

Reforming the Council – modeling facets of a multi-actor system

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This paper investigates the Council of Ministers and the Convention's/IGC's dossier on the Council's system. Acknowledging that supranational influence is contingent upon both the context and actual strategies employed by supranational actors in an IGC,¹ I focus on an issue where the Member States' strategic positions are under review. I argue that the Nice IGC's outcome² is the product of a trend of Member States who already during the Maastricht reforms started to base their preferences on a non-agreed type measure. Building on the findings about the Nice IGC, the paper moves on to discuss different readings of the Council system and to analyse their empirical validity. I then systematically look at the ongoing debate about the Council's

reform. Focusing on the Franco-German contribution of January 2003, I sketch two extreme variants for the future development of the Council, its presidency, its separation into a legislative and an executive/governing Council and its visibility with regard to Foreign Policy. The paper concludes that both extreme visions – the federal and the intergovernmental type – do not correspond to the reality of the Council. Nor do they help to reduce the Council's deficiencies with regard to efficiency, transparency, visibility and coherency. However, both extremes help to forecast the possible outcome of the Convention: A more presidential system which will be compensated by the set up of a truly legislative Council.

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1. Introduction: Continuous Theme tracking around the Council's system

The objective of the Intergovernmental Conference 2000 - as well as that of the ongoing Convention - lead to a simple question: Should and can the European Union enter the 21st century as some kind of an ad-hoc coalition of organized particular interests or as a structured organization for the representation and execution of 'European Community interests'? The respective debate³ that was initiated to optimize the institutional and procedural design of the 'EU XXL' was not to be understood as an exaggerated exposure addressed to Brussels: In view of a dynamic Community, from which the citizens expect to act with state-like instruments in almost all areas of public life, rules must be determined providing a unique identity for the EU and its institutional components within the international system.

2. To go from where? Institutional Needs and Options for Reform

The existing structures of the EC/EU of 1999/2000 were still based on the logic of the Rome Treaties of 1957 and its six members, which acted in a relatively limited field of competencies and with wide common or shared interests towards third countries and organizations. Since the Rome treaties, the total number of Treaty articles dealing with specific competencies and decision-making rules - the *enumerative empowerments* - has grown considerably from 86 (EEC Treaty 1957) to 254 (Nice Treaty 2000). Also the increasing number of sectoral formats of the Council of Ministers (from four in 1958 to twenty-three in 1998)⁴ as well as the extension of its administrative

substructure, indicates that governmental actors have become more and more involved in using their Brussels networks extensively and intensively.⁵

As for the provisions governing the legal opportunities for the Council's potential efficiency, figure 1 shows the absolute proportion of the Council's internal decision making modes between 1952 until 1999. It can clearly be seen that the total number of rules providing for both unanimity and qualified majority voting (QMV) has considerably increased over time. Moreover, if we focus on the relative rates of the Treaty-based provisions in the Council (figure 2), we also notice an over-proportional growth in QMV voting up to Amsterdam.

figure 1: Decision Making Modes in the Council of Ministers 1952-2001 (only EC Treaty area) in absolute numbers

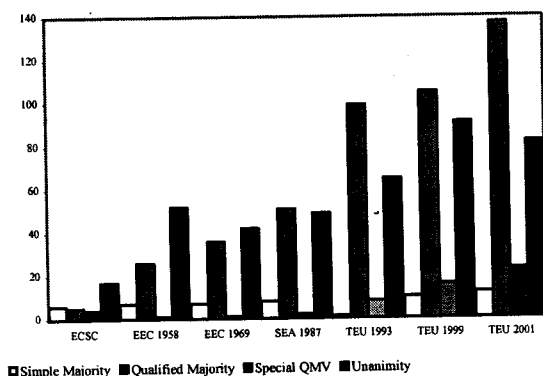
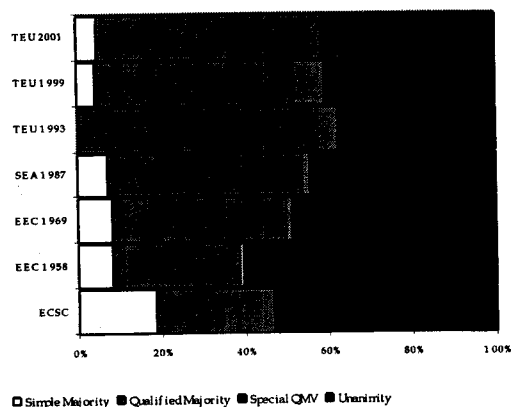


figure 2: Decision Making Modes in the Council of Ministers 1952-2001 (only EC Treaty area) in per cent



Source: Original ECSC, EEC, EC and EU Treaties (by time of their entry into force)

3. Fifteen Times Salade Nicoise - Main Lines of the Negotiations on Majority Voting

The extension of the fields for application of decision-making by qualified majority was already made in the last three Intergovernmental Conferences in 1986/1987, 1991/1993 and 1996/1999, and was declared as a goal of the majority of the Member States. To emphasize this principle as much as possible would be to secure the capacity to act as an enlarged Union, because it could hardly be imagined how 27 states could "only" decide unanimously on distributive and regulative policies, which due to increasing socio-economic differences and resulting differences in interest, would lead to a tendency towards an asymmetric distribution of costs and burden. In order to improve upon the poor outcome of the Treaty of Amsterdam,⁶ the Commission and the German Federal Government referred to an approach, which basically intended to transpose all the competencies of decision-making defined under the Amsterdam Treaty as unanimous decision-making, into decision making with qualified majority. Exemptions to this rule were agreed upon according to a concrete catalogue of criteria ("rule-exemption- approach"). The principle of unanimity should have been applied under the following circumstances:

- Decisions that are subject to ratification by the Member States;
- Decisions with constitutional character that do not require an amendment of the Treaty, for example institutional questions that concern the relative balance of power between the states (e.g. the question of languages, Article 219 EC Treaty), or decisions related to the authorization of the EU bodies to act in particular areas of policy according to Article 308 EC Treaty;
- Decisions in the area of taxation and social security that are not directly related to the functioning of the internal market;
- Decisions related to military policy and defense.

Contrary to this strategy, another approach of organized analysis of particular cases already prevailed under the Finnish Council-presidency 1999⁷, according to which any proceedings from the Treaty of Amsterdam had to be reviewed for areas of decision making requiring a qualified majority (“case-by-case-approach”). These cases should coincide with the following criteria:

- Cases related to the European Internal Market where procedures for decision-making could be converted into decision making with qualified majority without a necessity to amend the substantial provisions;
- Authorizations for action, which cannot be fully transferred into QMV due to explicit concerns and particular interests of Member States;
- Basic principles for actions in the areas of freedom, security and justice that have been incorporated into the EC Treaty;
- Rules on assignments and appointments of representatives of particular EU institutions;
- “Institutional anomalies” i.e. rules of the Treaty which are already made subject to the procedure of co-decision making that are still subject to the principle of unanimity, which is obligatory for decision-making within the Council.

4. The EU’s Capacity to act “in the shadow of uncertainty”

The results of the Nice conference finally lead to 31 areas transferred into decision-making by a qualified majority after the enforcement of the Treaty. From that, nine provisions concern rules on appointment and approvals of agenda. Additionally, seven authorizations in the Treaty call for the EC/EU to act in respect to decision-making, using a qualified majority under the following conditions: Article 67 EC Treaty on the procedures of the policy on asylum requires for the introduction of majority-decisions and co-decision procedures under framework agreements of the Council which are to be decided earlier with unanimity. In other fields of immigration policy QMV will be introduced only from 1st of May 2004. In Articles 161 EC Treaty on structural funds and the Article 279 EC Treaty on the EC’s own resources, the transitional period will remain in effect until 1st of January 2007⁸ and thus, - given the decisions for the period 2007-2013 that were already decided upon at the Berlin European Council in 1999, in fact until 2013.

The quality of an enlarged European Union to act in its surrounding international environment⁹ has been improved upon with the possibility to decide by QMV for the conclusion of agreements concerning trade in services and trade-related aspects of intellectual property (Article 133, Par. 5 EC Treaty).¹⁰ On the other hand, international agreements in the area of trade in cultural and audio-visual services, which fall under the area of education as well as social security and healthcare, are subject to a mixed competence of the Community and its Member States (Article 133, Par. 6, sent. 2 EC Treaty). Consequently, these are further subject to the principle of unanimity. With regard to questions related to the trade in intellectual property (patents, copyrights, trademarks) only an

opening clause in favor of majority decisions has been stipulated, which requires an unanimous decision by the Council (Article 133, Par. 7 EC Treaty). These provisions are likely to weaken the central position of the European Commission as an international negotiating partner, if particular EU Member States take advantage of the exemptions from the majority principle as a consequence of national reservations.

5. Council rules and Council behavior

Unlike with unanimity as a general rule, the possibility of majority decisions reflects the awareness of the Member States to renounce national sovereignty in related policy fields permanently and to implement “the adopted legal acts also as a defeated minority - possibly against the will of the national parliament’s majority - in order to secure the capacity to act and to the efficiency of acting.”¹¹

The experience with the effective usage of qualified majority rules in the Council indicate that the extension of the fields of application for majority decisions do not lead to an increase of decisions on the basis of such procedure.¹² In fact, majority decision-making functions more as a Damocles sword, which is sweeping above the Council to increase the probability of decision-making in the “shadow of voting”.¹³ Legal provisions on the Council’s (and the other institutions’ way to deliberate, negotiate and to vote) do not determine the real voting behavior. The quantitative calculation is quite often criticized as an academic ivory tower exercise which does not take into account the limited number of ‘real voting’ cases and the different overlapping cleavages within the Council. Countries are not always in the same coalition of outvoted minorities. The prospect that QMV rules might be used is often said to be more important than their day-to-day application: What matters is that they encourage ministers and civil servants to act prudently. We know that about 9 to 10 per cent of all decisions were taken by qualified majorities in recent years but the risk of a blocked decision machinery is not negligible. Moreover, it is methodologically unacceptable to extrapolate past-behavioral trends of the present Union into an unknown future with 27 or even more members.

Table 1: Real Voting in the Council 1985-2000

	1985	1986	1994	1995	1996	1997	1998	1999	2000
Total Sum of Council Legal Acts	615	731	561	458	429	327	438	332	262
Number of Cases where ‘Real Voting’ occurred	+/- 70 ¹⁴	+/- 100 ¹⁵	64 ¹⁶	54 ¹⁷	45 ¹⁸	31 ¹⁹	No figures	31 ²⁰	24
Percentage: Number of Cases of Voting / Council Legal Acts	+/- 11,38	+/- 13,67	11,4	11,84	10,48	9,78	-	9,78	9,16

Source: Maurer, Andreas: *Parlamentarische Demokratie in der Europäischen Union. Der Beitrag des Europäischen Parlaments und der nationalen Parlamente*, Baden-Baden, Nomos 2002, p. 81. Data are based on: for row one (Total Sum of Council Legal Acts): CELEX database; for rows two and three see endnotes.

Clearly, the voting modalities of Nice do not point to a trend towards more supranational procedures. Intergovernmental reflexes have dominated at Nice, but not so much as to reverse former trends but rather to limit their further increase. Treaty architects did not develop enough trust towards the Community institutions and rules to give up a final veto. Instead of accepting the ‘veil of ignorance’ and honoring their own commitments to credible institutions they themselves created. In the shadow of an uncertain future they demonstrated reluctance and a lack of confidence in their own political collectivity.

6. Failing Collectively?

Overall, the extension of the field of application of decision-making with qualified majority lagged behind the general targeted objectives of all those who participated in the negotiations. Like its predecessor and successors - the Single European Act of 1986, the Amsterdam Treaty of 1997 and the eventual Rome Treaty of 2003/4 - the Nice Treaty has to be interpreted as but one 'grand bargain' decision²¹ among Member States along an uncharted path of European integration and co-operation. In this perspective, the Nice Treaty needs to be seen as a peak within an unfixed landscape, moving with regard to time, the functional, institutional and geographical dimensions of supranational integration and interstate co-operation and co-ordination. Member states were and still are important but not exclusive players of the game: their preferences provide an input or a 'voice'²² on the basis of experience gained while crossing the landscape between the 'peaks' of intergovernmental conferences. We therefore should conceive Treaty revisions and amendments as initial 'offers' to actors working within the EU institutions. Placed within this multi-level and multi-actor framework for governance they create incentives and disincentives to use or to refrain from Treaty articles - legal empowerments provide the skeleton of a 'living constitution'.²³ Institutions and procedures provide arenas and rules for making binding decisions. Therefore, one could argue that Treaty building has a significant effect on the subsequent day-to-day output of the EU and thus on the evolution of the system in general. Consequently one has to consider the evolution of para-constitutional patterns within the integration process over the whole history of the EU. We should therefore expect to identify a post-Nice-implementation phase which will be defined by new decisions either to create, amend or re-design the treaties.

An essential partial result of the Treaty of Nice included the "Declaration on the future of the European Union", according to which already in December 2001, the European Council of Laeken/Brussels adopted the concrete procedure for the preparation of the Intergovernmental Conference in 2004.

7. A snapshot from the Belgian countryside in December 2001

The Laeken European Council of December 2001 sets out a set of questions with regard to the future design of the EU's institutions and their democratic legitimacy. The Laeken mandate mirrors an unequivocal picture of the EU: The Union is a political system in process. Although it is based on some of the most traditional concepts of representative democracy, the system requires improvement. However, the very nature of the mandate and its context - the failure of the Treaty of Nice, the perspective of an enlarged Union of 25 and more member states, and the effects of a globalized economy and trans-national risk production - show that these concepts are not fully implemented. In other words: The European Union faces some serious problems with regard to the relationship between its governing bodies and its citizens. Does, and if yes, how does the EU provide opportunity structures for establishing an efficient and democratic system? In how far do the EU institutions - more specifically the highly aggregated system of the Council - provide an obstacle for efficient, transparent and democratic policy making? Are there any means to reconstruct a concept of de-nationalized democracy, which allows the Union to further build on its differentiated set of institutions, and to gain a positive feedback by its citizens?

8. Different Views and Expectations on the Council

Different theoretical conceptions of the Union lead to different perceptions of its actors. However, the debate about the Council's system and its reform miss the reciprocal acknowledgement of the

arguing actors about their concepts and 'readings' of the EU.²⁴ Hence, each theoretical school focuses only on parts of the system. Concomitantly, proposed reforms do exclusively address remedies on some isolated elements of the Council, the European Council, its links with the other institutions etc.

8.1. Intergovernmental Monitoring: The Council as the core arena for bargaining national interests

According to Realists the sovereign nation-state remains the authoritative actor in cross-border interactions.²⁵ Although various inner state actors participate in the making of political decisions, the nation-state is identified as a unified protagonist of clearly defined interests and preferences.²⁶ Following neo-realist assumptions the EU and its institutional set-up are products of a general strategy of national governments to gain and to keep influence vis-à-vis other countries and the EU's institutions, which they would identify and use as instruments for their strategic choices.²⁷ National actors defend and shape an institutional balance favoring the Council and - to an ever growing extent - the European Council: The Council's infrastructure is then considered as an addition to national institutions sharing the control of the Commission's activities and thus preventing an evolution towards an unrestrained supranational bureaucracy: „The influence of supranational actors is generally marginal, limited to situations where they have strong domestic allies.“²⁸ The style of European law making is characterized by conflict between Member States in which zero sum games predominate. Accordingly, the behavioral pattern of actors in the Council of Ministers and its administrative substructure of COREPER and working groups²⁹ would be characterized by unanimous decision-making and distributive - 'quid-pro-quo' - or "integrative balancing".³⁰

Unlike classic realism, the liberal intergovernmentalist variant of neo-realism focuses the construction of national preference building.³¹ The analysis of the configuration of national interests, therefore, includes looking at how actor groups beyond the core of governments and administrations steer the definition or - with respect to public opinion - the background of interests and preferences: „Groups articulate preferences; governments aggregate them.“³² Liberal intergovernmentalism therefore shares the (neo-)realist assumption on the centrality of Member States' actors within the EU and it explicitly "denies the historical and path dependent quality of integration"³³, which both neo-functionalism and neo-institutionalism stress as the rationale to explain the very process of "supranational governance"³⁴ in the European Union.

According to this concept, the Council, its sub-structure and the committees surrounding the EU's organizational set-up are identified as products and instruments of a general strategy of national governments and administrations to pave the way to more influence in the Brussels sphere.³⁵ The principal task of these institutions is to mirror the supremacy of the Member States as 'masters of the treaty'.³⁶ Particularly the Council's infrastructure (COREPER, working groups) would be considered as an addition to national administrations sharing with them the supervision of the Commission's activities.

8.2. Parliamentary Europe: The Council as a State Chamber

According to the federalist paradigm, the struggle of national actors for access, influence and veto powers e.g. for an effective control of the Brussels arena has not been, is not and will not become successful.³⁷ Instead, Member States' actors will be more and more marginalized and substituted by EU bodies and institutions, which are being transformed from dependent Member States' arenas into

independent actors. Each step of treaty building would increase the role of supra-national institutions and decrease veto powers of Member States. The behavioral pattern of the Council of Ministers would be dominated by referring to and using Treaty provisions of qualified majority voting. Those EU-related bodies which bring the national actors together - Council, COREPER and its related working groups - would be seen as primarily serving the national interest and thus constituting a major obstacle to a proper federal system which alone could guarantee efficient, effective and legitimate European policies. Concomitantly, the attempts of national administrations to lock into the EU system of supranational governance and government are rejected as a strategy against the real will of the 'European people' and its path to a federal union.³⁸

Federalism would assume a legitimate supranational order, which formulates far-reaching policy agendas, articulates ideals and brokers strategies for the deepening of the integration process. In the extreme, national actors - governments, administrations and their EU-related agencies - would wither away from the Brussels scenery. Moreover, inter-state and inter-administrative bargaining would be considered as an obstacle to solve the problems of the European Union and its citizenry. Following this school of thought, the model of a 'truly' European Government would be an accountable European bureaucracy which clearly dominates the national administrative bodies in each relevant field of European public policy, but which itself is dominated by a supranational government based on parliamentary elections and a single European Parliament.

An alternative variant of federalism – inspired by the ideal of the separation of powers - would suggest the existing Council of Ministers to be split into a Legislative Council and a Governing Council. The Commission, in its communication published on 4 December 2002,³⁹ argued to *"broaden the current thinking on the distinction between the Council's legislative and executive functions, with a view to making the Council's work more transparent."* Both the Governing Council and the Legislative Council should be made up of representatives of Member States at ministerial level. Ideally, the functions should be exercised by a Europe Minister. Moreover, the parliamentary logic would suggest that national parliamentarians could participate in their national delegations to the Council. COREPER could take up the overall coordinating role in the legislative and governing functions. Accordingly, the Permanent representations should work as secretariats to national delegations to the Legislative and Governing Councils. In the long run, the Legislative Council would mutate into a EU Second Chamber, which represents the interests of Member States in the legislative decision-making process, acting in co-decision with the European Parliament, which represents European citizens. Meetings of the Legislative Council would be public.

8.3. Supranational Technocracy: The Council as part of a meta-national network of experts

From neo-functional points of view the very nature of integration is considered as the process whereby "political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new center, whose institutions possess or demand jurisdiction over the pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the pre-existing ones."⁴⁰ The main feature of integration would be the concept of functional, institutional and procedural spillover - a process that refers "to a situation in which a given action, related to a specific goal, creates a situation which the original goal can be assured only by taking further actions, which in turn create a further condition and need for more action, and so forth."⁴¹

From this perspective, the Council's specific formats and the corresponding committee structure would be considered as functional necessities, tackling technical problems together without the need

for further reflection on their democratic legitimization. In this perspective, one would expect the Council formats and their committees to be arenas where functional „problem-solving“ rather than political „bargaining“⁴² would dominate the interaction style. COREPER and Committees would be conceived as bodies of experts, where people with highly specialized technical knowledge in a certain area come together in order to shape European secondary legislation.

8.4. The Council as a network for problem-solving

In view of major approaches within the post-1989 school of governance the institutional and procedural changes in the EU treaties need to be analyzed as one particular element of rather minor relevance within the complex multi-level game of the EU.⁴³ The EU polity is seen as a “post-sovereign, polycentric, incongruent” arrangement of authority, which supersedes the limits of the nation-state.⁴⁴ Assuming a non-hierarchical decision-making process, the EU does matter but as one realm for collective decision-making and implementation. In other terms, “policy-making in the Community is at its heart a multilateral inter-bureaucratic negotiation marathon”.⁴⁵ As formalized and informal networks⁴⁶ among a large number of different groups of actors in various arenas for decision-making, formal rules generally tend to become irrelevant. The ‘governance-inspired’ pendulum thesis then assumes some kind of cyclical up and down between “fusion and diffusion”.⁴⁷ This “pattern of the pendulum varies over time and across issues, responding to little endogenous and exogenous factors, and including shifts between dynamics and static periods or arenas of co-operation”⁴⁸.

In view of this school of thought, the Council’s system might be regarded as one particular element within the complex multi-level structure of the EU. Assuming a non-hierarchical decision-making process overarching the geographical limits of the EU and its Member States, the Council’s structure does not (intend to) move the EU into a certain direction or transform its basic character and organization.

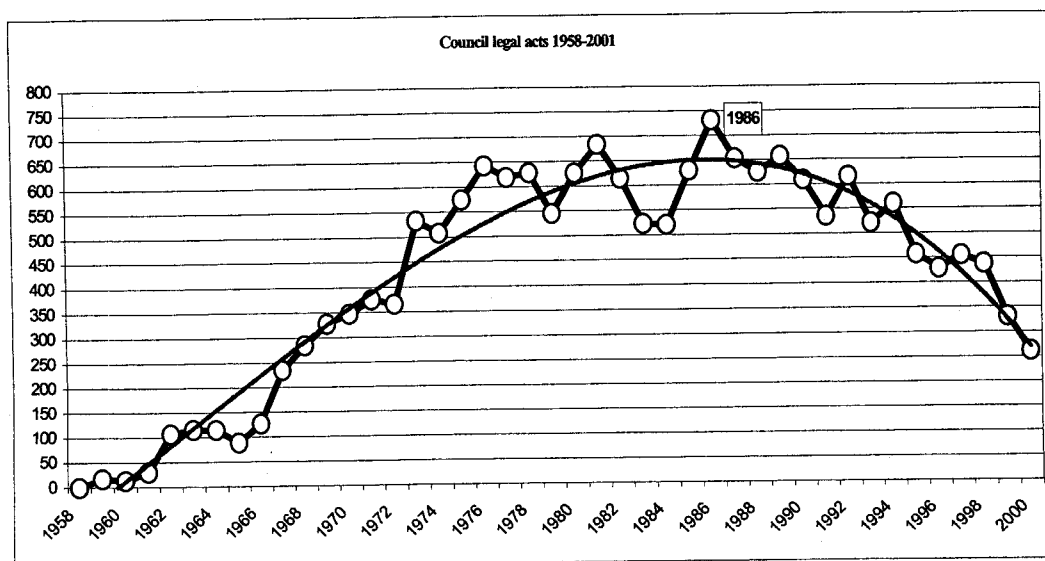
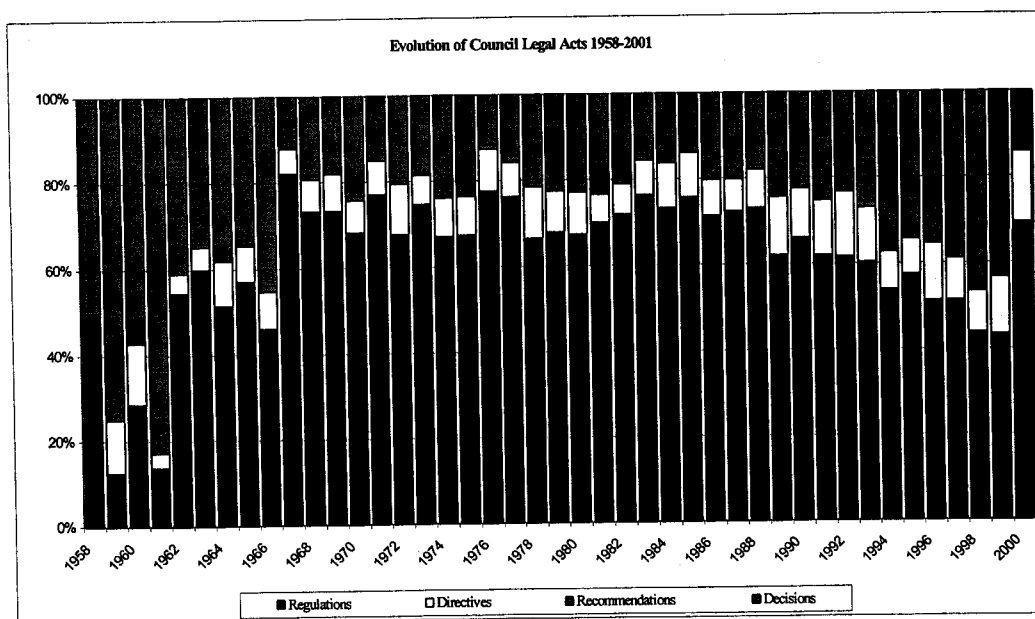
Beyond the analysis of the integration process at a given time, the fusion theory offers tools to understand the very process of interaction and joint problem solving beyond the state. It regards EU institutions as core channels as interested actors increasingly pool and share public resources from several levels to argue on commonly identified problems and to attain commonly identified goals. Institutional and procedural growth and differentiation - starting from the ECSC onwards - signal and reflect a growing participation of several actors from different levels, which is sometimes overshadowed by cyclical ups and downs in a political conjuncture. The major feature of this process is a ‘fusion’ of public instruments from several state levels linked with the respective ‘Europeanisation’ of supranational, national, regional and de-nationalized actors and institutions. The result is a new grade of institutional and procedural complexity.

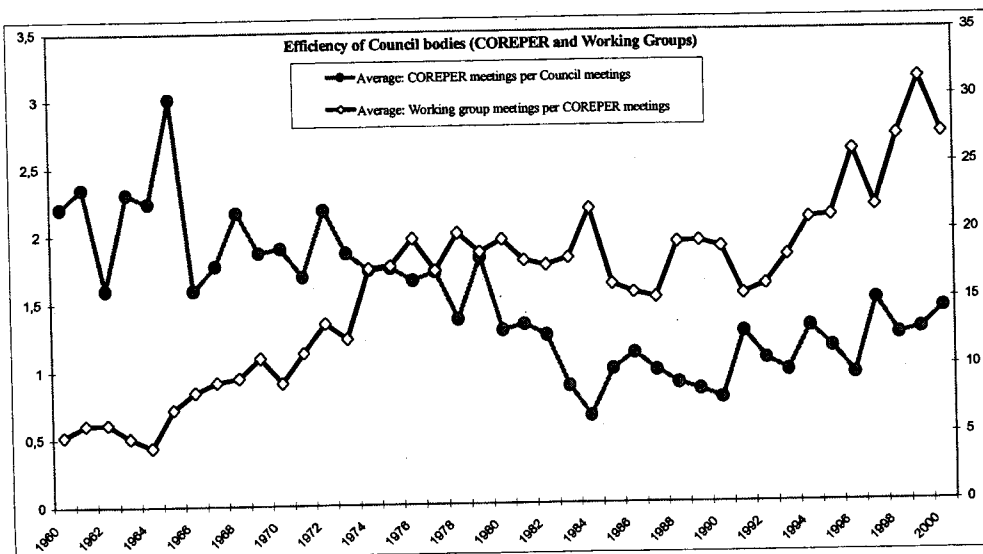
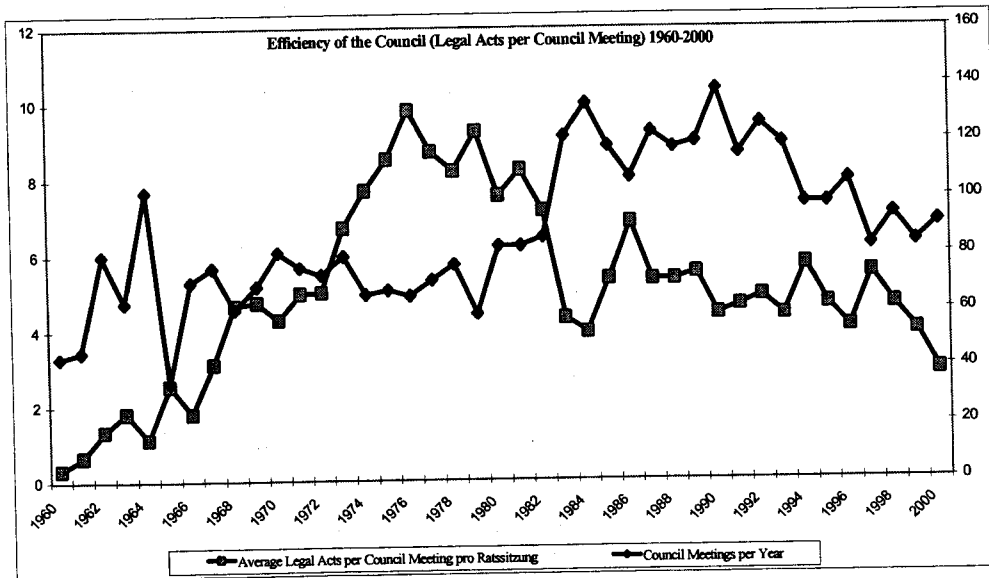
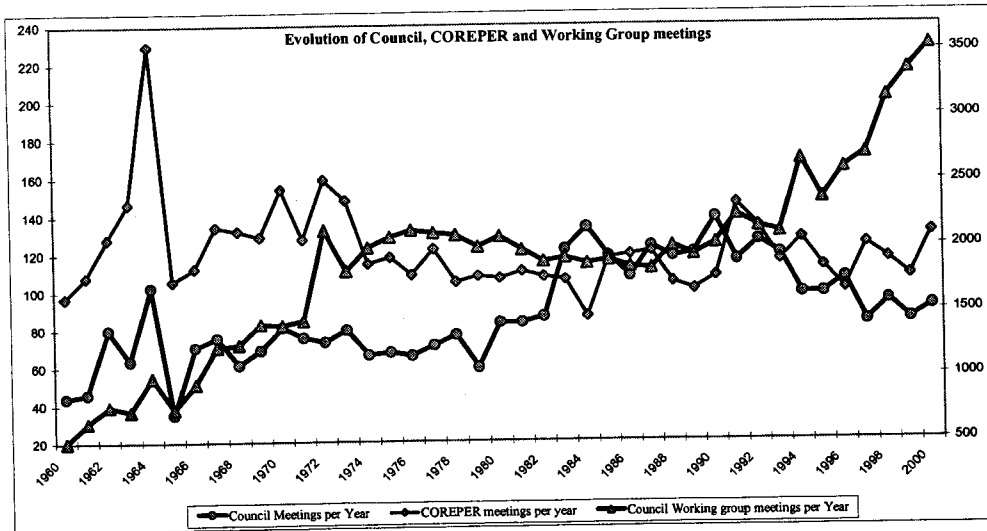
Fusion theory regards the Council’s system as an indicator of this permanent process of combining and sharing resources from several institutional and instrumental levels; committees are the manifestation of a growing Europeanisation of national administrations. The Council’s network with national and European civil servants are examples for and a main driving force behind the merging of public instruments. They are to some extent a product of the increasing competition for access and influence in the EU policy cycle.

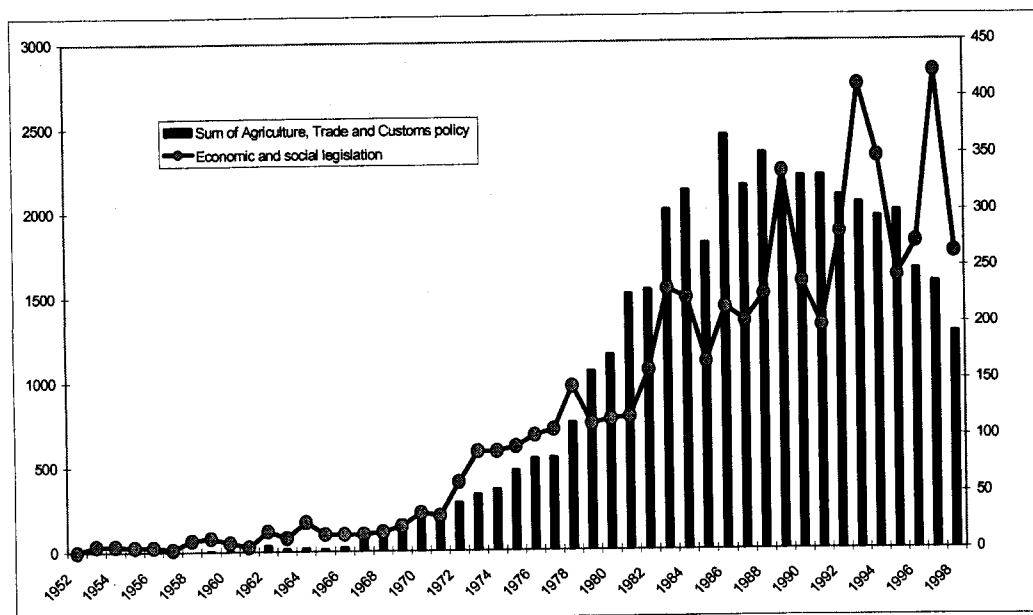
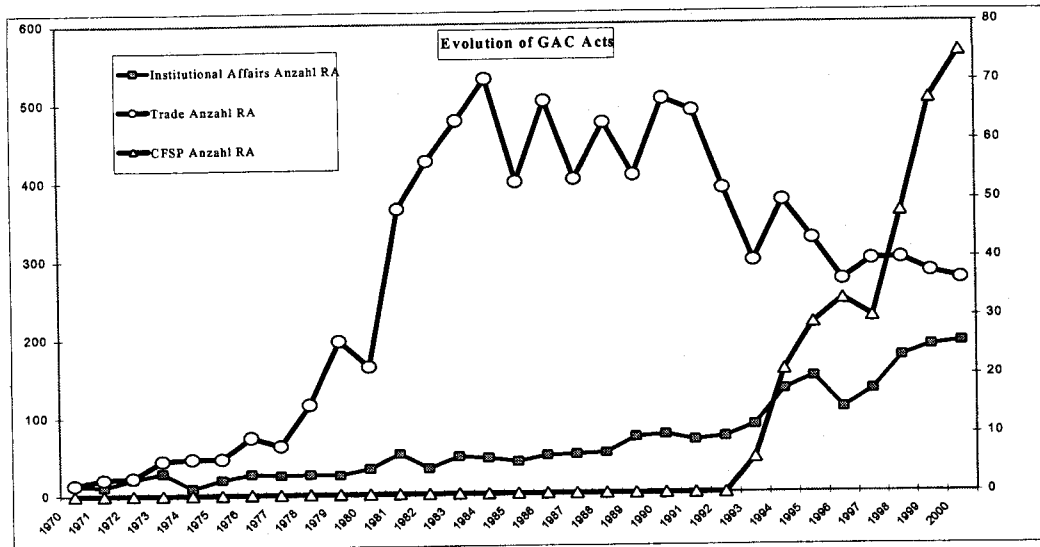
9. Real patterns of the EU system

The EC/EU’s legal ‘offers’ are used to different degrees. Earlier findings on the efficiency of the EU’s policy machinery point at processes of institutional learning and mutual recognition of actors.

These effects are highly visible with regard to the development of the codecision procedure where joint efforts are made to generate a genuine bi-cameral system on the EU-level. A closer look at the Council's activities reveals that the overall decrease of its legislative work is mainly caused by a 'saturation' in traditional EC fields. Governments have used to a considerable degree the provisions for taking politically binding decisions in the new pillars although the procedures are clearly 'intergovernmental'. Also the recent - post-Amsterdam - moves into the so-called 'open method for co-ordination' in fiscal, employment, economic and education policy point at a new curb of joint searches for less binding modes of governance.







All figures are based on author's own calculation. Sources: CELEX, OEIL, DECLIF

Comparing the explanative power of the different theories of European integration to the phenomena of the Council's system and submit them to empirical validity we are confronted, by a not entirely surprising confusing picture. Certainly the Council's system is not an artificial creation, nor a typical development by pure accidental factors, nor merely a bureaucratic plot to keep, or even extend, the influence of Member States. Whereas the Member States acting in the Council dominate the creation of committees - as neo-realism would suggest -, the concrete business of policy implementation through comitology is clearly shaped by the European Commission⁴⁹ - an argument fitting more into a federalist conceptualization of a federal administration. However, the EU's committee system is not characterized by a tendency whereby the different bodies are being replaced by pure Community institutions. The realist concept of diplomatic administration hardly corresponds to reality: Members in the Council's sub-units or acting in the European Commission's committee network may feel a certain type of »togetherness«. But given the Commission's power to dominate the game of implementing measures on the one hand, and the powers of the Council in establishing committees,

as well as the power of the Member States to nominate their representatives and the power of the European Parliament to scrutinize the comitology decisions at least to a certain extent on the other hand, the image of independent diplomats shaping the preparation and implementation of EU law without the Commission is rather misleading. Of course, if we focus attention exclusively on the committee networks in the field of justice and home affairs established prior to the Maastricht Treaty (within the Schengen and the TREVI regime), we would have to acknowledge a certain trend of intergovernmental monitoring combined with some kind of governmentally monitored diplomatic administration between the early 1980s and the post-Maastricht era. However, since Maastricht came into effect, the TREVI committee structure of the third pillar has shifted towards functional co-operation with a pre-dominance of the national level at all stages of the policy process.

Some of the indicators may suggest neo-functionalism as the most appropriate tool for investigating the Council's system in the field of EC legislation. Especially the evolution of the Council's and the Commission's legal output in comparison to the increase of committees suggests to conceptualize the Council's interaction as a supranational technocracy in process⁵⁰. However, qualitative studies on national administrations and their interaction within the EU do not indicate subsequent shifts of loyalty from the nation-state towards the EU committee systems, as neo-functionalism would suggest. The concept of a multi-level mega-bureaucracy would expect growing complexity and a lack of transparency, hence committee interaction networks that are impossible to control either by the European Parliament or by the national parliaments of the Member States. However, this concept ignores that the control capacities of the European Parliament, especially with regard to the comitology system, have been improved. This is not to say that Parliament's demands regarding the accountability of the comitology network have been fulfilled by the new comitology decision of 1999. But especially in those cases of post-Maastricht secondary legislation, where the co-decision procedure applies, the European Parliament is able to influence the choice of the comitology procedures to be established.⁵¹

Our interpretation leads to a characterization of both the Council's system and the related Committee interactions according to the concepts of horizontal and vertical fusion. The growth rates of the meetings of Council working groups, of the number of civil servants involved, of the frequency of meetings particularly in the field of agriculture and of the expenditure for meetings, indicate a process of institutional and personal mobilization within a concentric - polyarchical instead of hierarchical - political system, in which national administrations are shifting their attention towards Brussels.⁵² The challenges of a Commission providing the operational rules of comitology, the claims of a Parliament pressing COREPER into 'pre-conciliation' meetings for co-decision and the demands of interest groups offering Council and bringing in 'transnational' expertise spill back into national administrative systems. Moreover, Council members are increasingly confronted with different administrative cultures and interaction styles. Consequently, mobilization leads to Europeanisation of institutions and staff, which share common belief systems about their contribution to the establishment of a functioning democracy in the EU system. The fusion attempt stresses the 'checks and balances' between the national and the European institutions in preparing, making, taking, implementing and controlling EC/EU binding decisions. It also emphasizes the frequently observed mixture of national and EU competencies and also the distributed responsibility for the use of decision making instruments. One element of our short view on the empirical reality is clear: The Europeanization process has been asymmetrical. Not the complete set-up of the Member States has moved but mainly the administrative machinery. The trend towards bureaucratization and administrative segmentation keeps on going - although some of the dramatic loops of this development have decreased.

Overall thus, the last fifty years mirror European co-operation and integration by Member States' governments as well as by EC/EU institutions through the creation and reform of a variety of instruments and procedures within a triangle between market, state and non-governmental networks. The 2003-result is as a flexible, incomplete and unstable arena for "the mediation of the interests of governments, administrations, supranational institutions and interest groups."⁵³ New and/or revised sets of provisions offer European and national actors additional incentives and opportunity structures to solve their most serious socio-economic problems.

10. The Convention and the proposals on institutional architecture

The Council is in need of reform. It represents the central link between the member states and the European institutions. The fundamental problems in the functioning of the Council can be summarized simply:⁵⁴

- First of all the multiplicity of authorizations, according to which the Council must decide unanimously increases the risk of decision blockades in a Union XXL.⁵⁵
- Secondly a loss of coherency of the Council and a significant decrease of the coordination function of the General Affairs Council (GAC)⁵⁶ need to be considered.⁵⁷
- Thirdly, the Convention should consider the evolving network of "parallel structures" to the supranational EC, in which the European Council plays a more and more important role. The European Council has taken over functions of the Council.
- Fourthly the philosophy behind the rotation of the Council Presidency⁵⁸ might not function with a European Union of 25 member states.⁵⁹

We therefore identify four topics for reforming the Council system:

- the scope of application of the qualified majority votes in the Council;
- the co-ordination system between separated, specialized Council formations in order to arrange more efficient policy making and to establish a transparent separation between the legislative functions and the executive functions of the Council;
- the visibility and effectiveness of the high representative of the Council in CFSP/ESDP; and finally
- the improvement of the abilities of the chairs in the Council and in the European Council in order to establish more consistency and coherency within the Council, and to visualize EU politics.

Any reform of the Council system can not only orient itself at the criteria of efficiency, democracy and transparency. For reasons of sincerity and mutual confidence the participants of the Convention might proceed from a broadly outspoken confession that conflicting interests of power can not be eliminated by simply adding new institutions. Therefore the overall institutional arrangement of the European Union must be considered as a result from balancing national interests within the European Union and common interests of the EU with regard to its external relations. That is why the reform of the Council system should be embedded into an overall revision of the existing institutions, procedures and instruments of the European Union.

The franco-german document of 15 January 2003 largely reflects the perceived consensus which emerged within the Convention on a number of points: the replacement of the multiplicity of the treaties by a Constitution; the single legal personality of the Union; the formal removal of the "pillars"; the insertion in the Constitution of the Charter on Fundamental Rights; a better delimitation of the competencies between the Union and the Member States, combining transparency and flexibility; the establishment, in legislative matters, of a correlation between the vote by a qualified majority within the Council of Ministers and codecision with the European Parliament; the

delimitation of the functions of the European Council around two principal roles: to formulate the major political and strategic guidelines of the Union, in cooperation with the Commission, and to define the major main principles of CFSP and ESDP; and the attempt to distinguish the legislative functions of the Council of Ministers of its operational or executive tasks.

Other elements exceed clearly the 25-minus-1 consensus within the Convention at the present stage of its work. This is true for

- the idea of a Congress,
- the idea of a double political responsibility for the Commission in front of the European Parliament and the European Council, and
- the extension of the competencies of Parliament with a view to ruling on all or part of the EU's budget.
- the non-application of the codecision procedure as a general rule for almost all legislative acts.

The two key elements of this common proposal which touch most directly the institutional architecture of the European Union and which have the most serious one are undeniably:

- the choice of a bicephalous structure;
- institutional architecture and the procedure retained for the external action of the Union.

10.1. The Bicephalism between the Council and the Commission

The idea rests on two personalities:

- the President of the Commission, whose designation is reversed in relation to the current treaties: s/he is first elected by the European Parliament "by a qualified majority of his members" (which leaves the door open to "consensual" designation involving the agreement of several groups of Parliament), then confirmed by the European Council by a qualified majority. "The President of the Commission constitutes his college taking into account geographical and demographic balances", which means that all the countries necessarily will not be represented within the college. The President of the Commission has the possibility of arranging its college by distinguishing commissioners having a sectoral portfolio and of other "function or specific mission agents", the whole having to respect a "rotation system". The President of the Commission would keep the right to give political directives to the work of the Commission ("Richtlinienkompetenz"). Lastly, the Commission would be "politically responsible at the same time before the European Parliament and the European Council".
- the President of the European Council is a new character, who "exercises his full-time functions throughout his mandate". Therefore, s/he is not chosen among the members of this Council, who do not have such an availability. The duration of this mandate is of five years or of two and a half renewable years. S/he is elected by the European Council by a qualified majority. Its role is to give "continuity, stability and visibility in the management of the European Council". To this end, it chairs and manages the meetings, "takes care of the implementation of the decisions", and "the Union represents on the international scene".

10.2. The institutional mechanisms with regard to the external action of the Union

The third visible innovation is the creation of the post of a "European Minister of Foreign Affairs", who assembles the functions of the Secretary General and High Representative of the Council and of the Commissioner responsible for Foreign Affairs under the same head. Named by the European

Council by a qualified majority, "in agreement with the President of the Commission", this Minister would:

- take part as a Member of the Commission endowed with a special statute; it will not form part of the investiture procedure of the Commission by the European Parliament.
- have a "formal right to take initiatives with regard to CFSP/ESDP issues and chair the Council of Ministers responsible for Foreign Affairs and for Defense".
- rest on a "European diplomatic service" associating the Directorate-General for Foreign Affairs of the Commission with a unit for foreign policy made up around the existing services of the Secretariat General of the Council, themselves strengthened "by officials sent by the Member States and the Commission".

11. The Grey areas of a Compromise by addition

The Franco-German paper of January 2003 can be read as an "agreement not to disagree" on the most difficult stage of the work of the Convention. This involves less a summary Compromise but mirrors two institutional designs not easily reconcilable – one federalist, the intergovernmental other. The paper therefore is a Compromise by addition, of a juxtaposition of drawn elements of each one of these two traditions. In addition, the positions defended by both governments do not correspond always simply to the "federal model" on the German side and to the "intergovernmental model" on the French side.⁶⁰ Admittedly, this Compromise by addition proposes elements which can serve as a base for the later work of the Convention, but these elements do not make it possible to have a very precise vision on the future interinstitutional relations between the EU bodies.

11.1. Institutionalized Competition at the top?

The German government granted the "ABC" idea (i.e. supported by Mr Aznar, Mr Blair and Mr Chirac) of a full-time President of the European Council – assuming that the European Council becomes a fully-fledged institution of the EU. But it ensured that the President's role does not interfere too much with that of the President of the Commission and of the new "European Minister for Foreign Affairs". Thus, the President of the European Council represents the Union on the international scene. This role of representation is subject to a triple limitation:

- s/he seems limited to the "meetings of the Heads of State and government" (and therefore exerted under the glance of at least certain representatives of the Member States), since "the daily operation of CFSP is allocated to the European Minister for Foreign Affairs";
- its function is exerted "without prejudice to the competencies of the Commission and of its President".
- The President's principal task will be limited to the organization of the European Council, the facilitation of its work and conclusions, and its 're-focalization' on the common strategies as regards CFSP.

This triple limitation should assure against a presidential and intergovernmental drift in the operation of Foreign Affairs of the Union. However, this drift is the *raison d'être* of the idea of a durable presidency of the European Council and of its support by France.

The majority of the commentators focused on the choice for the bicéphalism performed by this text and saw the risk of an institutional conflict. Hence, the proposed bicéphalism could take various shapes, short- and long-term: It is perfectly conceivable that both presidents are locked up in an almost daily influence war, especially at the beginning of their office when one will have to define the roles of the two in practice. The institutions which aim at representing the European executive's

center of gravity will raise the question of knowing who exercises political leadership in the EU? Numerous those in Germany which would answer without hesitating: the Commission.⁶¹ But, after the setting up of a President of the European Council and the strengthening of its weight in the institutional system of the EU, a development of the EU into a purely federal direction, with the Commission taking up the executive and governmental duty, seems practically excluded. The idea of a central, or even increased role of the European Council in the "government" of a Union XXL seems to be accepted, the choice of a durable presidency of EU governance and therefore of the bicéphalism. The choice can be regarded as the reflex of one common sense: Hence, it has at least the advantage of clarity vis-à-vis the EU elites by institutionalizing the constitutive tension of the European Union between the two sources of its legitimacy: the European states and the citizens. Moreover, the Bicephalism points to the reference of the formula of the "Federation of nation states". To make this tension clear to everybody rather than occulting it within a function of a double head – the President of the Commission as President of the European Council⁶² - has at least the advantage of transparency, and possibly that of effectiveness while forcing the EU's actors to specify the relations between both heads of the Union.

The basic – hidden - idea of strengthening the European Council in the system of the EU is not an original French idea: It was chancellor Schröder who underlined, in a common letter with Tony Blair, that "the role of leadership of the European Council will be increasingly important" in an enlarged Union.⁶³ And it was not by chance that the chancellor wanted to overcome the reservation of his Foreign Minister with respect to the French proposal for a bicéphalism, at the decisive meeting of 14 January in Paris, during which the two parts put the last keys in their common proposals on institutional architecture.⁶⁴ The solution represents clear advantages from the point of view of the Heads of States and of governments (especially those of the large countries), at least as long as it can check its future President.

11.2. The European Council and the Council of Ministers

The setting up of a durable President may improve consistency, continuity and the visibility of the deliberations within the European Council. But it also may create different problems of consistency – between the work of the European Council on the one hand and that of the various Council of Ministers formats on the other.⁶⁵ The problem of consistency and of the transversal coordination of the different Council formats changes therefore to some extent the level. It is all the truer as, according to the Franco-German proposal, the presidencies of the various Council's formats would no longer be assumed by a single country. The split between different kinds of presidencies is also proposed by the United Kingdom⁶⁶ and Spain⁶⁷. Smaller Member States⁶⁸ like the BENELUX⁶⁹ and Austria are against, since they fear the abolishment of the fundamental principle of equality between the Member States.⁷⁰ However, even if the General Affairs Council (GAC) can no longer manage to coordinate the activities of all sectoral Councils effectively, how should it fulfil this function vis-à-vis the competition of the European Council on the one hand and of the sectoral Councils with different presidencies on the other?

The related part of the Franco-German text devoted to the Council of Ministers makes a distinction between the legislative role of the Council of Ministers – acting in codecision with Parliament – and its "operational responsibilities – in particular as regards police and cooperation in penal matters and with regard to CFSP – which necessitates a stable direction". The introduction of a clear distinction between the legislative and the executive-operational functions of the Council corresponds to a German claim and tries to answer the aim of making the operation of the EU more transparent. But the proposed solution is likely to institutionalize and perpetuate a dividing line between a Community field which would correspond to legislative work and an intergovernmental field, dealt with by the

Councils having "executive" tasks: ECOFIN, Eurogroup, JHA Council and CFSP Council. Indeed, the distinction between legislative and "executive" Councils is not clear, the JHA Council and especially ECOFIN having also very important legislative tasks.

According to the franco-german paper, the proposed "executive" Councils are subject of durable presidencies: the CFSP Council would be chaired by the future Minister for Foreign Affairs, while ECOFIN, the Eurogroup and the JHA Council would "elect their presidents for two years among the members of the Council". The legislative Councils would keep their rotating presidencies. The GAC, on the other hand, would be chaired by the Secretary-General of the Council.

11.3. The Secretary-General of the Council – towards an ambiguous role

The appearance of this character in the Community field is at the very least surprising. Hence, the rise at political level of the function of the Secretary-General of the Council appears incongruous insofar as the distinction which is made between executive and legislative functions of the Council seems to militate for the maintenance of a rotating presidency of the GAC, which would coordinate the deliberations of the various legislative Councils. The proposal thus causes a number of questions:

- Is it possible to cumulate the function of the Secretary-General of the Council with the presidency of one of its principal formats?
- From where a senior official would draw legitimacy and the authority to occupy the highly political function of coordination of the deliberations of the specialized Councils, especially from the point of view for a strengthening of the role of the transversal coordination within the GAC.
- Is it possible to imagine that a senior official of the Council ensures some kind of 'parliamentary' coordination in codecision and that s/he co-presides the meetings of the conciliation committee with a member of Parliament?
- Would the Secretary-General not become a key character at the service of the President of the European Council, which would ensure the implementation and the legislative monitoring of the decisions of the European Council vis-à-vis the Council?

The proposed role would correspond perfectly to the 'chiraquienne' vision. In its principal speech on European policy during the presidential campaign of 2002⁷¹, the candidate Chirac, developing his vision of the role of a President of the European Council, proposed that s/he "should rest on the Council of Ministers" as a principal Chairman, and that this role "could, under the authority of the President of the Union, be served by the Secretary-General".⁷²

11.4. Double hats: The external action of the Union

Both countries made the choice to amalgamate the missions of the actual Secretary General and High Representative for CFSP and of the Commissioner responsible for Foreign Affairs. The selected solution – aimed at improving the coordination and consistency of Union action within the first and second pillars - is a single person exerting both authorities. Both governments re-state thereby key elements of a German proposal submitted to the Convention's working group VII on "external action" by State Secretary Gunter Pleuger.⁷³ The approach leaves open the question of knowing if, in the (very) long run, the external action of the Union will pertain to the field of the Council or of the Commission. Nevertheless, the choice of this Compromise formula does not induce an exact delimitation of the responsibilities and competencies of both institutions on the matter. Hence, the new Foreign Minister, who will chair the Council of Ministers responsible for Foreign Affairs, would have a formal right to take initiatives as regards CFSP, a right which s/he also has through the college of the Commission in the Community field.

Given that "the Commission does not take any decision on CFSP", one does not really see what the qualitative surplus of the Foreign Minister at the college's meetings will mean. His legitimacy is not clear: The double is appointed by the European Council by a qualified majority in agreement with the President of the Commission, but nothing is said, on the other hand, on the approval of this choice by the European Parliament and the double hat's responsibility as a Commissioner.

The innovation thus appears as born from a conflict between two perfectly contradictory wills: that to reunify in the same hand all the instruments of external action of the Union and that to establish a clear cut limitation between the actions of the Commission and the operation of CFSP. The resulting contradiction may generate bureaucratic tensions between all the entities concerned:

- between the President of the European Council instructed to represent the Union on the international scene, which will tend to develop its own administration if it wants to play an active role in the external action of the Union, and a minister who is not directly attached to it.
- between the President of the Commission whose competencies as regards Foreign Affairs are reaffirmed and a Commissioner who takes part in the debates only for parts of his action, with administrative means endowed in addition.
- between the Foreign Minister and the Members of the Commission having responsibilities in external business (trade, development cooperation, external facets of the internal policies).
- between the European Minister and his national colleagues, of whom s/he chairs the meetings while having a right to take initiatives.
- between this European Minister and the Secretary-General of the Council which, having at the same time an administration strengthened as regards CFSP and an arbitration power on the Community projects from his presidency of the GAC, is in a not very clear hierarchical situation with respect to him.

12. An Unstable balance between an intergovernmental tendency and a federal vision

The Franco-German contribution on institutional architecture does not answer the questions discussed within the Convention. One can imagine radically opposed developments of the politico-institutional system of the Union. In a caricature-like way one can illustrate the extreme solutions by two standard scenarios, one "intergovernmental" and the "federal" other.

12.1. The "intergovernmental" scenario-type

It would be built from the European Council and its President according to the following lines, none of which is contradictory with the letter of the Franco-German text:

The European Council would be the key of the institutional system of the European Union. Its functions would go well beyond its current ones and consist of

- laying down the main directions of the Union,
- adopting the common strategies in foreign policy matters and
- exercising the constituent power on a European scale.

It would constitute a call-back authority in the event of persistent conflicts at the level of the Council of Ministers and would take, consequently, a more important legislative role. Its President would have a specific role of political initiative – at the internal level as an outside. S/he would choose the Secretary-General of the Council, in order to coordinate the work at the level of the European Council as well as at the level of the Council of Ministers. S/he would control the deliberations of the "executive" Councils with their three elected presidents (which would be e.g. its Vice-Presidents).

S/he would obtain a powerful administration – partly at the expense of the Commission – and would make the European Minister for Foreign Affairs an executive body.

The Council of Ministers would have its executive/operational responsibilities strengthened, in particular as regards HJA, CFSP and the open coordination of the economic policies of the Member States. The rule of unanimity would be maintained in a large number of fields of action and the vote by a qualified majority still subject to a triple condition according to the provision of the Treaty of Nice.

The nomination of the *European Minister for Foreign Affairs* by the European Council, the ministers' responsibility with respect to the Council and the exclusion of CFSP of the Commission's competencies would change radically the college's operation. This European Minister for Foreign Affairs would be subordinated clearly to the "super-president". It could check the financial and administrative resources which are today at the disposal of the Commission on external action of the Union.

The *Commission* would be "wedged" politically between the European Council, the Council and the European Parliament. Its role would increasingly be limited to administrative offices and to the management of the internal market. It would be stripped of its functions as a political leadership because:

- of the increased political role of the President of the European Council and of its administration,
- of the multiannual strategic programs of the European Council and the operational Council programs, framing strictly its monopoly of initiative.

The European Parliament would occupy systematically a subordinate position with respect to the Council. It would only rule on the non-agricultural part of Community expenditure. Its legislative rights would suffer from numerous exceptions. It would in addition be competed with by a Congress, made up of national members of Parliament, which would get some of the traditional EP functions: annual debate on "the state of the Union", vote on the fundamental guidelines of the Union, confirmation of the modifications of the competencies of the Union, almost-decisive implication in subsidiarity control (possibility of blocking vote against the legislative drafts of the Commission), and, in future, appointment of the President of the Commission, etc.

12.2. The "federal" scenario-type

But the Franco-German proposals can just as well lead to a strengthening of the supranational character of the political system of the EU, or even to a "federal drift". This system of a federal nature would be built not from the European Council, but from the *European Parliament* (cf. graphic 2 in annex).

Parliament would become a player with equal weapons with the Council in the legislative process and in budgetary matters. The codecision procedure would be generalized and would apply to all acts with a legislative character, the cooperation procedure being suppressed. In budgetary matters, Parliament would have the right to decide on all the expenditure of the Union including agricultural expenditure. It would have a joint decision right on the multiannual programming of the expenditure of the Union. The idea of a Congress, would be given up, or would be replaced by temporary conventions.

At the level of the *Council of Ministers*, a clear distinction between legislative and executive functions with public debates of the legislative Councils and the publication of its minutes would

increase transparency in the public's eyes. The principle of the presidencies' rotation would be maintained, including at the level of the GAC, possibly in the form of group-presidencies who would ensure better continuity of work. Only the "Council for CFSP/ESDP " would be endowed with a stable presidency in order to give it continuity and visibility. It would be clearly separated from the GAC, which would have the vocation to transform itself, in the long term, into a Chamber of the states and chaired by the *European Minister for Foreign Affairs*. The Minister would occupy the post of a Vice-President within the Commission and would be responsible before Parliament.

The European Council could be limited, thanks to a clear improvement of the operation and of coordination within the Council, in particular by the GAC, to the definition of the main political guidelines of the Union and of common strategies in foreign policy matters. It would adopt the triennial strategic program, as decided in Seville, on a proposal of the Commission after consultation of the European Parliament. It would give its role up of some kind of a 'Roof Council' in the event of disagreement at the level of the different Council formats.

The role of the President of the European Council inside the EU would be limited to that of "chairman" of the European Council. As regards foreign policy, s/he would represent the Union only at the international level when the Heads of States and government meet, acting on the basis of the main principles of foreign policy defined by the European Council or on the basis of a precise mandate defined by the Council of Ministers. It would fulfil its functions without prejudice to the competencies of the Commission and of its President, knowing that the daily operation of CFSP is allocated to the European Minister for Foreign Affairs. S/he would not have an administrative machinery beyond a small cabinet of personal collaborators. And s/he would not have any role as regards political initiatives at the expense of that exerted today by the Commission.

The President of the Commission would be elected by a majority of the members of the European Parliament and would be confirmed by the European Council. The President could define the format of the Commission, with regard to the number of Commissioners, their possible structuring and by taking into account certain geographical and demographic balances. The Commission would be subject to the vote by the European Parliament. The executive role of the Commission would be definitely strengthened: it would have an important regulatory power delegated on the basis of European laws⁷⁴ with a right of "call-back" for the legislator, i.e. the European Parliament and the Council. The comitology would be radically simplified.

13. Compromised by addition?

Both scenarios-types illustrate the caricature and the eminently unstable character of the Franco-German Compromise. The question is how this weakness can be reduced. The answer requires an effort of clarification of the causes of this instability, and a reflection on the relevance of the remedies.

13.1. Separating the Supranational Logic from the Intergovernmental Games

The instability of the Franco-German Compromise is due to the fact that it was obtained by the federalist and intergovernmental "joining" of two contradictory visions, a "joining" process with a view to integrate the Maastricht *pillars* inside a single constitutional text. Thus, any attempt to make the Compromise develop risks a break up into its constituent components. The French Foreign Minister therefore argued for a clear distinction between two poles: "the first one which constitutes the basis of European integration, has to incorporate all those fields which involve an area without

frontiers: the internal market and the policies which accompany it". And the second pole, according to this vision, is that of what de Villepin named "shared sovereignty", which includes the CFSP/ESDP and police and penal cooperation.⁷⁵

For the "first pole", the Community method would apply entirely: initiative of the Commission, codecision monopoly between Parliament and Council governed by the majority rule, rotating chair-presidencies within the Council, a role of "guardian of the Treaties" for the Commission and of judicial control for the European Court. The German government seems to subscribe to the idea that CFSP/ESDP, as well as the coordination of the economic policies of the Member States, would remain be for a certain time – at least until the next Convention in 2010 – in the intergovernmental field. On the other hand, the idea that police and penal cooperation could develop without parliamentary control and especially without judicial control by the Court does not appear acceptable to Schröder, the red-green coalition and the majority of the government's ministers. However, nothing would prevent the Convention from introducing elements of supranationality into the "shared sovereignty pole" – in order to improve the capacity to act of the Union.

Logically from this conciliation of the opposites, one may come back to the choice of the bicéphalism – as a concern to compensate for the introduction of a permanent President of the Council by a strengthening of the political legitimacy of the Commission and the search for a specific procedure for the CFSP/ESDP, halfway between the intergovernmental and the Community method, that the figure of the European Minister for Foreign Affairs symbolizes, astride both designs.

The result is that each of the two partners and their subscribers remains faithful with its institutional vision, but that the obtained result would make an end to the ambiguity of Maastricht-Amsterdam-Nice.

13.2. The problems of synthesis

Another way would suppose a synthesis between the intergovernmental and supranational dimensions in the exercise of the European governmental function. Given that the Union remains a hybrid political system, half-way between the federal model and the traditional confederal solutions, it consists primarily in specifying the contours of a formula which enables the Union's institutions to function in phase with the national governments. Instead of exhausting itself to trace a clear border between what pertains to be the "management of the federal type" and the fields that remain intergovernmental, this approach - that some described as "intergovernmental federalism"⁷⁶ -, would then seek to give to the *European political system* double – i.e. multi-level - legitimacy, inter-state and parliamentary.

Accordingly, the Commission, engine of the system, can act in an effective way only if it has the confidence of the Member States and of Parliament, which implies that it the college remains the subject of a double investiture and of double control. This double legitimacy constitutes the principal difference with the EU's federal systems, where the federation's components are not associated in a direct way with the nomination of their highest executive body. A way of ensuring this balance between Parliament and the Member States would be to entrust the European Council with the responsibility to propose, in view of the result of the European elections, a candidate to the presidency of the Commission. The latter, if it is invested by Parliament, would constitute its team taking into account geographical and political necessary balances.

The advantage of this double basis of the Commission would be to make its intervention more legitimate in sensitive fields for the Member States, since it would be required to remain accountable

to the Council or to the European Council. Naturally, it would be illusory to think that all the policies of the Union would be managed according to a single plan. Accordingly it would be logical to envisage the attachment of the person responsible for the CFSP - whatever the title - to the Commission. Nothing would prevent the EU's actors to envisage special clauses, which would set out the differences between this person and the other Members of the Commission. Nothing would forbid the EU to extend the same formula to other executive functions of the European Union, for example JHA or the coordination of the economic policies. In the end, a specific *Presidium* inside the Commission would guarantee the participation of the Member States to the quasi-federal government of the EU.

Such an option, located half-way between the traditional positions of France and Germany, would force both governments and those hiding behind to real concessions, the first giving up the vision that foreign policy remains in the hands of national governments, the second ceasing with the ideal of parliamentary federalism as the alpha and the omega of the EU's construction.

14. Conclusions

The two solutions are far from being perfect. The Franco-German text defines an unstable balance. The paradox is that this unstable balance is probably the basis and strength of a Compromise. On the one hand, because it gives broad space to amendment and improvement with a view make the Union's architecture more consistent. In the second place, because the contingency of the balance is rich for a range of alternatives which define the corridor of a possible Compromise between the various projects in the Convention. Finally, because its fundamental ambiguity mirrors in fact the cleavage lines which separate the Convention's members, federalists and souverainists, non-neutrals and neutrals, representatives of large and small countries, etc. This instability - inherent in the Franco-German proposals - is only the reflection of the European Union and its politico-institutional system, which itself is subject to a permanent search for constitution-building in the absence of clarity regarding its "finalité".

Given the political statements, proposals and drafts for a Constitution, there seems to be common ground on the desire to maintain the European Council as a supreme institution of the Union with the power of defining its political guidelines, giving impetus and setting its general political agenda.

To date, there is no evidence for the assumption that the system of rotating presidencies will potentially lead to a lack of continuity and effectiveness, the anonymity of governance, but also to the absence of accountability at the European level. It is, on the other hand, essential for the European motivation and mobilization of the national administrations in that it gives them an opportunity to really participate at, and contribute to the politics and development of the Union, and hosting the European Council means to the citizens of the respective Member State that Europe is present within the country.

14.1. A Presidential Union?

Doubts against a presidential solution have to be considered:

- To date the Presidency of the European Council has considerable powers. They are accepted for a the short period of office giving the other Member States the certainty of balance, providing them equal rights and, in the worst case, limiting the "damage". Extending the period of office to five years would imply an enormous increase and centralization of power for the President of the European Council.

- A President would exercise power without being democratically accountable and controlled at the European level. Though s/he depends on the co-operation of, and will be controlled by, the - democratically elected - Heads of State or Government of the Member States, there is no instrument either of the European Parliament or of national Parliaments to censure him in case his policies are felt inadequate or wrong.
- The parallel structure of a President of the European Council and a President of the Commission would increase the construction of competing administrations. It would result in confusion about who is finally responsible for what and put into question the original executive function of the Commission.
- The central powers attributed to the President of the European Council would reduce the role of the President of the Commission to a mere (subsidiary) secretariat-function for European policies.
- If one combines the results of the Council's internal reform – the reduction of Council formats agreed in Sevilla – with the proposed creation of a European Council President and of a Double hat for CFSP/ESDP, the latter might tend to chair the Council meetings on CFSP, ESDP, Trade, and Economic Development. Accordingly, the Commissioners and the DG's for Trade and Economic Development would either wither away, or at least become confronted with an 'Eat-as-much-as-you-can'- Minister for Foreign Affairs. In any case, the existing networks of NGO's, national ministries and agencies surrounding the three FE Commissioners would loose their central arenas.

14.2. A Two-Faceted Council

The dual nature of the Council is a peculiarity of the Union's institutional system. It is the result of a complex history. Introducing a distinction between the Council's legislative and executive functions is likely to have far-reaching institutional consequences. As regards the split between the legislative and the executive functions of the Council, several questions would need to be addressed:

- The idea of a parliamentary Legislative Council is based on the distinction between executive and legislative powers, based on Montesquieu's ideal of the need to separate executive power, legislative power and judicial power.⁷⁷ For Federalists, the separation of powers is a basic democratic requirement: in principle, executive power should be entrusted to the government while legislative power rests with the Parliament. Given the Union's 'living constitution' as a multi-level system of authority-building, is it possible to conceive a Council giving up some of the most visible instruments of Member States to provide rules for their citizenry through the mechanisms of scape-goating?
- Today, there is a single 'chain of command' for executive and legislative matters within the Council: from the Council Working Groups via the Committee of Permanent Representatives (COREPER) to sectoral Councils, to the GAC – and, for certain matters, to the European Council. Introducing a separation between the legislative and executive functions of the Council leads to the establishment of two chains of command – either for part of the institutional procedure, or for all of it.
- If the split is generally accepted, how far should the separation go? Should there be one GAC-like and arbitrary or several legislative Councils? And should there be one – GAC-like - or several governing Councils? The separation towards an Governing / Executive Council would possible not interfere too much into the Member States's constitutional practice. The CFSP/ESDP Council could be staffed by the Foreign Ministers, a Governing / Executive Council for the OMC by the ECOFIN Ministers etc. However, if the Legislative Council would perform as the highest authority of Member States within the codecision framework, the Member States would need to think about establishing a clear-cut hierarchy between their Ministers: There would not be an obligation for the creation of a European Affairs Minister, but each national

system would need to nominate a body able to act as a clearing house for conflicts between different Ministries.

- If the Legislative Council would not act as an arbitrary chamber of all existing Council formats, would it be possible to establish a system for a 'Virtual Legislative Council': Each sectoral Council would mutate into the 'Legislative Council' when it votes on legislative acts, the actual GAC would mutate into an informal 'Coordination Council' which could be composed by European Affairs Ministers, Foreign Affairs Ministers or State Secretaries, or even by politically selected and accountable PERREP's. This solution would be the optimum for Member States not willing to change their constitutional practice. But it would also be the less transparent one.

Relations between Treaty reform and Treaty implementation are not one-directional. Treaty reforms – even the mutation of the treaties into a Constitution - do not emerge from nowhere as a 'deus ex machina', rather they represent reactions to prior developments and trends, reflecting both the complex day-to-day machinery at all relevant levels of policy-making as well as the reaction of socio-political actors which do not or only rarely intervene during the 'implementation' of a given set of treaties. Sometimes, Treaty foundations even simply formalize institutional evolutions which have been developed either within existing Treaty provisions, through inter-institutional agreements, institutional rules of procedure and codes of conduct, or outside of the treaties, through bi- or multilateral agreements between EU members.⁷⁸ Treaty amendments also attempt to address institutional and procedural weaknesses identified during the implementation of previous adjustments to the rules of the game. Treaty revisions are thus endemic parts of the EU's process; they are not only independent variables affecting the nature and the evolution of the system but also become dependent variables themselves. Institutions and procedures - 'formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the Polity and economy'⁷⁹ – will remain creations and creators at the same time. In this regard, one specific feature of the EU should be much more addressed: In negotiating and ratifying Treaty amendments, Member States challenge their own politico-administrative systems. As long as there is no (need for) unifying different national constitutions and their related interpretation in daily life, the effect of these challenges will remain to vary according to the nature of the political systems in the Member States.

The design of the European Union, which is construed as a poly-centric⁸⁰ and poly-archic⁸¹ multi-level-system, will continue to be confronted with unpredictable needs and latitude for action due to internal and external influences.⁸² Even today, the Treaties are in this context, indicators for a constitutionally structured community system that - in respect to its authorizations to act that are sanctioned by primary law, its actual application of competencies, its institutions and its policy area related regulations - is not arriving at a *finalité politique* that is agreed upon by all partners. The Treaty of Nice is - and the outcome of the Convention is likely to be - a further benchmark of an evolutionary and dynamically constituted process of interstate and supra-national policy-making⁸³, which still has an open end.⁸⁴

- 1 See Derek Beach, (forthcoming), Bringing Negotiations Back – supranational actors and the negotiation of intergovernmental conferences in the EU. Ph.D. dissertation to be submitted in October 2002, to be published by Odense University Press, Christiansen, Thomas (2002) 'The Role of Supranational Actors in EU Treaty Reform.', *Journal of European Public Policy*, Volume 9, Number 1, February 2002, pp. 33-53.
- 2 On the Nice IGC see Dinan, Desmond and Sophie Vanhooacker (2000-2001), 'IGC 2000 Watch.' Parts 1-4, in *ECSA Review*, Volume 13, Numbers 2-4, 2000 and Volume 14, Number 1, 2001, Galloway, David, *The Treaty of Nice and Beyond – Realities and Illusions of Power in the EU*. Sheffield: Sheffield University Press 2001.
- 3 See O. de Schutter, N. Lebessis, J. Paterson (edit.), *Governance in the European Union*, Luxembourg, 2001.
- 4 See Martin Westlake, *The Council of the European Union*, London: Cartermill, 1995, pp. 164-167.
- 5 See also: Wolfgang Wessels, *Die Öffnung des Staates. Modelle und Wirklichkeit grenzüberschreitender Verwaltungspraxis 1960-1995*, Opladen: Leske & Budrich, 2000, pp. 195-260.

- 6 Finally the Heads of States and Chiefs of Governments agreed in Amsterdam four fields of unanimity which were converted into decision-making with qualified majority, see: A. Maurer, *Die institutionellen Reformen: Entscheidungseffizienz und Demokratie*, in: Jopp, Maurer, Schmuck (1998), pp. 49-54.
- 7 See Presidency Paper: *Efficient Institutions after Enlargement. Options for the InterIntergovernmental Conference*, Helsinki (Dok. No. 13636/99), 7 December 1999, p. 5; as well as in this context the remark of the Portuguese Presidency: *Question of a possible extension of casting of votes with a qualified majority*.
- 8 See the Memorandum of the Government of the Federal Republic of Germany to the Treaty of Nice: *Memorandum to the Treaty of Nice from 26 February 2001*, Berlin, 2001.
- 9 See H. Maull, *Europa als Weltmacht? Perspektive für die gemeinsame Außen- und Sicherheitspolitik*, in: T. Jäger, M. Piepenschneider (edit.), *Europa 2020, Szenarien politischer Entwicklung*, Opladen, 1997, pp. 81-95; W. Wessels, *Die Europäische Union als Ordnungsfaktor*, in: K. Kaiser, H. Schwarz (edit.), *Weltpolitik im neuen Jahrhundert*, Bonn, 2000, p. 575- 590.
- 10 See Péraldi-Leneuf, F., 'La réforme de la politique commerciale par le Traité de Nice (article 133): un difficile négoce,' *La Gazette du palais*, No. 171-172, (20-21 June 2001), pp. 20-21.
- 11 See A. Maurer, *Reformziel Effizienzsteigerung und Demokratisierung - Die Weiterentwicklung der Entscheidungsmechanismen*, in: M. Jopp, O. Schmuck (edit.), *Die Reform der Europäischen Union*, Bonn, 1996, p. 32.
- 12 See A. Maurer, W. Wessels, *The EU matters: Structuring self-made offers and demands*, in: W. Wessels, A. Maurer, J. Mittag (edit.), *Fifteen into One ? The European Union and its Member States*, MUP 2003.
- 13 See on the concept of the majority vote: F. Scharpf, *Games Real Actors Play, Actor-Centred Institutionalism in Policy Research*, Boulder 1997, pp. 191-193, Golub, J., *In the Shadow of the Vote?: Decision Making in the European Community*, *International Organisation*, Vol. 53, issue 4, (1999), pp. 733-64.
- 14 Source: Answer to Written Question No. 1121/86 by James Elles to the Council of the EC; OJEC, No. C 306/42, 1.12.1986.
- 15 Source: Answer to Written Question No. 2126/86 by Nicole Fontaine to the Council of the EC; OJEC, No. C 82/43, 30.3.1987.
- 16 Source: Answer to Written Question No. E-1263/96 by James Moorhouse to the Council of the EU; OJEC, No. C 305/71-75, 15.10.1996, and: Answer to Written Question No. E-858/95 by Ulla Sandbaek to the Council; OJEC, No. C 213/22, 17.8.1995.
- 17 Source: Commission Européenne (Secrétariat Général): *Analyse des décisions adoptées à la majorité qualifiée en 1996*, Bruxelles, 14 juillet 1997.
- 18 Source: Ibid.
- 19 Source: Monthly Summaries of Council Acts, January - December 1999, <http://ue.eu.int/en/acts>. Data for 1997 and 1998: Antwort des Rates auf die schriftliche Anfrage Nr. E-0917/00 von Christopher Huhne vom 24.3.2000 entnommen, *Abl. der EG*, Nr. C 26 E, 26 January 2001, p. 131.
- 20 Own calculation on the basis of the Monthly Summaries of Council Acts, January-December 1999, <http://ue.eu.int/en/acts>.
- 21 See Andrew Moravcsik, 'Taking Preferences seriously: A liberal Theory of International Politics', in: *International Organisation*, No. 4/1997, pp. 513-553.
- 22 See Albert O. Hirschmann, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organisations and States*, (Cambridge, Mass.: Harvard University Press, 1970), p. 19; Joseph H.H. Weiler, 'The Transformation of Europe', in: *The Yale Law Journal*, No. 8/1991, pp. 2403-2483.
- 23 See Johan P. Olsen, 2000, *op.cit.*, p. 6; and Johan P. Olson, 'Europeanisation and Nation-State Dynamics', ARENA Working Paper No. 3/1996, (Oslo).
- 24 See Helen Wallace: 'The Council: An Institutional Chameleon', in: *Governance*, Nr. 3/2002, and Hussein Kassim/Anand Menon/Guy Peters/Vincent Wright (Ed.): *The National Co-ordination of EU Policy*, Oxford 2001.
- 25 See Waltz (1979); Evans/Rüschemeyer/Skocpol (1986); Volgy/Imwalle/Schwarz (1999), pp. 246-262.
- 26 See Grieco (1988), p. 494.
- 27 See Grieco (1988), pp. 485-587; Link (1998); Moravcsik (1999).
- 28 See Moravcsik (1995), pp. 611-628 (here p. 612).
- 29 See David Bostock: 'Coreper Revisited', in: *Journal of Common Market Studies*, Nr. 2/2002, PP. 215-234, sowie zur Frage der Arenafunktion des ASTV Jeffrey Lewis: 'National Interests: Coreper', in: John Peterson/Michael Shackleton (Ed.): *The Institutions of the European Union*, Oxford 2002, pp. 277-298 and Jeffrey Lewis: *The Institutional Problem-Solving Capacities of the Council: The Committee of Permanent Representatives and the Methods of the Community*, Max-Planck-Institut für Gesellschaftsforschung, Discussion Paper Nr. 98/1, Köln, February 1998.
- 30 See Link (1998).
- 31 See Moravcsik (1993), p. 481.
- 32 See Moravcsik (1993), p. 483: 'The most fundamental influences on foreign policy are, therefore, the identity of important societal groups, the nature of their interests, and their relative influence on domestic policy.'
- 33 See Moravcsik (1995), pp. 612-613.
- 34 See Stone Sweet/Sandholtz (1998), p. 5, who view "intergovernmental bargaining and decision-making as embedded in processes that are provoked and sustained by the expansion of transnational society, the pro-integrative activities of supranational organisations, and the growing density of supranational rules". Consequently, they argue, "these processes gradually, but inevitably, reduce the capacity of the Member States to control outcomes".
- 35 See Wessels (1990), pp. 229-241.
- 36 See Bundesverfassungsgericht 1993, in: Oppenheimer (1994), p. 190.
- 37 See Mayne/Pinder (1990), pp. 214-215.
- 38 See Schneider (1996), pp. 21-50.
- 39 See For the European Union - Peace, Freedom, Solidarity. *Communication of the Commission on the institutional architecture*. COM (2002) 728.
- 40 See Haas (1964), p. 16.
- 41 See Lindberg (1963), p. 10.
- 42 See Scharpf (1988), p. 2.
- 43 Note the classic school of European governance refers rather exclusively to the European institutions. See: Smit/Herzog (eds.) (1976).
- 44 See Schmitter (1996), p. 136.
- 45 See Kohler-Koch (1996), p. 367.
- 46 See Héritier (1996), pp. 149-167.
- 47 See Wallace (1996), p. 13.
- 48 See Wallace (1996), p.14.

- 49 See Commission report on the working of the committees during 2000, OJ C 37/2002 of 9 February 2002 pp. 2-16; Ciavarini-Azzi (1996).
- 50 See Wessels (2000).
- 51 See Bradley (1997), pp. 230-254.
- 52 See Andreas Maurer/Wolfgang Wessels: „Die Ständige Vertretung Deutschlands bei der EU: Scharnier im administrativen Mehrebenensystem“, in: Michèle Knodt/Beate Kohler-Koch (Ed.): Deutschland zwischen Europäisierung und Selbstbehauptung, Frankfurt am Main: Campus 2000, pp. 293-324, and Jan Beyers: Multiple Embeddedness and Sozialisation in Europe: The Case of Council Officials, ARENA Working Paper No. WP 02/33, Oslo, 10 October 2002.
- 53 See Peterson (1995); Ayrat (1975), pp. 330-342.
- 54 See Hartwig, Ines: Der Rat der Europäischen Union, in: Werner Weidenfeld / Wolfgang Wessels (Ed), Jahrbuch der Europäischen Integration 2001/2002, Bonn 2002.
- 55 See on the criticism with regard to the Council of Ministers: Groupement d'Etudes et de Recherches Notre Europe (Hrsg.), Europäische Union. Zur Reform des Ministerrates. Seminar vom 4. September 2000. Veranstaltet von der Studien- und Forschungseinrichtung Notre Europe und dem Verein Friends of Europe, April 2001. See also the Report of the European Parliament on the Council's reform, 17 September 2001, Jacques F. Poos, Europäisches Parlament, A5-0308/2001.
- 56 The coordination role of the General Affairs Council exists since 1974; see nos. 3.3 of the Communiqué of the member states of the European Communities of 9/10 December 1974, in: Europa Archiv, 29 (1975) 1, p. 41.
- 57 See also the Swedish prime minister Persson speech at the Humboldt University on 18 October 2001 (HRE 2001), <http://www.whi-berlin.de>, p. 16.
- 58 See David Metcalfe: „Leadership in European Union negotiations: The Presidency of the Council“, in: International Negotiation, No. 3/1998, pp. 413-434, and Jonas Tallberg: „The Agenda-Shaping Powers of the EU Council Presidency“, in: Journal of European Public Policy, No. 1/2003; <http://www.dse.ruc.dk/tallberg.pdf>.
- 59 On the options for reforming the Council's system see Andreas Maurer, Auf dem Weg zur Staatenkammer. Die Reform of the Ministerrats, Berlin, Stiftung Wissenschaft und Politik, (S 6, February 2003), on the Internet: http://www.swp-berlin.org/pdf/ap/S06_03.pdf.
- 60 On the respective positions of both countries within the Convention, cf. Joachim Schild, France, Germany and the debate on the constitutional future of the European Union, in: L'Allemagne d'Aujourd'Hui, No. 162, October-December 2002, pp. 284-300.
- 61 The red-green coalition as well as the chancellor Schröder in his general policy statement at the beginning of the new legislature stressed the importance of the strengthening of the executive role of the Commission; See the coalition agreement "Erneuerung – Gerechtigkeit – Nachhaltigkeit", p. 78: www.gruene-fraktion.de/rsvgn/rs_datei/0_985_00.pdf as well as the statement of chancellor Schroeder on 29 October 2002 in: http://www.amb-allemanne.fr/actualites/grands_themes/actualite.asp?rub=dof.
- 62 See *Le Figaro*, of 4 September 2002, p. 13; Pierre Lequiller: Contribution to the Convention: "A president for Europe", CONV 320/02, Brussels, on 7 October 2002 (<http://register.consilium.eu.int/pdf/fr/02/cv00/00320f2.pdf>). This idea met a favourable echo on the part of the German Minister for Foreign Affairs, Mr Fischer, See "Streit ums copyright", in: Der Spiegel, of 6 January 2003, p. 55.
- 63 See Common letter of Tony Blair and of Gerhard Schröder to the presidency of the Council, Berlin and London, on 25 February 2002.
- 64 See "Fischer wollte mehr", in: Frankfurter Allgemeine Zeitung, 16 January 2003, p. 3.
- 65 On the options for reforming the Council's system see Andreas Maurer, Auf dem Weg zur Staatenkammer. Die Reform of the Ministerrats, Berlin, Stiftung Wissenschaft und Politik, (S 6, February 2003), on the Internet: http://www.swp-berlin.org/pdf/ap/S06_03.pdf.
- 66 See Jack Straw: „Reforming Europe: New era, new questions“, Speech by the Foreign Secretary, Jack Straw, at the Hague, 21 February 2002, <http://www.britischebotschaft.de/en/news/items/020221.htm>, „Straw calls for president of Europe“, BBC News, 11 October, 2002, http://newsp.bbc.co.uk/1/low/uk_politics/2318963.stm, „Britain presses for figurehead EU presidency“, in: The Guardian, 4. Oktober 2002, <http://politicpp.guardian.co.uk/eu/story/0,9061,804287,00.html>, „EU set to have elected president“, in: Daily Telegraph, 16 December 2001, Charles Grant: „New leadership for Europe“, in: Katinka Barysch, Steven Everts et al.: New Designs for Europe, London: Centre for European Reform, October 2002, pp. 7-19.
- 67 See „Blair and Aznar discuss agenda for Seville“, Edited transcript of a press conference given by the Prime Minister, Tony Blair, and Spanish Prime Minister, Jose Maria Aznar, 19 June 2002, <http://www.britain-info.org/eu/xq/asp/SarticleType.1/Article.ID.2409/qx/articles.show.htm>. See: Discours du Président du Conseil européen, José Maria Aznar au St. Antony's College, Oxford, 20 May 2002.
- 68 See the speech by Guy Verhofstadt of 18 November 2002 to the College of Europe: „Montesquieu and the European Union“, and „Copenhagen attacks Chirac and Blair EU leadership plan“, in: Financial Times, 2 July 2002, http://www.convention-france.com/2_0406.htm, „Denmark attacks plans for council superpresident“, <http://www.euobserver.com/index.phtml?sid=18&aid=6853>.
- 69 See Willem van de Voorde: „Plädoyer für das Rotationsverfahren in der Ratspräsidentschaft der Europäischen Union“, in: Integration, No. 4/2002, pp. 318-324.
- 70 See „Austrians not ready to give up rotating presidency“, www.euobserver.com, 15.3.2002.
- 71 See Jacques Chirac, speech in Strasbourg on 6 March 2002, www.chiracaveclafrence.net/PDFArticle/Strasbourg.pdf.
- 72 The Spanish-British contribution on the institutions of the Union has the merit of posing the colour on this question by envisaging that the president of the European Council chairs also the GAC, See Contribution by Mrs Ana Palacio and Mr Peter Hain, members of the Convention: 'The Union institutions, CONV 591/03, Brussels, on 28 February 2003, p. 3. This proposal was also put forward by Dominique de Villepin in his speech to the Senate on 12 November 2002, See Debate on Europe, Intervention of the Foreign Minister, to the Senate, in: www.doc.diplomatie.fr.
- 73 See Working Group VII "External Action", WD 17, "Double hat", Gunter Pleuger's contribution, temporary member of the Convention, on 5 November 2002; See also the final Report of the Working Group, CONV 459/02, WG VII 17, Brussels, on 16 December 2002.
- 74 That is what the Praesidium of the Convention in its project for Article 27 of the Constitution proposes, See CONV 571/03, Brussels, 26 February 2003.
- 75 See the speech on Europe of the Foreign Minister, Marseilles, on 2 December 2002, in: www.doc.diplomatie.fr.
- 76 See Mauritius Croisat/Jean-Louis Quermonne, *Europe et federalisme*, 2nd éd., Paris, Montchrestien 1999.
- 77 In: L'esprit des lois.

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- 78 See Thomas Christiansen, 'Bringing Process Back in: The Longue Durée of European Integration', in: *Journal of European Integration*, No. 1/1998, pp. 99-121; Thomas Christiansen and Knud E. Jorgensen, 'The Amsterdam Process: A Structurationist Perspective on EU Reform', in: *European Integration Online Papers*, Vol. 3, No. 1/1999, <http://www.eiop.or.at/eiop/texte/1999-001a.htm>.
- 79 Peter Hall, *Governing the Economy: The Politics of State Intervention in Britain and France*, (Cambridge: Polity Press, 1986), p. 19. David R. North offers a similar definition. Institutions are 'the rules of the game in a society or, more formally [...] the humanly devised constraints that shape human interaction'. See: David R. North, *Institutions, Institutional Change and Economic Performance*, (Cambridge: Cambridge University Press, 1990), p. 3. See also: James G. March and Johan P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics*, (New York: Free Press, 1989), p. 167.
- 80 See P. Schmitter, *Imaging the Future of the Euro-Polity with the Help of New Concepts*, in: G. Marksi, F. Scharpf, P. Schmitter, W. Streek, *Governance in the European Union*, London, 1996, p. 132.
- 81 See F. Pfetsch, *Negotiating the European Union: A Negotiation-Network Approach*, in: *International Negotiation*, 3 (1998), pp. 293-317, pp. 295-301. See H. Milner, *Interests, Institutions, and Information: Domestic Politics and International Relations*, Princeton, 1997 and J. Cohen, C. Sabel, *Directly Deliberative Polyarchy*, unpublished paper, Columbia Law School, 1999.
- 82 A. Maurer, *Die institutionelle Ordnung einer größeren Europäischen Union - Optionen zur Wahrung der Handlungsfähigkeit*, in Barbara Lippert (edit.), *Osterweiterung der Europäischen Union - die doppelte Reifeprüfung*, Bonn, 2000, p. 32.
- 83 The notion 'European Union as a process' goes back to the activities of a working team in the Centre for interdisciplinary Research Bielefeld, which from 1973 until 1980 under leadership of H. von der Groeben and H. Möller published six studies to the 'opportunities and limits of a European Union', H. von der Groeben, H. Möller (edit.), *Die Europäische Union als Prozeß*.
- 84 See Petite Michel, 'Nice, traité existentiel, non essentiel,' *Revue du droit de l'Union européenne*, No. 4, (2000), pp. 887-903.