much more important than nationality in determining how members vote and that members vote the party line more often than, for example, legislators in the United States. This pattern has continued in the Parliament after the 2004 elections. The addition of members from ten new member states has not served to undermine significantly the coherence of groups, despite occasional calls for MEPs from one country to act together to defend the national interest. For example, the Hungarian Prime Minister, Peter Medgyessy, proposed unsuccessfully that there be a single list of MEPs from Hungary at the 2004 European elections to act together in the Parliament. In practice, being a member of a group encourages all to follow the group line in most circumstances.

The obligations imposed by the treaties also create strong incentives for groups to find agreement across party lines. To reject or adopt amendments to the Council's draft budget or to its common position at second reading under the co-decision procedure, to give assent, to approve the accession of new member states, or to adopt a motion of censure on the Commission all require an absolute majority in favour (at present 367) for the Parliament's voice to be heard. No group has anything approaching such a majority: the largest group, EPP-ED, is still at least 100 votes short, even with all its members voting. Thus a strong bargaining culture between the groups has evolved. For some, this development is to be regretted. As two former MEPs have commented, 'political argument is usually displaced by detailed horse-trading to secure the widest possible cross-party support for a given position or set of amendments' (Clegg and van Hulten, 2003: 14). Alternatively, this practice can be seen as an effective way of aggregating interests and perhaps the only way of ensuring the Parliament significant influence in the policy process.

The committee system

Most of the detailed work of the EP is conducted within twenty policy-specialized committees, whose political composition broadly reflects that of Parliament as a whole. These committees enjoy a high level of autonomy under the Parliament's rules. All legislative proposals are referred directly, without debate, from the plenary to one of the committees, which then organizes the examination of a proposal before it returns to the plenary for a vote. Only one committee can be responsible for a proposal and only its amendments can be considered in plenary; other committees can table amendments in the responsible committee but do not get a second chance in plenary. The responsible committee appoints a *rapporteur* who follows a legislative proposal from its inception to the conclusion of the procedure. On the basis of the work of the *rapporteur* the committee comes to adopt a position that will normally prevail in the plenary, unless the members of the committee are unable to overcome their own differences and the vote on a proposal is very close.

The committees provide an effective mechanism for finding agreement across political groups but they also embody two other important features that differentiate the Parliament from the Council. First, all committee meetings are, and since 1999 must be, held in public. The Parliament has traditionally offered a contrast between its own way of operating and the often less transparent mechanisms of the Council. The result can be very full meeting rooms with all those who wish to influence the shape of proposals—lobbyists, national governments or officials from the Council Secretariat—free to observe the evolution of debate. Second, the detailed work in the committees provides an opportunity for those interests that fail to win the argument in the Council or the Commission to have a second chance. The fact that the Parliament does not mirror the majorities in the Council, with opposition parties often making up the largest number of MEPs from a member state, means that such efforts to influence policy may have a reasonable chance of succeeding. In both respects, the Parliament offers a distinctive model for reaching political agreement at EU level.

The 2004 enlargement has undoubtedly challenged this model. The introduction of ten new languages has posed extraordinarily difficult logistical problems for an institution committed more than any other to multilingualism. The shortage of suitably qualified translators and interpreters—particularly for smaller new languages such as Maltese—has obliged committees to share scarce resources and obliged some members to work some of the time in a foreign language. The difficulty has been mitigated by the high linguistic competence of many members from new member states. Still there is growing uncertainty about the practical limits of the existing system in the face of future enlargements.

Exercising influence

To look at what the Parliament is doing on a day-to-day basis is to be confronted with a bewildering array of reports, debates, and questions. To identify the importance of the Parliament's role, it is useful to distinguish between history-making, policy-making and policy-implementing decisions (following with slight variation, Peterson and Bomberg 1999). Using this distinction one can establish that the Parliament is more likely to have an effect on outcomes at the level of policy-making than in history-making and policy-implementing decisions.

History-making decisions

Most of the major decisions in the European Union are taken at the level of the European Council (see Chapter 3). In this framework the Parliament is an outsider: it is not present in European Council meetings except for the relatively brief appearance of its President at the start of the proceedings. It does not have the formal right to say yes or no to the outcome of an IGC, ultimately determined by the European Council. Despite repeated calls to be given such a right of assent, including during the European Convention, ratification of the results of an IGC is a purely national affair, determined by parliamentary vote and/or referendum.

Two powers of decision given to the Parliament after the European Council has taken its decision can be described as history-making ones. As we have seen, the Parliament has the right since Amsterdam to approve the candidate proposed by the European Council as President of the Commission. It also has to give its assent to the accession of new member states. The possibility of the Parliament not approving a Commission President cannot be ignored. In 1994 Jacques Santer was approved by a majority of only twenty-two, despite very heavy lobbying by national governments. After the decision at Nice that the President of the Commission be chosen in the European Council by qualified majority, the opportunity for the Parliament to influence the choice has grown. As suggested earlier, the largest group in the Parliament is likely to press for a candidate from its ranks to be chosen.

Regarding the accession of new member states, the right of assent grows in importance as the number of potential applicants continues to increase. It is a right that is perhaps most empowering during accession negotiations when the Parliament can influence individual issues and try to shape the overall debate. Already in December 2004 Parliament's vote in favour of opening negotiations with Turkey 'without undue delay' (407 votes in favour, 262 against, and 29 abstentions) gave a sense of the balance of political opinion across Europe and paved the way for the formal decisions of the European Council later the same week. Hence the Parliament can influence some history-making decisions but its role is undoubtedly more restricted than it is on policy-making decisions.

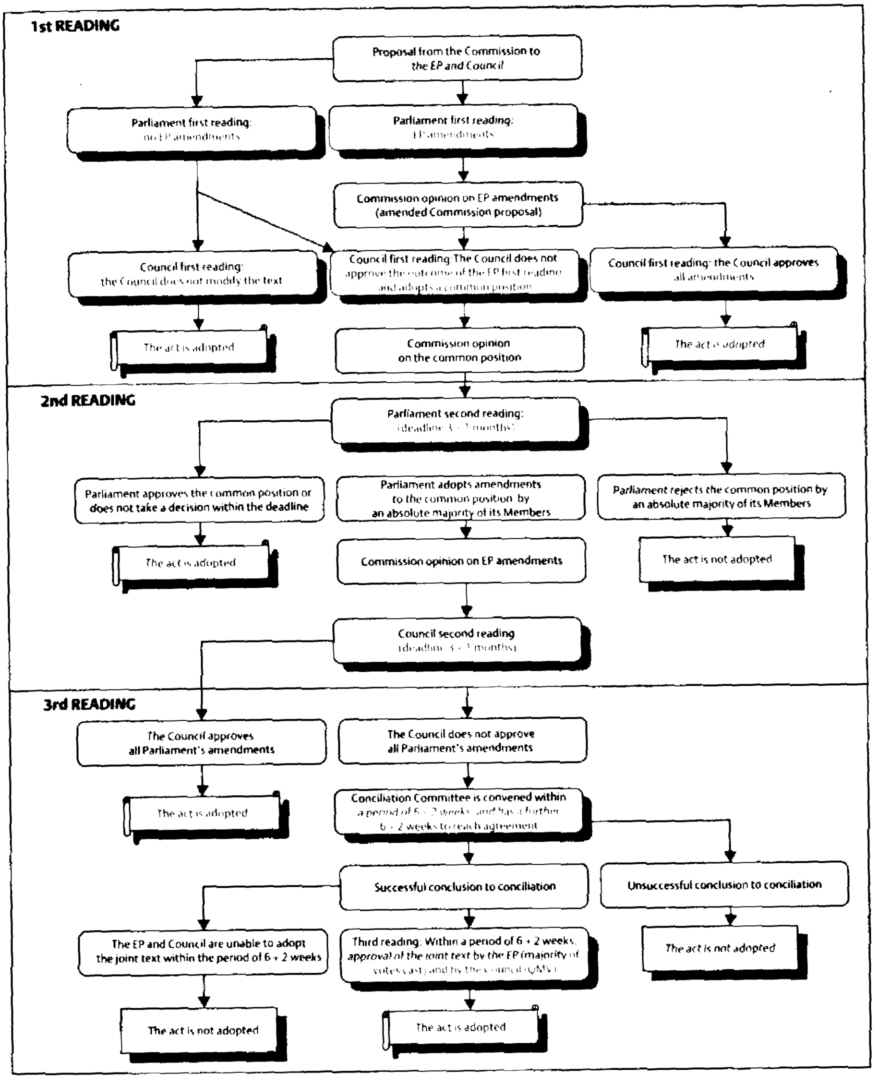
Policy-making decisions

The Maastricht agreement on the co-decision procedure established the principle of the Parliament as a joint legislator with the Council in a limited number of areas. As we have seen, the Constitutional Treaty provides the opportunity for the renamed 'ordinary legislative procedure' to apply in future to all areas of policy, with the exception of proposals involving taxation or the revenue sources of the Union.

The overall shape of the procedure and the possibilities it offers are presented in Figure 6.1. Two central features should be underlined:

- first, the EP and the Council have two readings of legislation. If the Council cannot accept the amendments presented by the Parliament at its second reading, the two institutions have to meet in a conciliation committee whose job it is to find an agreement by a process of negotiation. Neither can tell the other one what to do at this stage;

Figure [illegible] The co-decision procedure



- second, not only are the negotiations subject to time pressure—they have to be concluded in a maximum of eight weeks—but failure to agree in conciliation brings the procedure to an end. Such a prospect necessarily concentrates the minds of the negotiators.

The behaviour of the two institutions under co-decision is illustrated in Exhibit 6.1, a chronology of the directive on railway liberalization. It shows how additional institutional arrangements have been developed to make the procedure work better, notably tripartite meetings, known as trialogues, which bring together representatives

Exhibit 6.[illegible] Railway liberalization package under conciliation—a chronology [illegible]

2003	
23 October	At second reading EP adopts 73 amendments to the four proposals of the Second Railway Package
19 November	EP delegation to Conciliation Committee is constituted and appoints six negotiators to meet the Council
22 December	Council adopts its second reading announcing it is unable to approve all EP amendments
2004	
13 January	At a first trialogue the negotiators meet the chair of Coreper I
15 January	EP delegation establishes an initial negotiating position and notes agreement on one of the four directives
27 January	At a second trialogue the EP negotiators meet the Irish Transport Minister and the Commissioner responsible. They draw particular attention to the composition of the board of the European Railways Agency; the date for the liberalisation of national and international rail freight services and of international passenger services; and the setting-up of a European railway safety system
	After three hours of discussion at the first Conciliation Committee, agreement is reached on 44 of 73 amendments.
18 February	At a third trialogue further progress is made regarding new national safety measures.
10 March	At a fourth trialogue Parliament proposes compromise texts for 13 of the 21 outstanding amendments. Later, the EP negotiators present to their delegation a compromise suggesting liberalization of international passenger services from 2010 (rather than 2008 as proposed by EP)
16 March	At a fifth trialogue Council accepts the compromise texts relating to the liberalization of international passenger services from 2010 and offers a new compromise in relation to the composition of the board
	After three hours the Conciliation Committee reaches agreement on the last outstanding questions: international freight services are to be liberalized from 1 January 2006 and national freight services from 1 January 2007 (rather than 2006 as proposed by EP); EP accepts (reluctantly) that the board should have one member from each member state subject to a Commission commitment to a general reform of the boards of all EU regulatory agencies.

of the Council (in particular, the Presidency), the Commission, and EP. Nowhere are such meetings referred to in the Treaties but they have become a regular feature of all conciliations. Many fewer people attend than at the full conciliation committee where there can be over 100 people in the room. There are usually no more than thirty, with speakers normally restricted to three members of the Parliament delegation, the Deputy Permanent Representative of the member state holding the Council Presidency (most matters in conciliation fall under the responsibility of

Coreper I—see Chapter 14) and a Director or Director-General of the Commission. The major negotiations on the railway package took place in trialogues, with the various compromises first being aired in these meetings. More generally, this example shows that a real negotiation took place with both sides giving ground in the interests of moving towards an overall agreement.

The railway liberalization example is not atypical. In conciliation a high percentage of Parliamentary amendments at second reading are usually either accepted as they stand or in a compromise form more or less favourable to the Parliament (European Parliament, 2004: 13). The procedure has created a new environment where the Council takes the views of the Parliament seriously and is open to modifying its initial position.

The close relationship between Council and Parliament extends beyond the conciliation procedure itself. After Amsterdam, the two institutions increased their cooperation on legislative dossiers to such an extent that it was possible to find agreements at first reading in almost 30 per cent of cases and at second reading in almost half of the 403 proposals dealt with under co-decision between 1999 and 2004. This level of cooperation was only possible because both institutions recognized the need and usefulness of negotiating earlier in the legislative process as a way of avoiding the heavy burden of conciliation. A more specialized form of cooperation has also emerged in the period after the adoption of legislation, with both institutions obliged to join forces to defend the results of co-decisions if they are challenged in the Court of Justice.[1]

This reinforced level of cooperation between Parliament and Council has had two important consequences. First, it has enhanced the institutional status of the Parliament. In particular, co-decision reduces the role of the Commission as the privileged interlocutor of the Council. The Commission no longer can withdraw its proposal once conciliation has begun and is restricted to the often vital but nevertheless circumscribed task of seeking to reconcile the positions of the other two institutions. Second, the Parliament starts to be seen as sharing responsibility in changing the shape of laws that affect all European citizens. Slowly, it is becoming clearer that legislation is not simply a product of agreement within the Council. Parliament can and does alter policy outcomes in significant ways.

Policy-implementing decisions

The implementation of Community policies involves thousands of individual decisions in any one year. No parliamentary body can hope to follow all these decisions in detail. However, the EP has consistently pressed for scrutiny rights equivalent to those of the Council over the implementing bodies, known as comitology committees, that are chaired by the Commission and bring together representatives of all the member states. The EP has consistently argued that it should be informed about the work of these committees and should have the opportunity to block draft decisions with which it disagrees.

This argument became more intense after co-decision was introduced. With the Council able to block draft comitology decisions and take an implementing decision itself, the legislative parity of the two branches in policy making clearly did not extend to policy implementation. The Council claimed that its role in policy implementation related to its executive functions and that it therefore was in a different position from the EP. Nevertheless, it was willing to discuss the issue and in 1999 a new comitology decision was adopted. As a result the Parliament received more information and was given the right to request re-examination of measures adopted under co-decision if the committee was suspected of acting beyond its powers or *ultra vires* (Corbett *et al.* 2005: 290).

The debate about comitology may seem arcane but it raises essential questions about the openness and accountability of the EU system. The decisions are not simply technical: in the early 1990s, for example, the level of controls needed to stop the spread of BSE was decided in a comitology committee, the Veterinary Committee. All such decisions are taken very far from the public gaze, remaining in the hands of the Commission and national experts. Advocating a more powerful role for the Parliament was designed therefore to improve the transparency of the system. Member state governments effectively accepted such criticisms and agreed in the Constitutional Treaty to give Parliament effective parity with the Council in the comitology structure. However, such a reinforced role remains in the future. For the time being, Parliament exercises considerably less influence over policy-implementing decisions than it does over policy-making.

The Parliament and the democratic deficit

The crisis provoked by the 'No' votes in the referenda in France and the Netherlands in May and June 2005 was particularly keenly felt in the Parliament. The Parliament had championed the Convention as an original and better way of preparing an IGC. It had achieved equal status with the Council for virtually all EU legislation. And it had voted by a very large majority in favour of the results of the IGC. For the first time in its history its acquisition of broader powers was blocked.

Critical outsiders suggested that there was a wider lesson to be learnt. *The Economist* suggested that the referenda results 'cruelly exposed the fantasy that the EP is the answer to the disconnect between political elites and ordinary citizens'. It contrasted unfavourably the turnout in France and the Netherlands for the referenda (70 and 63 per cent respectively) with the much lower figures in the 2004 European elections (see Table 6.3 below).[2]

The disappointment felt in much of the Parliament and the undisguised glee of some of its critics reflected very different perspectives on the nature of the European Union and the possibilities for closing the 'democratic deficit'. At least three such perspectives can be identified, each offering a different remedy for the democratic failings of the EU. Yet all share the idea that the structure of the institutions is not a technical question but one with political values at its core. In this sense the French and Dutch referendum results brought into the open a debate that had remained half-hidden.

A first perspective is often referred to as the 'no demos' thesis. It suggests that democracy is a chimera outside the national context because the peoples of Europe are not bound together in the same way as national communities with common histories and cultures (Siedentop 2000). If there is no European *demos*, there can be no democracy at European level. From this point of view, the European Parliament can only be an expensive irrelevance.

The most militant advocates of this point of view do not look for a solution within the structures of the Union: they would rather return to the kind of non-binding international cooperation found in the Council of Europe. Milder versions of the thesis accept the existence of the EU institutions but would look to reinforcing significantly the role of national parliaments. There were strong voices, for example, before and during the Convention in favour of this approach. Joschka Fischer, then German Foreign Minister, and Tony Blair both argued in 2000 that the European Parliament should have two chambers, one made up of directly elected members and the other of members of national parliaments.

For the moment these arguments have not prevailed. The Constitutional Treaty did reinforce the role of national parliaments in checking for respect of the principle of subsidiarity, but without creating a second parliamentary chamber at European level. There continues to be great reticence against creating such a new institution that would be likely to face the same kind of organizational and political weaknesses that confronted the European Parliament before direct elections as well as making the European structure still more difficult to understand.

A second perspective suggests that the EU system needs to be less consensual and more politicised to become democratic. On this view the 'EU will only be democratic if European elections are fought by cohesive Euro-parties which present rival agendas for EU policy action, the winning parties form the executive and the parties act cohesively to ensure that their office-holders implement their electoral programme' (Hix 1998: 20).

Such a vision of the future corresponds to the classic parliamentary model found in all EU member states. It can be seen as a natural development from the existing structure of Parliament's powers. However, it is hard to believe that the EU will ever reproduce the national model (Shackleton 2005). For example, the right of censure over the Commission is 'more similar to the power of the US Congress to impeach the American President than to the power of a parliamentary majority to withdraw the support of the government' (Hix 1998: 25–6). Thus when the Commission resigned in 1999 in anticipation of a vote of censure, it did so not because of differences over policy direction, but rather as a result of charges of incompetence and maladministration. To censure a Commission on a question of policy seems an unlikely prospect given the absolute majority required, a much higher figure than can be achieved by any one party in the Parliament.

Similar obstacles stand in the way of applying party logic to the appointment of the Commission President. It has been suggested that a direct link could be created between European citizens and the Parliament, if each European political family nominated a candidate for President of the European Commission in advance of the EP elections (Clegg and van Hulten 2003: 26). Such an apparently attractive arrangement faces major obstacles. It is hard to see national political party structures being willing to accept such nominations, which would weaken their control of the electoral process. Moreover, there would be a marked tension between candidates nominated by European political parties and those nominated by the European Council.

different variants of institutionalism includes a section entitled 'what is an institution?', and manages to limit rational choice theorists alone to no less than four different, alternative definitions! (Peters 1999: 53).

8 See 'Dual Challenge of Turkey's Entry Effort', *European Voice*, 6–12 October 2005, p. 8.

9 The Ombudsman has assumed extensive powers under Art. 195 TEC to examine cases of maladministration, and more generally, has felt free to criticize the way in which the institutions operate. The institutions have in turn felt obliged to respond and to improve their working methods, such as recruitment procedures or the response to requests for information from the general public.

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