

STAGING EUROPEAN UNION DEMOCRACY
DISCUSSION PAPER PREPARED FOR THE
'ROUND TABLE ON A SUSTAINABLE PROJECT FOR EUROPE'

BEN CRUM

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Abstract

Much of the malaise surrounding EU democracy can be accounted for by the fact that there is no effective staging of political debate between the European Parliament and EU executive power. This paper explores the options to increase the visibility of political choices in the European Union, to open ways to have political positions challenged and, thereby, to improve the staging of the democratic process. It starts from the relationship between the European Parliament and the Commission as this is the relationship that has come to resemble most the dynamics of representative democracy at the EU level. In turn, possible reforms are then explored to strengthen the articulation of political alternatives in the European Parliament, to allow for a well-calibrated politicisation of the Commission and to subject EU executive powers beyond the Commission to democratic accountability. The paper concludes with 20 concrete recommendations for reform – some of which would preferably still be taken on board by the current Intergovernmental Conference, but most of which can be followed up upon by the European actors in the years to come.

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Introduction

Modern democracy is essentially representative democracy. For EU democracy to work, we have to make the institutions of representative democracy work. At centre-stage in representative democracy is the interlocutory relationship between parliament and the executive. Much of the malaise surrounding EU democracy can be accounted for by the underdevelopment of the two sides of this relationship in the Union. As a consequence, European politics basically are not staged for the people to see and hence we should not expect much engagement from them either.

A well-working democratic system is an imperative for sustaining the European project in the long run. In its absence, the gap between political elites and the public is bound to increase. Since the Treaty of Maastricht, political elites have been propelling the European project forward. Without proper democratic channels, the public is likely to lag behind. The detrimental consequences of this are bound to be felt first in those countries that, since they only entered the project at a later stage, have been compelled to accommodate to the pace set by the earlier members. This may explain some of the popular scepticism expressed in countries like Sweden, Denmark, the United Kingdom and Ireland. Similar sentiments are also likely to be encountered among the 10 new states joining the Union in 2004. Eventually, however, even the founding members will have to face up to popular anxieties regarding the pace of European integration; consider only the small margin of the French referendum on the Maastricht Treaty, the reservations of the German *Länder* and the European sentiments that the Pim Fortuyn-movement has expressed in the Netherlands.

A sustainable Europe can, moreover, not be built only on the historical legacies (values, experiences, etc.) that bind the peoples involved. It will need to be maintained and fostered. Eventually that is a question of institutions, people and will. Further, it is my personal appreciation that in many respects the European Union is still an unstable construct. The Union is a project in evolution that clearly has not reached its *finalité* or *telos* yet. It will also not get there by the adoption of the Constitutional Treaty now proposed by the European Convention.

In this paper I explore the institutional preconditions for improving the ‘staging’ of European democracy. In doing so I limit my analysis to institutions at the European level, although admittedly important and major improvements can also be sought at the national level, particularly in national parliaments’ scrutiny of the governments’ engagement in European affairs. Obviously I also focus on representative institutions, although I do believe that instruments of direct democracy (like referenda), if judiciously used, can play a valuable complementary function to representative democracy.

Presuming that the staging of the democratic process requires an interlocutory relationship, I focus on the European Parliament as the subject of this relationship. So far Parliament has been most able to develop an interlocutory relationship with the European Commission. Hence much of this paper is concerned with how this relation can be improved and become more engaging for the public. The analysis forces us however also to look beyond the relationship of the European Parliament with the Commission.

One further preliminary remark is that the analysis departs from the constitutional framework now outlined by the European Convention and elaborates on the opportunities within that setting. Much can

be achieved without re-engineering the Constitutional framework – and, indeed, one suspects that changing the Constitutional (or Treaty) framework has at times become an excuse in the Union to avoid bolder moves within the framework as it stands. Still unavoidably the analysis also leads to some constitutional reforms that appear desirable in the long run.

1. Parliamentary accountability of the European Commission

To get a sense of the political mechanisms involved, this section first sketches the powers the European Parliament has come to enjoy vis-à-vis the Commission. Over time the European Parliament has consistently expanded its powers. The foundation of the accountability of the European Commission lies in its responsibility – already established in the 1951 European Coal and Steel Community – to report annually on the activities of the Community (Art. 212 ECT; somewhat marginalised by the Convention as Art. III-257 DTCEU). The Treaties also oblige the European Parliament to discuss the report (Art. 200 ECT; Art. III-242 DTCEU). In addition the European Parliament has powers to actively interrogate the Commission by way of questions (Art. 197 ECT; III-239) and can, if needed, establish a Committee of Inquiry to investigate alleged faulty behaviour of the Commission or other matters it deems of particular concern (Art. 193 ECT; III-235 DTCEU).

Further, the Parliament acts as a budgetary authority in approving the Union's budget drafted by the Commission and by being able to amend the so-called 'non-compulsory expenditures'. The Convention proposes to abolish the distinction between compulsory and non-compulsory expenditures but does restrain Parliament's budgetary powers by requiring them to conform to the decisions on the Union's resources and the multi-annual financial frameworks in which the member states retain the upper hand. The Parliament also has to give a discharge to the Commission with respect to the implementation of the Community budget (Art. 276 ECT; Art. III-315 DTCEU).

The main relation between the Commission and the European Parliament is channelled through the legislative process where the Commission is generally responsible for the drafting of legislative proposals. Over time the European Parliament has seen its powers in the legislative process expand both in impact as in scope. Where originally its powers were limited to consultation or merely assent, under the so-called co-decision procedure it can also amend legislative proposals in coordination with the Council. At the same time co-decision has come to be applied to ever more policy domains. The Convention has completed Parliament's role as a co-legislator with equal powers as the Council by recognising co-decision as the 'standard legislative procedure' of the European Union. Further, Parliament also has the right to request proposals for legislation from the Commission (Art. 192 ECT; III-234 DTCEU), although the Commission can turn down this request if it can provide appropriate reasons for doing so.

Over the last 20 years or so, the European Parliament has sought to expand its powers over the Commission further so as to encompass censure and appointment (Magnet, 2001; Crum & Coussens, 2003: Ch. 2). From its inception onwards the European Parliament (earlier 'General Assembly'), acting by a supermajority, has had the power to force the Commission (earlier 'High Authority') to resign as a whole. The sheer bluntness of this measure made it unlikely to be effectively exercised in practice. The alternative of granting Parliament the power to censure individual commissioners has however been resisted by the invocation of the Commission's collegiality and for the fear of it being abused in the course of disagreements between various nationalities. Thus when in 1999 the conclusion became unassailable that Commissioner Cresson as well as Commission President Santer had seriously fallen short in the performance of their duties, the College (in anticipation of an EP decision with the same effect) resigned collectively.

After these events, provisions were inserted in the Treaty of Nice to enable the Commission President to force, with the approval of the majority of the College, individual Commissioners to resign. As a consequence the European Parliament can now in principle initiate the resignation of individual Commissioners by addressing the Commission President while threatening to exercise a collective censure if its request is not followed up upon. The Convention reinforces the position of the

Commission President in this by scrapping the precondition for the resignation request to be approved by the majority of the College (Art. I-26.4 DTCEU). As a consequence we can expect Parliament to focus its political pressure more and more on the person of the Commission President.

The appointment of the Commission was originally decided unanimously by the heads of the member states without any role for the European Parliament. The Treaty of Maastricht (1992, entry into force 1993) first involved the European Parliament in the appointment procedure by giving it the formal right to be consulted on the choice of the President. The European Parliament took this provision to mean that it was entitled to approve or reject the nominee for president. Surprisingly, at the first occasion in 1994 this rather opportunistic interpretation was approved by the President-in-office of the Council (Germany). The Parliament's interpretation was formalised by the Treaty of Amsterdam (1997, entry into force 1999), which explicitly requires the European Parliament to approve the European Council's choice for Commission President. The other Commission members are then nominated by the national governments by common accord with the nominee for President. Finally, the entire College is subject to a vote of approval by the European Parliament for which the Parliament first subjects the nominees to a hearing.

The Treaty of Nice (2000, entry into force 2003) revised the appointment procedure again in that the national governments will in the future decide on the Commission President by a qualified majority rather than by unanimity. The nominee then needs to be approved by the European Parliament. While on first look the implications of this reform may appear slight, the fact that the Commission President need not necessarily enjoy the approval of all governments in fact much increase the chances that the European Parliament will adopt its own, diverging, view on the nominee put forward (cf. Lord & Hix, 1996).

The Convention's take on the appointment of the Commission President is ambiguous in that it suggests a fundamental change but then leaves the basic features of the present procedure intact. Thus Article I-19 of the draft Constitutional Treaty boldly affirms that the European Parliament shall elect the President of the European Commission. But when the election procedure is spelled in detail in Article I-26, it turns out that the European Parliament's choice is limited to the candidate nominated by the European Council. If it rejects the nominee, it simply forces the European Council to come up with another one. As one further gesture to the Parliament, the draft Constitutional Treaty requires the European Council to take account of the outcome of the EP elections in putting its nominee forward.

All in all, apart from de facto control over the appointment procedure, the European Parliament has acquired a significant set of powers to control the exercise of executive powers by the European Commission. Indeed in many respects its formal powers equal or even exceed those of national parliaments. Still the democratic appeal of the EP-Commission relationship falls short on at least three grounds. First, one can find problems on the side of the Parliament and the way it mobilises itself. Then there are some problems on the side of the Commission that above all have to do with what I call its 'suppressed politicisation'. Finally, problems follow from the place of the EP-Commission nexus in the wider context of the EU architecture and especially the way executive power has been dispersed within it. Moreover, in practice these problems often turn out to be mutually reinforcing.

2. Political mobilisation in the European Parliament

MEPs Nick Clegg and Michiel van Hulten have well formulated the central paradox concerning the EP: "While it has steadily increased its powers in the legislative and inter-institutional arrangements of the EU, it has not yet succeeded in translating its authority into a more visible role amongst Europe's electorates" (van Hulten & Clegg, 2003, p. 4). In the stereotypical perception the European Parliament remains dominated by national politics ('second-order parliament'), lacks political structure and behaves immaturely. These stereotypes are overdrawn and have to some extent been discredited by the present situation. Still it is useful to examine their underpinnings, the extent to which they have become invalidated and what can be done to overcome them for good.

It is important to recognise that the European Parliament is a parliament in development. In the year 2003 it is only in its 5th term since it was first directly elected in 1979. Political scientists have come to characterise the elections of the European Parliament as ‘second-order elections’, as voting behaviour in these elections primarily reflects national political preoccupations (Reif & Schmitt, 1980; Schmitt & Thomassen, 1999). What is more, the exact rules of the elections are eventually set by each member state for itself and voter turn-outs lag (far) behind the level of national elections. The relationship between the Members of the European Parliament (MEPs) and the electorate is weak. Public knowledge of the MEPs is low and to the extent that it does exist, it is mostly limited to MEPs of one’s own nationality.

The distinct, ‘second-order’ character of the elections for the European parliament also reflects upon the internal workings of the Parliament. Although the Parliament is organised in cross-national ideological party groups, in day-to-day practice MEPs operate first of all from within their national political faction. Also most of their public engagement is oriented to their own national sphere. Moreover, the European party organisations, while formally well-established, remain in practice dominated by national parties. A key factor here is that politicians themselves perceive their own careers primarily within the framework of the national parties that someday may well allow them a function at the national level again, and hence they only take a secondary interest in the European party-organisation (cf. van Hulten & Clegg, 2003).

Research does demonstrate, however, that in the day-to-day voting behaviour in the European Parliament, ideological differences have come to dominate national or territorial differences (Kreppel & Tsebelis, 1999). What is more, most of the voting behaviour reflects the left-right dimension that also generally dominates national parliaments (Hix, 2001).

Even if the EP in its internal day-to-day operations has very much come to function as a ‘normal parliament’, it fails to put itself at centre stage at moments of European political crisis. Beyond the fact that it simply lacks powers when it comes to some of the most fundamental issues (like the EU’s foreign policy), this is above all a consequence of the fact that, when it comes to political crises, the internal logic of the EP is taken over by other forces (cf. Magnette, 2001: 304f.). On the one hand, we encounter efforts from the national parties to discipline MEPs to endorse agreements that have been settled earlier in intergovernmental fora. The classical example is the insistence of Spanish Prime Minister Felipe Gonzalez in 1994 that the Spanish Social-Democrat faction in the EP had to endorse the candidacy of Christian-Democrat Jacques Santer for Commission President (Lord & Hix, 1996). More recent examples can easily be cited.

On the other hand, we find as a counter-current the tendency of the European Parliament to close political ranks and to maintain a broad consensus in its confrontation with other European institutions (cf. Magnette, 2001, pp. 308f). This kind of behaviour is for instance exemplified in the EP’s engagement with allegations of fraud within the Commission. The tendency for the EP to close ranks is not only provoked by the need to affirm itself as an institution vis-à-vis the other European institutions. It is also fostered by its main mode of procedure that is organised around MEPs preparing the position of the Parliament as a whole by acting as ‘rapporteurs’ on a dossier assigned to them (cf. van Hulten & Clegg, 2003, p. 14).

For the EP to claim the position of the central arena of EU politics, two things are thus required: it has to reinforce the systematic articulation of political alternatives within its own confines and it has to escape from under the shadow of national politics. Here the strengthening of European party organisations is the key and this requires concerted action at four different levels:

- the internal organisation of the EP,
- the electoral system,
- the status of European political party organisations and
- the recruitment procedures for top executive posts at the European level.

The internal organisation of the EP

To start, the European Parliament would do well to reconsider its basic working method: the rapporteur system. This system is particularly effective in ensuring that the Parliament has a clear and coordinated voice in its engagement with the Commission and the Council. As it stands, the rapporteur system basically involves the Parliament collectively in the writing of a single opinion. This puts a particular responsibility on the rapporteur as he or she knows from the start that the report will have to cater for the Parliament as a whole. Also when it comes to the final vote, MEPs basically face the choice between either adopting the report or having no report at all. Thus, the rapporteur system is inherently bound to technocratise debates and to prevent the articulation of political alternatives within the Parliament (cf. Benedetto, 2001, esp. section 3). Admittedly reforming the rapporteur system goes to the heart of the Parliament's organisation and rules of procedure, and a workable alternative will not be easily conceived. Still it seems desirable to foster the development of alternative views within the Parliament instead of focusing on the drafting of one catch-all opinion.

A related reform concerns the allocation of resources within the Parliament. At present staff of the Parliament does much important preparatory work. Visibility and politicisation of Parliament would benefit from shifting resources from the Parliament's central administration to the party groups (cf. van Hulten & Clegg, 2003, p. 32).

The effects of these shifts have to be appreciated within the context of the overall size and composition of the Parliament. At its present size of 626, we find already great disparities between the roles and involvement of MEPs. With membership increasing to 732 after enlargement, concerns have been expressed that there will simply not be enough work to occupy all members. The whole situation will change again however if the rapporteur system is to be re-organised and decentralised more towards the political groups. Still, the overall size of the Parliament remains a matter of concern. The European Convention has proposed to cap the EP's size at 736 members but has eventually delegated the decision concerning its size and composition from 2009 onwards to the European Council and the Parliament.

The sheer size of the Parliament inhibits the personal visibility of its members to the public. What is more, the bigger the Parliament, the more likely it is that part of its members will become detached from their proper responsibility for the general European interest and rather turn to cater for the interests of particular (national) publics – a trend that again can only be countered by giving more powers to the political groups. If the Parliament is to be perceived as a genuine *European Parliament*, also in the public's eye, a reduction of its size appears desirable. This raises however the fundamental issue of the distribution of seats between nationalities. On the one hand some of the larger member states find that the current distribution works disproportionately to their disadvantage. On the other hand, given the low number of seats held by the smallest countries (at present six, the Convention proposes to reduce this number to four), there does not seem much to be gained there either.

The electoral system

Over time, member states have more and more harmonised the electoral procedures they use for the EP elections, as is most notably illustrated by the United Kingdom that now also uses a proportional system rather than the 'first-past-the-post' district system it uses for national elections. In 2002 the Council, with the assent of the European Parliament, revised the act concerning election of the members of the European Parliament to the effect that in all member states the EP elections shall be based on the principle of proportional representation, using either a list system or the single transferable vote (Council, 2002). While it is eventually up to each member state to determine the exact electoral procedure, their discretion is limited to the decision to determine electoral districts and whether or not to set an electoral threshold, and even in making these decisions they have to respect the proportional nature of the system. In some respects harmonisation can be carried still further in order to reinforce the sense of genuine pan-European elections rather than the aggregation of national

polling results. For one thing all elections could be held on the same day rather than over the four-day spread that is allowed at present (cf. European Parliament, 2002).

However, more drastic reforms could be envisaged to loosen the relation between the European elections and the national political scene. One proposal in circulation calls for the creation of regional districts in which (several) candidates would be elected (Jospin, 2001; Van Hulten & Clegg, 2003). Presumably regionally elected candidates would develop a stronger relationship with their constituency. Although, as the EP asserted in its opinion of 1998, “it is impossible to establish a system of territorial constituencies in a uniform manner and that there has to be a distinction based on the population of each Member State”, such a reform might have the advantage of laying out a consistent electoral system across the Union, separated from the national level.

A suggestion that goes in the opposite direction is to have part (10 or 20%) of the European Parliament elected on the basis of pan-European lists (EP, 1998; cf. European Commission, 2002). While the Council resisted incorporating this proposal in its 2002 decision, the Parliament hopes that it will be taken up again in time for the EP elections of 2009. Indeed it is even possible to combine the idea of regional electoral districts and pan-European lists in an electoral system (somewhat resembling that of the German *Bundestag*) where each elector casts one vote for a regional candidate and one for a national political party.

The status of European political party organisations

The tasks of strengthening the party groups within the European Parliament and loosening their relationship with national parties need to be complemented by the reinforcement of pan-European party organisations. The statute for European political parties provides for the official recognition of European party organisations and makes significant funding available for them to organise themselves in a professional manner and to assert some degree of budgetary independence from the national affiliates. Unfortunately, as it looks now, the conclusion of this statute is far from certain, given some nasty disagreements on the issue of MEPs’ pay that it is to cover as well.

The recruitment procedures for top executive posts at the European level

Finally, the visibility of the European Parliament would be strengthened if there were to be a direct link between its membership and the recruitment for top executive jobs in the Union, most notably those of the Commissioners. Under the present procedures and practice, the allocation of these jobs is mostly controlled from the national level. Notably, career mobility in and out of the European Parliament is mostly determined at the national level. As a consequence there are basically three kinds of MEPs: those that are grounded for life, those that use the EP as a stepping stone for a national career and those who have come to the EP as a reward for past achievements at the national level. In general MEPs enjoy a lower status within (national) political parties than national parliamentarians.

Interestingly of course the European Parliament has by now acquired a veto right over the election of the Commission President. In principle, party groups can use this right to reject any candidate put forward by the European Council except the one to whom they have committed themselves. The obvious way to take control of the procedure would be for the political groups to put the position of Commission President already at issues in the EP elections by putting their preferred candidate forward. If one of the two major political groups (Social Democrats and Christian Democrats) would indeed be able to agree on a candidate, the other one would probably have to follow by putting forward an alternative candidate. Notably the party groups within the European Parliament have endorsed the view that “in future election campaigns, the European political parties should announce the candidate for the Commission President whom they propose to have elected” (EP, 2002). Whether this will happen in practice will however depend on the coordination skills of the European party organisations and on their ability to find suitable candidates who are willing to take the risk. In the

past, national parties have eventually prevented the emergence of compelling pan-European positions and candidates.¹

3. The suppressed politicisation of the Commission

The European Commission is a rather idiosyncratic political institution. Originally, the Commission was “designated as both secretariat and proto-executive” (Wallace, 2000, p. 11). While the Commission has steadily expanded in powers and resources, it retains a split identity. The single market project has led to a dramatic increase in the Commission’s powers to propose legislation and to develop implementing rules (regulations). Also the Commission plays a major executive role in the allocation of the biggest chunks of the Community budget: the agricultural subsidies, the structural funds and the Framework Programme for Community Research. Nevertheless, these powers remain confined in scope (as for instance the Common Foreign and Security Policy (CFSP) and police cooperation remain outside the Commission’s remit) and subject to strict control mechanisms of the Council (adoption of legislative acts and supervision of executive activity through the comitology system).

While the Commission has thus become a formidable political force, it has at the same time been expected to act as an impartial arbitrator of the general European interest. This role is particularly useful when in its political activities of policy-making and -execution it commits the Commission to the role of ‘honest broker promoting the general European interest’. However, the role impartial arbitrator becomes problematic where it has been stretched to encompass also certain quasi-judicial roles in which the Commission acts as ‘guardian of the treaties’ (cf. Sapir et al., 2003, par. 12.1.2). Most notable in this respect is the Commission’s role as European competition authority. One can also think of the Commission’s role in signalling breaches with the macroeconomic commitments member states have made (in the context of the Broad Economic Policy Guidelines and the Stability and Growth Pact) and of its role in initiating infringement procedures against member states that fail to implement Union legislation, although in the last resort it is the ECJ that decides here.

Originally European executive responsibility presupposed impartiality. The Commission could only exercise the powers entrusted to it if it could be trusted to be impartial. The neutrality of the Commission has even been inscribed in the European Treaties (Art. 213.2 ECT):

The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. (...)

The Commission’s neutrality is of course of particular importance with regard to national interests. The last thing we would want to see is a split Commission in which a majority coalition of certain nationalities systematically imposes its views. Such a development would jeopardise the Commission’s credibility. In practice the Commission’s claim to impartiality towards national interests has obliged it to shun any semblance of taking a political stance, thereby restraining it from manifesting itself as a political authority in its own right.

At the current stage the Commission’s role as impartial administrator has come to fit badly with its role as focus-point for executive responsibility at the European level. Not only does the Commission wield significant executive power, but it undeniably makes important political choices in the exercise of these powers. Even more so, if the Commission is effectively to implement the executive tasks

¹ Miguel Maduro has suggested a more radical alternative that would literally make the Parliament the Commission’s home by requiring the candidate for the Presidency of the Commission to be a member of the Parliament. Even if the first choice would then be left to the European Council, the Commission Presidency would become a central stake in the European elections. Politicians of the authority required for the job would be forced to put their stakes in the elections and the interest citizens take in these elections would get a major boost.

assigned to it, it needs to confront political choices and to be able to do so openly rather than to hide behind a technocratic guise.

Pursuing this diagnosis, three kinds of reforms follow:

- recognise the political nature of the Commission,
- hive off arbitrating powers and
- balance the position of the Commission within the overall institutional architecture.

Recognise the political nature of the Commission

To recognise that the Commission has to face important political choices requires that these can be articulated as such within the Commission. Regardless of the formal provisions, it is clear that even as it stands the Commission does display certain ideological orientations. Each of its members is affiliated with a political group and even if the institutional role of the Commission is probably more important for its stance than ideological persuasions, the latter may just be key in driving certain issues forward. In any case the very recognition of different ideological orientations would do much to increase the transparency and public engagement with the work of the Commission.

The key to inserting political choice into the workings of the Commission lies in its appointment procedure, and more specifically in the appointment of the Commission President. That the composition of the Commission has largely reflected the political colours of the national governments is generally downplayed. Since the Treaty of Nice has provided that the Council will henceforth nominate the candidate for the presidency of the Commission by a qualified majority rather than by unanimity, this nomination will quite likely become a subject of contestation between political groups. This is even more likely if the different party groups in the European Parliament follow up on their earlier commitment – already referred to above – to each feature their preferred candidate for the Commission presidency in the EP election campaign (EP, 2002).

Increasing the political weight of the election of the Commission President will affect his or her position within the College of Commissioners. Under the Treaty of Nice, the President already acquired the right to veto the Commissioners nominated by the national governments, the power to allocate portfolios among Commissioners and the power to force Commissioners to resign if approved by the rest of the College. The Convention proposes to further reinforce the role of the Commission President by giving him or her a free hand in selecting the Commissioners on the basis of lists of three candidates submitted by the member states, by deleting the requirement of the approval of the College before he or she can force a Commissioner to resign, and by reaffirming the President's prerogatives in the internal organisation of the College.

Once the Commission President is chosen for his or her political colour, this is bound to affect the relationship of the Commission with the European Parliament. In particular, one could envisage more government opposition-like dynamics to emerge where the party group of the President's colour would tend to defend his or her initiatives while the other groups would be motivated to develop alternatives.

Hive off arbitrating powers

Recognising the Commission as a political body does not necessarily imply that it has to relinquish its roles as promoter of the general European interest and as honest broker between the various political actors in the Union. Governmental institutions in national democratic systems are also expected to pursue the general interest rather than merely the interests of the electoral majority. Still politicising the election of the Commission President and opening up the Commission to political choices will require additional flanking measures.

One set of such measures follows from the fact that a more politicised Commission will no longer have the credibility to sustain its present roles as a quasi-judicial power (cf. Sapir et al., 2003, par. 12.1.2). Basically this implies that certain tasks the Commission currently performs need to be

delegated to independent agencies. The most prominent case in point is the Commission's tasks as competition authority (but, notably, not those as drafter of the competition policy) that would be better delegated to an agency that would exercise these tasks in full independence (though it should be able to draw on the political clout and power of the Commission if needed). In other cases where the Commission plays mostly a signalling role (infringement procedures, compliance with macro-economic commitments), clarifications and guarantees can be brought into place to distinguish its role from the final authority that decides.

Balancing the Commission

Possibly of a more fundamental character is the risk that political polarisation might lead to the structural alienation of certain groups from the European project. The heart of the matter is that the way the Commission is elected and controlled should allow it to retain its own independent position within the overall EU architecture (cf. Lenaerts & Verhoeven, 2002). It would be particularly damaging for the role of the Commission if it were to turn into an instrument of one group of member states used against another group. Almost equally damaging would be if one party group in the European Parliament could dominate the Commission at the expense of other political orientations and of the Council. The Commission needs to be able to play a credible role in reconciling different national and political orientations for the wider European good. At its current stage of development, the Union simply cannot afford to structurally exclude certain national or political groups from executive power.

Thus to ensure the proper functioning of the European institutions, the position of the Commission needs to be subjected to a carefully calibrated system of checks and balances. One check already follows from the fact that in the present situation the election of the Commission President needs the agreement of both the Council and the European Parliament. One thing to prevent here is however that by imposing too many requirements on the decision procedure, the election ends up being arranged behind the scenes again. A further guarantee is that, given the heterogeneity of the European electorate, political action in the European Parliament is bound to require shifting coalitions between various groups rather than that one or two fully coherent factions will be able to dominate it. Actual practice in the Parliament already demonstrates how the two largest groups (EPP and PES) either need each other or a coalition with the smaller ones to get things done.

Further, politicisation of the election of the Commission President can to some extent be mitigated by ensuring sufficient heterogeneity in the College of Commissioners. In terms of nationality, it seems likely that also with the new Constitutional Treaty all member states will at least have a (non-voting) Commissioner. Moreover, the Constitutional Treaty provides that each national government will provide a shortlist of three candidates from which the Commission President can then select the members of the College. After that the College as a whole still needs the approval of the European Parliament. Whether the IGC will maintain this shortlist procedure remains to be seen. The Convention proposal is open to manipulation, both on the side of the member states (proposing only one 'serious' candidate) as well as on the side of the Commission President (selecting weaker Commissioners). What is more, it would seem desirable that in the end the overall composition of the Commission is relatively balanced in terms of expertise and political affiliation. Criteria to that effect might be formulated either in the Constitution or in a separate decision by the Council and/or the Parliament. Also when in the end all member states would be represented in the College, then some precautions seem warranted to ensure that prestigious posts (vice-presidency, chair of possible teams, major portfolios) are fairly distributed among the members of the Commission.

4. The dispersion of executive power beyond the remit of the Commission

It would, however, be a mistake to limit this analysis to the EP-Commission nexus alone. A great part of the EU democratic deficit arises exactly for the reason that many strategic decisions are being taken and executive powers are being exercised beyond the control of these two institutions. More specifically this involves a number of competences that are of particular political gravity, most notably

foreign policy and police matters. Furthermore, the Commission and Parliament play a rather marginal role when it comes to setting the Union's agenda. On these key powers the member states have sought to retain their prerogatives and have been reluctant to involve the supranational institutions.

Executive decisions adopted by the member states in concert, within the framework of the Council or the European Council, resist democratic scrutiny. In principle it is up to national parliaments to control their governmental delegations. In practice, however, it turns out to be particularly difficult to exercise this task. A first reason for this is that up till now Council meetings generally take place behind closed doors. Secondly the process of decision-making is opaque as responsibilities have been dispersed across various Council formations and are often already prepared in administrative working parties. Thirdly, while the matters discussed within the Council are often already of a rather technical character, national parliamentarians are also generally rather ill-informed; they do not automatically receive all documentation or receive it only at a rather late point in time. Most fundamentally, however, national parliaments have to allow their governments a certain degree of discretion in the negotiation process without being able to fully ensure that the governments will exercise this mandate in good faith (*moral hazard*) (Scharpf, 1988).

While some parliaments (e.g. the Danish and the Finnish) have been more effective in controlling their government than others, this last consideration also demonstrates that simply tightening the grip of national parliaments on the governments is eventually bound to gridlock the Council rather than to solve the problem. The Convention proposes some valuable reforms to strengthen national parliaments' powers of oversight: ensuring that all Council communications are also sent directly to national parliaments, respecting a general period for parliamentary consideration before Council moves to agreeing on a common stance, and guaranteeing that legislative proposals are considered and agreed upon in public. Still these reforms are unlikely to ensure that decisions in the Council will in the future be subject to full and effective scrutiny.

Securing democratic accountability becomes even more difficult when the Council comes to the point where it (in turn) has to delegate executive tasks to specialised bodies. However much the member states resent delegating responsibilities, whenever we have seen cooperation intensifying in new policy domains, there has been an unassailable need for pan-EU executive tasks and for consistent coordination of the implementation efforts. This has been well-realised in the case of the single market, it is the main challenge encountered in realising a sphere of freedom, security and justice, and it is one of the major frustrations in the attempt to coordinate macroeconomic policy.

In those cases where member governments have been led to recognise the need for European executive power, they have (since the single market) preferred to establish new organs under their direct control rather than to involve the Commission. Typically, in police and judicial cooperation, the Council has assigned executive tasks to the specialised bodies Europol and Eurojust. In the Common Foreign and Security Policy (CFSP), member states are particular keen not to give any sovereignty away. In the past the Council has sought to put the joint executive responsibility in the hands of the rotating presidency and/or the so-called troika. Increasingly, however, it is relying on the secretariat of the Council and in particular on its Secretary-General who has been appointed High Representative of the CFSP.

The proposals of the Convention confirm the fragmentation of European executive powers by turning the Union's executive into a multi-headed animal. Besides the Commission President, it establishes the permanent positions of a European Council President and a Minister for Foreign Affairs. The Chair of the European Council is to replace the rotating presidency. Elected for a period of 2½ years, the Chair is to secure greater continuity to the work of the European Council and thereby reinforce the strategic role that is generally attributed to it. The post of Union Minister for Foreign Affairs is to arise from the merger of the position of the High Representative for the CFSP (at present held by Javier Solana) with that of the Commissioner for External Relations (at present held by Chris Patten). With all means of EU external actions concentrated in one hand, the Foreign Minister is supposed to become a driving force in forging a common European position in the world. Beyond the triumvirate,

further European executive fiefdoms may develop out of the chairs of the various (executive) Council formations.

While the Convention has drafted the outlines for the future allocation of executive responsibilities in the Union, some further fine-tuning can be expected from the IGC. Still, in the end it will need to be seen in practice exactly who is going to exercise what powers. Depending on the person and the circumstances, the President of the European Council might conceivably either amass such powers as to model the position on that of the French presidency or may find instead that the function is of hardly more than a ceremonial nature, not unlike that of the German President. As regards the Foreign Minister, we have to see whether the sensitive balance between communitarised and non-communitarised powers can be maintained, or whether the Minister is eventually drawn in on either the Council or the Community side. Also the importance of the chairs of the Council formations may vary from a mere procedural role to coming to constitute some kind of ‘parallel executive’ function of its own (a development that becomes likely when they are considered to be exercised as a team, the approach that now seems to be surfacing in the IGC).

Whatever the exact shape these positions eventually assume from a democratic perspective we would want two general guidelines to be observed:

- all European executive power should be matched by appropriate accountability mechanisms and
- there should be no unnecessary fragmentation at the European level.

Ensure that all European executive power is matched by appropriate accountability mechanisms

In principle one would not want any executive power to be exercised at the European level without proper mechanisms by which it can be publicly exposed and by which the decisions of those responsible can be challenged. It is exactly the absence of such mechanisms that allows the negative public perception of European politics to persist.

The work of the Council poses a particular challenge in this respect. Importantly, the Convention has consistently sought to disentangle the various roles of the Council. However, judging by the fact that the idea of a separate legislative council was the first to be scrapped by the IGC, it seems that member states do take an interest in retaining a certain degree of opacity in the Council proceedings. Still, to the extent that the Council acts as a legislative body, the proposals of the Convention (openness, full information of national parliaments) in combination with the controls exercised by the European Parliament come a long way towards meeting democratic standards. At the other extreme, where the Council only serves as an exchange of views and experiences between member states, there are also no problems of principle. Yet where the Council and the European Council, acting outside of any legislative capacity, engage member states in mutual commitments, the situation – at present as well as after the Constitutional Treaty would enter into force – remains rather problematic.

Indeed when member states engage in executive commitments, considerations of efficacy are bound to lead to the establishment of some independent power that is to induce and to monitor the member states’ compliance. The proposed Union Minister for Foreign Affairs is to play such a role for the Common Foreign and Security Policy and the European Council chair is to play a similar role in ensuring compliance with the strategic objectives agreed upon.

What is problematic, however, is that these new powers are established without providing for any clear mechanisms of public accountability. Naturally the Foreign Minister and the European Council chair will have to justify their actions to the formations that have elected them and over which they preside. However, as indicated, this engagement takes place behind closed doors. What is more, the relation with the electorate is rather tenuous or, as I have suggested elsewhere (Crum, 2003c), they are cases of ‘delegative overstretch’ of the representative chain (from electorate to national parliament to government to European authority).

In the light of the uncertainty about how the new posts will develop, one should maintain the principle that, as long as they fail to provide for proper mechanisms of public accountability, they can serve no more than a function internal to the bodies in which they are embedded and can in no way represent or commit the Union as a whole. In turn, if they are to fulfil roles that do concern the Union as a whole, then corresponding mechanisms of accountability need to be put in place.

With regard to the Union Minister for Foreign Affairs, it should be noted that its position is strengthened by the fact that the proposed Constitutional Treaty does provide for some accountability measures. For one, the Minister is supposed to maintain contact with the European Parliament by keeping it informed, by answering questions, by engaging in a semi-annual debate and by consulting it on the main aspects of the Common Foreign and Security Policy (CONV 850/03, Art. III-205). Moreover, to the extent that the Foreign Minister is part of the Commission, he or she will fully share in the Commission's accountability to the European Parliament – although whether this also includes the need for the nominee to be approved as part of the College and the obligation to resign after a motion of censure has been passed on the Commission appears to be a matter of debate in the IGC.

The status of the European Council chair is notably different since – except for the European Council itself that in exceptional circumstances may end his or her mandate by a qualified majority – he or she will not in any way be accountable to any democratic body. This circumstance should, in principle, very much limit the possibility of the chair to exercise powers that commit the Union as a whole.

Also with respect to other positions within the Union, accountability mechanisms need to be considered in line with the principle that all executive power needs to be matched with proper accountability mechanisms. Beyond the Commission, the Council, the European Council and the Foreign Minister, I am thinking here in particular of organs like the European Central Bank, Europol and Eurojust. All of these institutions need to be subject to general obligations with regard to transparency and reporting on their activities. Also one could in principle expect them to respond to questions put to them by the European Parliament (cf. Crum, 2003b).

One must note moreover that already at present the European Parliament is consulted on the appointment of the President of the European Central Bank as well as that of the other members of its Executive Board (Art. 112 TEC). While obviously the ECB should not be under any political instructions in its daily operation, one might well want to consider upgrading Parliament's consultative role in the appointment procedure to one of assent. (In fact it would appear unlikely and undesirable that the governments would persist on an appointment against the negative opinion of Parliament.) A similar role for Parliament can be considered with regard to other functions within the Union that may well turn out to be of more than a mere administrative nature, like the director of Europol and the chair of the Euro-group who the Convention proposes to elect for a term of two-and-a-half years.

Ensure coordination and prevent unnecessary fragmentation at the European level

The fragmentation of executive power at the European level can be accounted for if one takes in consideration the *sui generis* nature of the Union as a political system and the differences between policy domains. Still this fragmentation does necessitate guarantees to ensure coordination between the initiatives that can be taken throughout the Union. Naturally the responsibility to ensure consistency of action lies first of all with the member states. With specific regard to executive tasks at the supranational level, there is much to be said for recognising the primacy of the Commission regardless of whatever new bodies can be established. Admittedly the performance of the Commission has had its highs and lows over the fifty years of European integration. Still, whichever way one looks at it, the Commission does play a central and well-embedded role in the institutional architecture of the Union.

One positive reform proposed by the Convention is to assign the Commission the initiating role in the strategic programming of the Union with a view to achieving inter-institutional agreements (CONV 850/03, Art. 25.1), rather than leaving the initiative to the European Council as was suggested in the Conclusions of the 2002 Seville European Council. It will be for the next European Commission to

take up on this assignment and to affirm again the Commission's role as strategic agenda-setter of the Union (a role that it appears to have lost to the European Council in recent years).

The double-hatted Foreign Minister will in principle ensure coordination and consistency between the Union's actions in CFSP and the general orientation of the Commission. Whereas before, the member governments insisted on keeping the CFSP as much as possible under their exclusive control, the Foreign Minister is likely to actively engage across the Union organisation. In principle then one can expect the onus to turn in the sense that, where up till now the CFSP was conducted outside the remit of the supranational institutions except where their involvement was demonstrably needed, now the Council and the Foreign Minister will have to justify each claim to exclude Commission and EP involvement from CFSP decisions.

A further point where coordination needs to be ensured concerns the operation of the sectoral Council formations. As the chairs of these formations will no longer rotate each half year but are likely to remain in the same hands for a longer time, new positions of power emerge. This applies in particular to the position of the president of the Euro-group who supposedly will be elected for a period of no less than two-and-a-half years. While more stability and continuity in the Council is to be welcomed, guarantees are needed to ensure consistency between Council and Commission actions in the various policy domains. It would be undesirable if some kind of parallel executive would develop around the Council chairs that operated at cross-purposes with the Commission (cf. Commission, 2003).

Finally, the future position of the European Council chair remains clouded by uncertainty. Theoretically the person exercising this position might come to challenge both the powers of the Foreign Minister as well as those of the Commission President. However, as defined by the Convention, the European Council chair will lack both the legitimacy and the resources to put a significant mark on the Union as a whole. Indeed in due course, it may well turn out that the best way to make this position work is to have it filled by the Commission President, a possibility that has deliberately been left open by the Convention. If at any point in time the governments will indeed be ready to recognise such a powerful double-hatted presidency for the Union, then one may well want to match power by accountability by making the post the direct object of democratic elections (cf. Hix, 2002; Coussens & Crum, 2003).

5. Conclusion and recommendations

All suggestions made in the course of this analysis seek to increase the visibility of political choices in the European Union, to open ways to have political positions challenged and, thereby, to improve the staging of the democratic process. Few of the suggestions made are original and many of them are already implied in on-going developments, not least in the constitutional proposals of the Convention. Still this does not mean that we can sit back and wait for the logic of democratisation to enfold itself. As the foundations for the Union are still being laid down and the global context is full of uncertainties (e.g. economic and in terms of security), many of the practical choices we make now may well be decisive for the long-term trajectory of European cooperation.

In considering these choices, it is of crucial importance to appreciate the implications of, and interrelations between, the various options we face. Two factors appear of particular importance: time and consistency. European cooperation is a process that allows certain steps only to be taken in due course. At the same time in setting out the political strategy, clarity and consistency are of the essence, not least in bringing the European public along. The small choices of today need to fit the larger strategic perspectives in the long run; they have to conform to as consistent a trajectory as possible and be readily understandable in that light.

As indicated, one element towards a mature EU democracy is that the European Parliament improves its own efficacy hand-in-hand with strengthening its bond with its electorate. The other side of the story that I have sought to highlight in particular is that Parliament's credibility depends eventually on the shape of the power it is supposed to control. At present the European Union does not have a government as such. Indeed anything like a European government will be slow to emerge, and when it

does, it will still look distinctively different from anything we know at the national level. Still a consistent and coordinated conception of European executive power is of crucial importance in working towards EU democracy. What is more, however one comes to think of it, the current Commission structure will have to be a major building block within that conception.

All in all, this perspective leaves us at this point with the following recommendations:

With regard to the European Parliament

1. Parliament needs to revise its rapporteur system to allow for a better and more systematic articulation of political alternatives.
2. Parliament also needs to shift resources from the Parliament's central administration to the party groups.
3. At the conclusion of the IGC, the European Council should instigate a broad and well-informed debate about the future size and composition of the Parliament that will be concluded in good time before the EP elections of 2009.
4. The Council, with the assent of the EP, should set future EP elections (from 2009 onwards) on the same day in all member states.
5. Member states (at least those with more than 10 seats in the EP) should use sub-national constituencies in EP elections.
6. The Council, with the assent of the European Parliament, should provide that at the 2009 EP elections, 10% of the EP membership is elected on the basis of pan-European party lists.
7. The provisions in the statute for political parties for the recognition and funding of European political party organisations need to be finalised as soon as possible by the Council and the Parliament.
8. European party groups need to identify their candidate for the presidency of the Commission in their campaigns for the 2004 EP elections, and they need to agree between them that they will approve no one but these candidates as nominees from the European Council.

With regard to the European Commission

9. The European Council has to accept the politicisation of the election of the Commission President and to conduct the election procedure in public.
10. The Commission, in close coordination with the Council and the Parliament, has to hive off the quasi-judicial tasks it currently performs – most notably its work as competition authority – and delegate them to independent agencies.
11. The procedures in which the Commission plays a signalling role (infringement procedures, compliance with macroeconomic commitments) need to be revised to clearly distinguish between the role of the Commission and that of the final authority that decides.
12. Criteria need to be adopted by the IGC or the Council and/or the EP to ensure that the composition and internal organisation of the College of Commissioners is well-balanced in terms of geography, political affiliation and expertise.

With regard to the overall structure of EU executive powers

13. The IGC needs to provide in the Constitutional Treaty that the Council will meet in public, also when addressing non-legislative matters, except when there are clear and demonstrable grounds to meet behind closed doors.
14. The Union Minister for Foreign Affairs shall not be given any powers to represent or engage the Union without being properly accountable to the European Parliament.
15. The European Council chair shall be given no role in representing and committing the Union unless this position is properly accountable to a representative body.

16. Constitutional or legislative measures need to be taken to ensure that all executive organs that are part of the EU architecture, including the likes of the European Central Bank, Europol and Eurojust, are subject to a general regime of public accountability including general obligations with regard to transparency and reporting on their activities and the duty to reply to questions put to them by the European Parliament.
17. All top-executive appointments in the Union (including the European Council chair, the Foreign Minister, the ECB Executive Board and the directors of Europol and Eurojust and the chair of the Euro-group) shall require the approval of the European Parliament.
18. The next European Commission needs to take the initiative on the multi-annual and annual programming of the Union. All other political institutions (Parliament, Council and European Council) will have to cooperate in this process in a constructive way.
19. The future Foreign Minister shall be committed to engage the Commission and the Parliament fully in the CFSP except for those cases where there are substantial reasons to exclude them.
20. Future chairs of Council formations shall be committed to cooperate fully with the Commission and shall avoid developing parallel administrative capacities.
21. On appointing the European Council chair, the merits of having the post filled by the Commission President shall be seriously considered. If indeed the two positions are to be exercised by one person, the options to increase the democratic legitimacy of the post will need to be explored.

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* In its present form of a discussion paper, I have only sparsely annotated the text. The list includes, besides the works already referred to in the text, the main works that have inspired and guided my thinking.

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