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SIEPS (Swedish Institute for European Policy Studies)
Author: Maddalena Gherardi

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Summary

The paper gives an overview of the development of the European Parliament's role as a legislator from 1952 up to the provisions of the Treaty Establishing a Constitution for Europe of 2004. It serves as a background paper for the emergence and evolution of governing modes across policy fields dealt with in Cluster 1 of the NEWGOV Project.

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1 Introductive Summary

At the outset of its institutional career the European Parliament (alternatively referred to as ‘the Parliament’) was commonly represented by the unkind metaphor of a ‘talking shop’. Almost powerless under the 1952 European Coal and Steel Community (ECSC), its advisory role under the Rome Treaties of 1958 developed into a more substantial participation with the cooperation procedure established by the Single European Act (SEA) in 1987. The Treaty on European Union (TEU) introduced another procedure in 1993, further bolstering the powers of the European Parliament, and known as the ‘co-decision’ procedure. Through two subsequent Treaty reforms, sealed in Amsterdam (1999) and Nice (2003), co-decision acquired its present extension and structure, whereby a measure may not be adopted without the approval of the Council and the European Parliament, and emphasis is placed on the reaching of a jointly adopted text. Finally, the Treaty establishing a Constitution for Europe (CT), whose ratification is at least uncertain, remarkably labelled that procedure both ‘ordinary’ and ‘legislative’, officially vesting the European Parliament and the Council with the legislative function. This could appear surprising for those living under the assumption that the Member States have so far held a privileged role over decision taking, but hardly a novelty for others perhaps more acquainted with the EU official website, which advertises co-decision as being used for most EU lawmaking.

It was primarily the accountability concerns of the Member States that brought about the inclusion of the European Parliamentary Assembly, to use the original title of the European Parliament, in the framework of the Communities. Its consultative role developed into a more sophisticated form of cooperation with the Council due to a wide spectrum of related factors. At the outset, the conversion into a system of own resources for the financing of the Community budget necessitated the participation of the institution in budgetary decisions pursuant to the principle ‘no taxation without representation’. The Assembly exploited this new competence in order to influence the content of legislation. In 1975 this lead to the Council’s introduction of a new form of dialogue with the Assembly, namely a conciliation procedure. For its part, the Commission entrusted a group of experts to carry out a study on the ‘problem’ of the Assembly’s growing power, whose recommendations for a case-by-case extension of legislative co-decision may be at the root of the reforms in subsequent Treaties. Hence, also in consideration of the legitimacy problem raised by the new budgetary system, the direct election of the Assembly finally took place in 1979, as prescribed by the Treaty of Rome already in 1958. The event affected the institutional balance to the extent that the Assembly grew in self-confidence and respectability. From this moment the European Court of Justice seemed to engage in a campaign that was strongly supportive of the representative and legislative role of the European Parliament.

In 1984, the newly legitimated body approved its own Draft Treaty on European Union (DTEU). It proposed a mechanism for co-decision structured upon the budgetary procedure.

1 See Article 189b EC (1993).
2 See Article 251 EC (2003).
and applicable to all those matters it had qualified as legislative. Despite the fact that it never entered into force, the Draft became an irreplaceable reference point for many parliamentary resolutions on institutional matters as well as for some intergovernmental proposals, such as the Dooge Report. The latter, presented to the Milan European Council in 1985, invited the implementation of the necessary institutional reforms by convening an Intergovernmental Conference (IGC).

At that time, the commitment to demolishing trade barriers by 1992 and the subsequent introduction of qualified majority voting (QMV) in the Council for internal market decisions reinforced the Communities’ accountability problem. The SEA provisionally solved this through a new cooperation procedure whereby the Parliament’s amendments on certain items of legislation could no longer be passed over. The Parliament exploited its new powers to the full, by looking for informal ways of speeding up a rather complicated procedure, by instead threatening non-cooperative behaviour where this might be more fruitful, and by strictly supervising the choice of legal basis for the adoption of Community acts.

The Parliament finally achieved its co-decision goal not only due to its successful strategy, but also due to geopolitical changes and the ambition to create a European Monetary Union. Prior to the second IGC, the European Parliament had promoted its cause in inter-institutional conferences and Assizes involving national parliaments. At the same time, in response to growing concerns with regard to an efficient and democratic decision-taking system, some Member States and the Commission launched the idea of applying co-decision to all acts defined as legislative within a hierarchy of norms, although different from that previously tabled by the European Parliament. Yet the time was not ripe for such a binding reform, since abundant reservations still questioned the reasonableness of having a co-decision procedure at all.

Finally, a deal was struck in Maastricht for a piecemeal application of a rather unbalanced co-decision procedure. By 1994, however, in spite of a limited legislative output in the first four years, Parliament seemed capable of covering areas of cooperation formally excluded from its competence, flanked by a favourable jurisprudence and, perhaps, a Council willing to field-test its partner. In the background though, the Commission was prominent in its huge regulatory production, seemingly in line with the consolidation of rules for delegation.

Since the last Treaty had left open the possibility of widening the scope of co-decision and of ranking Community acts, the 1996 IGC had a broad mandate to deal with the powers of the Parliament. In this context, the most extensive and influential contribution probably came from the Commission, which laid down non-binding criteria for the definition of a legislative act, suitable for co-decision. It is uncertain whether the subsequent significant, yet scattered, extension of co-decision in the Treaty of Amsterdam followed the Commission’s line. With the new millennium a steady growth in the use of co-decision has hence begun, not visibly affected by the entry into force of a non-ambitious Treaty of Nice. Instead, we may point at independent factors of growth such as the parallel decrease in agricultural legislation (adopted only by consultation with the Parliament), and the increase in procedural efficiency.

Although the CT signed in Rome on 29 October 2004 will in all likelihood not enter into force, the document could unveil the ‘natural development’ of the discipline of co-decision. It defines it as the ‘ordinary legislative procedure’ as such applicable to all those acts entitled ‘law’ in the hierarchy of acts finally approved by the Member States. As in the past though, some exceptions have been kept, providing the European Parliament with reasons to come back (again) for more.
2 The Origins: From the Statute of the Council of Europe to the Treaty on European Union

2.1 The Precedent and the Predecessor

The precedent for the creation of the European Parliamentary Assembly, to call the Parliament by its original title, has been set by the Council of Europe’s Consultative Assembly, born as a democratic guarantee for the operation of the Council. As a compromise between federalist and intergovernmental tendencies, it was conferred merely advisory powers. Some other of its attributions are recognizable in its latest heir: (1) members could vote according to their political preferences, instead of national interests; (2) after May 1951, they could plan their own agenda; and (3) they could adopt their own rules of procedure. In addition, a preliminary proposal called for a European Parliament which was directly elected and had legislative powers even though at the end of the negotiations the system opted for was the plain nomination of the Assembly’s members.

Instead, the direct predecessor is universally recognised to be the ECSC Common Assembly, also included in the basic framework for the accountability concerns of the ratifying parties: they had pooled some of their sovereign powers for the first time, and consequently demanded an appropriate institution to monitor the High Authority (today, the Commission). The supervisory power stemming from those concerns represents a striking characteristic of the Common Assembly when compared to all the other international assemblies. Moreover, pursuant to the Treaty of Paris, its members could be elected by direct universal suffrage. On their own initiative, they sat according to ideological affiliation, instead of nationality.

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5 According to Gerbet ‘[o]nce the Council of Europe included a parliamentary assembly, it was inconceivable that the first European Community should not have one’, see Gerbet, P., The Common Assembly of the European Coal and Steel Community, in European Parliament, 40th Anniversary, proceedings of the Symposium: The European Community in the Historical Context of its Parliament (Office for Official Publications 1992), p. 12.

6 See the Statute of the Council of Europe of 5 May 1949 (ETS No 1), Article 22.


8 See the Statute of the Council of Europe, Article 23(b).

9 Ibid., Article 28.


11 Ibid., Article 25a.

12 Ibid., p. 36; and Rittberger, B., Building Europe’s Parliament (Oxford University Press 2005), p. 100-102. At the outset, technocrats counselling in the High Authority figured as protagonists of a united Europe. This pragmatic vision belonged to Jean Monnet, French Commissioner General, responsible for the reconstruction of France (and eventually Europe). Commentators clash on whether he originally intended to put forward a European assembly, but lucubration have little value once realized that the Assembly probably stood in a corner simply as a result of the Community’s circumscribed range of action: see e.g. Featherstone, K., Jean Monnet and the ‘Democratic Deficit’ in the European Union (1994) 32 JCMS, p. 160; Hirsch, E., Ainsi va la vie (Fondation Jean Monnet pur l’Europe 1987), p.107; Milward, A., The Reconstruction of Western Europe (Methuen 1992), p. 336; and Westlake, M., A Modern Guide to the European Parliament (Pinter 1994), p. 71.

13 Article 20 ECSC (1951).

14 Article 21 ECSC (1951).

The Assembly could also adopt its Rules of Procedure independently. Apart from these characteristics, other key factors contributed to the Assembly’s unexpected development: to start with, its peculiar membership for which the most Europe-enthusiastic national parliamentarians volunteered. Secondly, its early alliance with the High Authority, due to a shared integrationist vision. Thirdly, its inauguration task, namely the drafting of a Political Constitution for Europe. The ECSC Council of Ministers commissioned that project following the creation of a European Defence Community on 27 May 1952. However, the Draft Treaty establishing a Political Community, died the day the French Assemblée voted against it. However, while in the long-term, writing a new constitutional settlement encouraged the Parliament’s future initiatives to this end, in the immediate-term some of the Draft’s principles provided a basis for the negotiations of the EEC Treaty.

2.2 The European Parliamentary Assembly

On 25 March 1957, the six ECSC Member States signed two additional Treaties establishing the European Economic Community (EEC) and the European Atomic Energy Community (Euratom) respectively. These two new Communities joined the previous Coal and Steel Community to form the European Communities. Correspondingly, new institutions were created to deal with the increased amount of responsibilities; in particular, the European Parliamentary Assembly, common to all three organizations.

The most significant difference between the Assembly and its predecessor was its advisory powers: 22 Articles of the EEC Treaty and 11 Articles of the Euratom Treaty envisaged the consultation of the Assembly on the Commission’s proposals before their adoption by the Council. Specifically, the Assembly could fulfill its duty without being subject to deadlines. The lack of time pressure became a major condition for the enhancement of the Assembly’s legislative powers. In general, the so-called consultation procedure was the first legislative procedure involving the Parliament and from which the cooperation and the co-decision procedures ultimately descended.

16 Article 25 ECSC (1951).
18 See Westlake, M., p. 11.
21 See Corbett, R., p. 89.
Furthermore, elections by direct universal suffrage contributed to relaxing the hurdles to the further evolution of the Assembly. According to the new Treaty, European deputies were to be appointed by popular vote, once the Council had approved the Assembly’s proposal on the matter.\(^{27}\)

### 2.2.1 An Immediate Arrest: The Nationalistic Approach

The decade following the birth of the EEC Treaty reported little success for the Assembly. This was the consequence of a more general European ‘sclerosis’ or ‘pessimism’. At the source of the paralysis was the nationalistic attitude of the French President Charles De Gaulle. He first suggested the institution of a Committee with the task of advancing proposals for political cooperation between the six Member States.\(^{28}\)

In 1961 The Fouchet Committee, so called after its chairman, Christian Fouchet, presented a first plan which greatly disappointed the Assembly.\(^{29}\) The report had a highly intergovernmental character and gave the Assembly a very marginal role, even depriving it of the prospect of direct elections. The Assembly countered with the Pleven Report, which requested not only a directly elected parliament, but also one with budgetary powers.\(^{30}\) De Gaulle did not give in and revised the Fouchet Plan, conferring it an even more reactionary print than the original one.\(^{31}\)

Another attempt to block the integrationist process and with it, the Assembly’s growth, succeeded in 1966. As rapid integration required majority voting in the Council, De Gaulle sought to keep the unanimity vote. He initiated the so-called ‘Luxembourg Compromise’, according to which the unanimity requirement would be applied in the Council whenever a Member State declared that it had a ‘vital national interest’ at stake. At the centre of the controversy generating such a huge step backwards was the Parliamentary Assembly itself.

These are the main facts: The member governments agreed on the creation of a common agricultural policy. Walter Hallstein, the German President of the Commission and convinced integrationist, proposed to finance the CAP through the Community’s ‘own resources’ over which the Assembly would have exercised a democratic overview. According to article 201 of the Treaty of Rome the Commission shall study the conditions under which the financial contributions of Member States may be replaced by other resources of the Community itself. Hence, Hallstein simply combined the creation of a financial system already set out by the Treaty, with the maxim ‘no taxation without representation’.\(^{32}\) De Gaulle’s fury, especially after the failure of the CAP negotiations in which France had the greatest interest, dictated his subsequent moves. He recalled the French representative and boycotted all Council meetings to come.

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\(^{27}\) See Article 138 EEC (1958).

\(^{28}\) See Kreppel, A., p. 62 and 63.


\(^{30}\) The Pleven Report is mentioned by Westlake, M., p. 18.


\(^{32}\) See Westlake, M., p. 20 and 21.
Notwithstanding the adverse environment, the Assembly obtained some small concessions: in 1960, 1964 and 1968 the Council undertook to consult it on virtually all legislative and non-legislative bills so that it could fully immerse itself in the activities of the Communities.\textsuperscript{33}

The Assembly also promoted the Treaty of 8 April 1965 merging the three Councils of the different Communities, and the EEC and Euratom Commissions with the ECSC High Authority.\textsuperscript{34} According to Westlake, the Assembly believed that a single Commission would be stronger, and thus more helpful to the Assembly itself.\textsuperscript{35}

\section*{2.2.2 A Slow Revival: The Democratic Approach}

\subsection*{2.2.2.1 The Hague Summit}

With the departure of De Gaulle from the political scene, his successor, Georges Pompidou, adopted a more favourable policy towards Europe and its representative assembly.

In the Final Communiqué of the Hague Summit of 1969, we read that the Heads of State and Government finally agreed on establishing a system of own resources for the integral financing of the Communities budgets, and on strengthening in this regard the powers of the European Parliament.\textsuperscript{36} The same point mentions the problem of the Parliament’s direct elections under the consideration of the Council of Ministers. Some of the governments taking part in the Summit had been pushed in this direction by their domestic assemblies.\textsuperscript{37} In particular, the Dutch Parliament had officially resolved that the Assembly must be given power over the Communities’ expenditure.\textsuperscript{38}

As matters stood, in the aftermath of The Hague summit political discussions ceased to centre on the opportunities of the Parliament’s new budgetary competences, and rather focused on the degree of such competences.\textsuperscript{39}

\subsection*{2.2.2.2 Budgetary Powers}

Rittberger defines the Treaty of Luxembourg of 1970\textsuperscript{40} as ‘a stepping stone’ towards a Parliament with traditional competences.\textsuperscript{41} He argues that the Member States partly gave up their budgetary power since in the CAP and custom tariffs policy they had delegated the levy of financial resources to the Community. The ‘own resources’ mechanism escaped domestic parliamentary approval, and thus required an alternative parliamentary control.\textsuperscript{42} At that time

\begin{itemize}
\item\textsuperscript{33} Ibid., p. 19 and 20.
\item\textsuperscript{34} See Treaty of 8 April 1965 establishing a single Council and a single Commission of the European Communities (OJ 1967 152/1).
\item\textsuperscript{35} See Westlake, M., p. 20.
\item\textsuperscript{36} See \textit{Bulletin EC} 1-1970, p. 15 (point 5).
\item\textsuperscript{37} See Rittberger, B., p. 120 and 121 lists Luxembourg, Germany and the Netherlands. He also quotes some early European Parliament reports on the subject, i.e. the Furler Report of 1963, the Vals I report of 1964, and the Vals II of 1965.
\item\textsuperscript{39} See Rittberger, B., p. 124.
\item\textsuperscript{40} Treaty of 22 April 1970 amending certain budgetary provisions of the treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities (OJ 1971 L 2/1).
\item\textsuperscript{41} See Rittberger, B., p. 114.
\item\textsuperscript{42} Ibid., p. 120.
\end{itemize}
several political actors warned against a too generous manoeuvre: During the negotiations on the Treaty of Luxembourg, the French delegation, for instance, expressed the fear that Strasbourg could legislate ‘through the backdoor’ in areas exclusively retained by the Council.\textsuperscript{43} To placate the concerns of France, a distinction between compulsory and non-compulsory expenses was drawn. The first consists of expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, and over which the Council has the final say. The second consists of all other Community expenditure (today, Union), conclusively approved by the Parliament.\textsuperscript{44} This solution, however, gave Member States only a temporary relief since over the years the budget has experienced an increase related to non-compulsory expenditure, which soon exceeded compulsory expenditure.\textsuperscript{45} The Parliament has not remained idle and has tried to use its budgetary powers extensively to influence legislative acts. For instance, in 1988 it persuaded the Council that the implementation of a legislative act would not be possible unless there were a related financial plan.\textsuperscript{46}

The Brussels Treaty\textsuperscript{47} and the conciliation procedure,\textsuperscript{48} both dated 1975, further improved the Parliament’s budgetary competences. The latter is of more interest for our survey as we may address it as the ancestor of the co-decision procedure’s conciliation. It was drawn up partly because there was an awareness that the Parliament might abuse its new powers to hamper the implementation of controversial legislation with financial ramifications.\textsuperscript{49}

According to the relevant Joint Declaration, the procedure may be activated only for Community acts of general application which have appreciable financial implications;\textsuperscript{50} the discussion may be open only where the Council intends to depart from the opinion adopted by the Parliament;\textsuperscript{51} conciliation should come through a committee consisting of representatives from the Council, the Parliament and the Commission;\textsuperscript{52} when its position is sufficiently close to that of the Council, the Parliament may release a new opinion, after which the Council shall take definitive action.\textsuperscript{53}

Although the Council retained the last word, the conciliation procedure introduced some important advantages to the Parliament. First and foremost, it established an early direct confrontation between the Council and the Parliament. The Council became accustomed to dialogue and unlikely to refuse all Parliamentary requests.\textsuperscript{54} The Council itself declared in 1979

\textsuperscript{43} Ibid., p. 134.
\textsuperscript{44} See Article 203(4) EEC (1958).
\textsuperscript{45} See Smith, J., p. 73.
\textsuperscript{46} See the Inter-institutional Agreement of 28 June 1988 on budgetary discipline and improvement of the budgetary procedure (OJ 1988 L 185/43).
\textsuperscript{47} Treaty amending certain financial provisions of the Treaties establishing the European Economic Communities and of the Treaty establishing a single Council and a single Commission of the European Communities, in OJ 1977 L 359/1. For details, see Corbett, R., p. 94 and 95.
\textsuperscript{48} See Joint Declaration of 4 March 1975 of the European Parliament, the Council and the Commission on the institution of a conciliation procedure (OJ 1975 C 89/1).
\textsuperscript{49} See Judge, D., and Earnshaw, D., p. 38.
\textsuperscript{50} See Joint Declaration of 4 March 1975, paragraph 2.
\textsuperscript{51} Ibid., paragraph 4.
\textsuperscript{52} Ibid., paragraph 5.
\textsuperscript{53} Ibid., paragraph 7.
\textsuperscript{54} See Corbett, R., \textit{The European Parliament’s Role in Closer EU Integration}, 2\textsuperscript{nd} edn. (Palgrave 2002), p. 121.
that the conciliation procedure ‘has brought a new dimension to the role of the Parliament in
the Community legislative process’. 55

Moreover, the Council adopted a flexible interpretation of the concept of legislation with ‘ap-
preciable financial implications’, admitting conciliation on proposals that hardly fell in this
category, such as the Social Charter. 56 The Parliament stretched those concessions to the point
of declaring that the conciliation procedure included all ‘important’ Community acts. 57

2.2.2.3 The Vedel Report

In response to the increase of the Parliament’s budgetary powers the Commission set up an ad
hoc Working Party of independent experts to exam in e the matter. The final outcome of its
survey, the Vedel Report, 58 constitutes a valuable and original document as it is the only one
from this period that is exclusively devoted to the ‘problem’ of the Parliament’s growing
power. 59 As a general solution the Report proposes a gradual development of the Parliament’s
role in law making decisions, ‘from a simple consultative role into a real power of co-
decision’. 60

In reaching its conclusions, the Working Group had been guided by two basic criteria: democ-

cracy and efficiency. 61 As regards democracy, the Group considered that the Council did not
represent a Community with new and wider tasks sufficiently any longer, for two principal
reasons: First, the discretionary powers contained in the Treaties could only be extended with

the support of political and social forces, normally gathering in the European Parliament.

Second, where the Community extended its powers, it did so to the detriment of national par-

liaments. 62 The Report acknowledged that the democratic structures common to all western
European States with little variance, cannot be simply transplanted into the Community. 63
However, the process of democratization ought to be started, and possibly through the inter-

pretation of the Treaties: Article 149 EEC (1958) stated that ‘as long as the Council has not
acted [on a proposal of the Commission] the Commission may alter its original proposal, in

particular where the Assembly has been consulted on that proposal’. According to the Group,
the authors of the Treaty sought to lay great weight on the opinion of the Parliament with this
proposition. 64 Yet, the founding fathers were more interested ‘in the construction than the
government of Europe’, and that would explain the marginal role of the Parliament at the outset. 65

57 See Judge D., and Earnshaw D., p. 39.
58 Report of 25 March 1972 of the Working Party examining the problem of the enlargement of the powers of
59 See Kreppel, A., p. 69.
61 Ibid., chapter I.
62 Ibid., chapter III, section III, paragraph 1.
63 Ibid., chapter I.
64 Ibid., chapter III, section I, paragraph 2, sub-paragraph A.
65 Ibid., chapter III, section II, paragraph 4.
As regards efficiency, the Parliament’s participation in decision-taking would have not bother, provided that the Council applied the majority vote rule, and that day-to-day matters continued to be handled by the Council and the Commission. Indeed, Article 145 EEC (1958) assigned upon the Council a general competence to take decisions, and Article 155 EEC (1958) charged the Commission with the exercise of the competence conferred on it by the Council for the implementation of the rules laid down by the latter. Thus, the Parliament was to participate in the fields listed by the Report, e.g. the CAP, only to take decisions ‘similar to those regarded by national laws as normally being of legislative nature’. The experts further qualified them as ‘important decisions, especially in that they modify the legal order of the Community or of the Member States’. In the report, the distinction between measures of application and legislative measure is held to already exist in the Community legislative system. In particular, it is held that ‘framework laws’ or ‘loi-cadres’ frame the principles, the implementation of which is left to the Council or the Commission. The report admitted that the border between these two categories of acts was a fine one, but the Group was reassuring ‘the distinction will become clearer with the practice’.

The Report’s suggestions turned into nothing in practice. However, Kreppel underlines how the SEA, the Maastricht and the Amsterdam Treaties finally granted to the Parliament many of the powers envisaged by the Report, which might have been an unofficial source.

2.2.2.4 Direct Elections

Along with the revision of the role of the Parliament, the experts debated the related problem of direct elections. At the time, the matter had become rather enigmatic: should the Community have a powerful Parliament without popular legitimacy or a directly elected Parliament without powers? What should come first? Powers or direct universal suffrage? The Commission’s delegates suggested to break the ‘vicious circle’, and denied the inter-dependence of the two objectives. Admittedly though, the achievement of one of them would have amounted to a step forward in the achievement of the other.

The Council had betrayed the Treaty’s terms on direct elections for a decade, until the Paris Summit gave a gleam of hope. Although we might remember the Summit as the one that institutionalized the so-called ‘European Councils’, it also sought to elevate the Community to a more supranational dimension. Point 12 of the Final Communiqué called for elections by universal suffrage ‘as soon as possible’, given that ‘people must be represented in an appropriate manner’. In addition, the representatives of the Member State declared that the European Assembly should be granted certain legislative powers.

The first European Parliament election by universal suffrage was held in 1979. The part that direct elections played in doing away with stark European inter-governmentalism is controversial. Smith recalls that well before European people were called to the polls, the Parliament

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66 Ibid., chapter VII, section IV, paragraph 1.
67 Ibid., chapter VI, section II, paragraph 6.
68 Ibid.
69 Ibid.
70 Ibid. Italics added.
71 See Kreppel, A., p. 70, footnote 19.
74 Ibid., p. 8 (point 12).
pressed for real powers on the grounds that its members were, after all, elected at national level, and thus democratically legitimated.\textsuperscript{75} Furthermore, direct elections had played no role in handing over budgetary powers to the Parliament.\textsuperscript{76}

On the other hand, though, it was only once they were elected that the members of the Assembly showed their teeth and vetoed the budget for the first time in 1980.\textsuperscript{77}

Nugent simply argues that the sole fact that the Member States waited until 1979 to hold the Parliament’s first elections, proves that the latter was feared because of its federalist core and because of the institutional reforms it could have called for.\textsuperscript{78}

Along this vein, Lodge adds that direct elections encouraged European parliamentarians to write a Treaty in 1984, as they felt they had a right to act on people’s behalf, and thus to reform the Community.\textsuperscript{79}

Corbett reminds us that after 1979, the European Parliament finally consisted of full-time members, totally dedicated to the European cause and to the enhancement of their own decisional powers.\textsuperscript{80}

Yet, what most matters at this point is to see the logical link between the Parliament’s new budgetary powers, the Council’s definitive decision for direct elections, and the strengthen of the legislative capacity of the Assembly. The latter was also a consequence of the changed attitude of the other institutions towards a new, directly elected assembly.

\textbf{2.2.2.5 The Isoglucose Cases}

Direct elections exercised a special influence over the attitude of the European Court of Justice (alternatively, the Court) towards the Parliament\textsuperscript{81} and brought to the institution a legal development parallel and equal to the political one. The two \textit{Isoglucose} decisions,\textsuperscript{82} in particular, encouraged the Parliament’s struggle for more legislative influence in several aspects.

In both cases, the Assembly intervened in direct actions where private individuals pleaded the annulment of a Council Regulation. The Parliament did not have a legal interest in the specific outcome of the cases, yet it intervened to complain about the violation of its right to give an opinion on the adoption of the Regulation at stake. The first step the Court took in the face of the Council was to declare the Parliament’s intervention admissible,\textsuperscript{83} even in the absence

\textsuperscript{75} See Smith, J., p. 57.
\textsuperscript{76} See Wallace, H., Direct Elections and the Political Dynamics of the European Communities (1979) 17 \textit{JCMS}, p. 286.
\textsuperscript{77} See Smith, J., p. 59.
\textsuperscript{80} See Corbett, R., p. 91.
\textsuperscript{81} See Judge D., and Earnshaw D., p. 40.
of a genuine interest in the outcome of the proceedings. Evidently, from then on, the Parliament’s right to intervene before the Court of Justice might function as a way of reinforcing its legislative role.

The second step was to uphold the Parliament’s right to be consulted in these stark and meaningful terms:

[C]onsultation … is the means which allows the Parliament to play an actual part in the legislative process of the Community, such power represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly. Due consultation of the Parliament in the cases provided for by the Treaty therefore constitutes an essential formality disregard of which means that the measure concerned is void.

The Court kept the borders of the right of consultation very broad. When confronted with the Council’s argument that the Parliament’s behaviour was contrary to the principle of loyalty, artificially withholding its opinion, the Court deliberately avoided any comment on the matter. Only in 1995, the Court tried to restrain the Parliament by stating that the consultation procedure required sincere cooperation between the institutions.

Using the same line of reasoning from the Isoglucose decisions, the Court concluded in later cases that the Parliament could bring proceedings for failure to act, and actions for annulment, but only when alleging that its prerogatives had been infringed in the adoption of the contested act.

2.2.2.6 Parliament’s New Rules of Procedure

As a reaction to its latest success, the Parliament overhauled its Rules of Procedure in 1981. Rules 35 and 36 introduced a delaying tactic for producing parliamentary opinions. The threat of delay could prove particularly effective on matters requiring an immediate reaction by the Parliament. Moreover, through these rules, a great deal of pressure was put on the

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84 Case 138/79, paragraph 21; Case 139/79, paragraph 21.
85 Case 138/79, paragraph 33; Case 139/79, paragraph 34.
87 Case 138/79, paragraph 36; Case 139/79, paragraph 37.
89 Parliament could plead on the basis of Article 175 EC (1958), see Case 13/83, European Parliament v Council of the European Communities, [1985] ECR 1513 (Judgement of 22 May 1985), paragraph 17. In this case the action was brought for the alleged failure of the Council to implement the common transport policy as required under the Rome Treaty.
90 See Article 173 EC (1958).
91 See Case C-70/88, European Parliament v Council of the European Communities (Chernobyl), [1990] ECR I-2041, [1992] 1 CMLR 91 (Judgement of 4 October 1991), paragraph 26. In a precedent case though, the Court ruled that only the Council and the Commission could bring annulment proceedings and that there were already other adequate means for the Parliament of ensuring that its legislative role was respected and that illegal acts were challenged: see Case 302-87, European Parliament v Council of the European Communities (Comitology), [1988] ECR 5616 (Judgement of 27 September 1988), paragraph 27.
92 These Rules of Procedure are reported in Judge D., and Earnshaw D., p. 41.
Commission to withdraw a proposal or to amend it according to the Parliament’s will. In the case of the Commission revising a proposal, the Council would have almost certainly surrendered, as unanimity was required to change the draft again.

In this manner the new rules did not only affected the relationship between the Parliament and the Commission but, according to Judge, ‘they marked a psychological turning point in the EP’s relation with the Council’.\(^93\)

### 2.2.3 Towards Significant Reforms of the Treaties

#### 2.2.3.1 The Draft Treaty on European Union (1984)

While changes of procedural rules together with some parliamentary resolutions\(^94\) belonged to the Parliament’s ‘small step strategy’, the DTEU\(^95\) was born in the context of a parallel ‘long term strategy’.\(^96\) The former Commissioner and member of the European Parliament, Altiero Spinelli, founded the ‘Crocodile Club’ named after the restaurant in Strasbourg that was used as a meeting place by deputies who wanted to endow Europe with a federal constitution. They brought on the Parliament’s resolution of calling for the creation of a Committee on Institutional Affairs with a view to the definition of the European Union’s principal goals. Set up in January 1982, the Committee drew up a preliminary Draft Treaty which entrusted the Parliament and the Council with the joint exercise of legislative power.

Article 38 of the DTEU described a scheme of approval for draft laws very close to the co-decision procedure currently in force. In writing the provision, the Committee took care of democratizing the legislative process by increasing the Parliament’s role, while at the same time safeguarding the rights of a strong executive.\(^97\) Also the budgetary procedure inspired the authors, especially in two respects: the deadlines for an institution to accept a draft and the conciliation procedure.\(^98\)

Once proclaimed, the Parliament’s participatory powers were extended to include all ‘Union laws’, comprising ‘ordinary laws’, ‘organic laws’ and ‘budgetary laws’.\(^99\) The first were to lay down the rules governing ‘common action’. The concept covered any action carried out by the institutions within the fields of competence of the Union, approximately corresponding to that of Community common policy.\(^100\) Ordinary laws were to replace

\(^{93}\) Quote from Judge D., and Earnshaw D., p. 42.

\(^{94}\) Eight parliamentary resolutions on disparate matters were issued between April 1980 and December 1981. For more details see Kirchener, E., and Williams, K., The Legal, Political and Institutional Implications of the Isoglucose Judgements 1980, p. 180.


\(^{97}\) See Capotorti, F., Hilf, M., Jacobs, F. G., and Jaqué, J., p. 152.

\(^{98}\) Ibid., p. 153 and 159.


\(^{100}\) See Article 10 DTEU and the relevant comment of Capotorti, F., Hilf, M., Jacobs, F. G., and Jaqué, J., p. 66.
old regulations, directives and decisions.\textsuperscript{101} The Treaty, however, expressed a preference for laws circumscribed to fundamental principles.\textsuperscript{102}

Organic laws required for their adoption a larger parliamentary majority than ordinary laws. Their subject matters ranged from the organization and operation of the institutions to decisions taken to introduce common action in a field originally out of the Union’s reach. While Parliament and Council were to adopt ordinary and organic laws pursuant to Article 38 of the DTEU, they were bound to a different procedure for the adoption of the budget.\textsuperscript{103} The Commission was to hold the power of implementing, where necessary, all those laws in the form of regulations or decisions.\textsuperscript{104}

The draft Treaty was adopted by the Parliament on 14 February 1984 by a large majority (by 237 votes to 31, with 43 abstentions). By establishing a co-decision procedure and a hierarchy of sources\textsuperscript{105} in the legal system of the Union, the Parliament was well ahead of its time, but the political climate was seemingly favourable as concerns institutional reforms.

\subsection*{2.2.3.2 Intergovernmental Initiatives}

In 1981 two Member States, Germany and Italy, submitted a plan for further political integration (the Genscher-Colombo Plan) to the Council and to the European Parliament.\textsuperscript{106} The Plan recalled the central importance of the European Parliament in the development of the European Union, and, thus, the need to involve the institution in the decision-making process and to review its function.\textsuperscript{107} The plan also recommended greater use of majority voting within the Council.\textsuperscript{108} The Genscher-Colombo initiative ultimately led to the drafting of a document adopted by the Stuttgart European Council in the form of the Solemn Declaration on European Union in June 1983.\textsuperscript{109} Most interestingly, the European Council bound the Council of Ministers to an inter-institutional dialogue for ‘improving and extending the scope of the conciliation procedure provided for in the Joint Declaration of 4 March 1975’.\textsuperscript{110}

The outcome of the subsequent Fontainebleau Summit had certainly been influenced by the commitment of President Mitterrand to support institutional reform and the ‘inspiration’ behind the Draft Treaty.\textsuperscript{111} The European Council indeed agreed to convene an \textit{ad hoc} intergov-

\begin{footnotes}
\footnote{Ibid., p. 138 and 139.}
\footnote{See Article 34(1) DTEU.}
\footnote{See Article 34(3) DTEU.}
\footnote{See Article 40 DTEU. Powers of implementation were also recognized in Member States; see Articles 34(1) and 42 DTEU. Power of implementation did not exclude legislation on the part of the Member States and the Commission, especially where the Union law was confined to general principles. On this point see Capotorti, F., Hilf, M., Jacobs, F. G., and Jaqué, J., p. 140.}
\footnote{The new scheme defined by Capotorti, F., Hilf, M., Jacobs, F. G., and Jaqué, J., p. 138.}
\footnote{See \textit{Bulletin EC} 11-1981, p. 89 (part II, paragraph 3).}
\footnote{Ibid., p. 90 (part II, point 8).}
\footnote{Ibid., p. 26 (point 2.3.6).}
\footnote{See the Speech by François Mitterrand of 24 May 1984 to the European Parliament, in \textit{Bulletin EC} 5-1984, points 3.4.1 \textit{et seq.}. Support to the Draft could imply the acceptance of the ‘take it or leave it’ condition set out in Article 82(2) DTEU, according to which the ratification by a \textit{majority} of the Member States whose populations represent two-thirds of the total population of the Communities would have been sufficient to determine the entry into force of the Treaty. It has been suggested that the Mitterrand speech covered France’s intention of challenging the British Government, engaged in the difficult negotiations over the British budget.}
\end{footnotes}
ernmental committee to study a possible institutional reform.\textsuperscript{112} The final report of the Dooge Committee,\textsuperscript{113} so called after its chairman, was presented to the European Council in Milan in June 1985. The report called for the strengthening of the European Parliament, which as a directly elected body deserved more than a consultative role, where ‘the principles of democracy are logically applied’.\textsuperscript{114} To this aim, the Council and the Parliament were to share ‘joint decision-making’.\textsuperscript{115} In order to deal with the shortcomings of efficiency, QMV in the Council was put forward as the best choice.\textsuperscript{116} Denmark, Greece and the United Kingdom entered reservations against co-decision and upheld the Luxembourg compromise.\textsuperscript{117}

Lastly, the Committee invited the implementation of the auspicated reforms by convening an IGC to negotiate a ‘draft European Union Treaty’ based on three elements: (1) the \textit{acquis communautaire}, (2) the Dooge Report itself, and (3) the Stuttgart Solemn Declaration. The whole production should have been guided ‘by the spirit and the method’ of the DTEU.\textsuperscript{118}

At the Milan Summit, the divisions among the national governments roughly reflected those apparent in the Dooge Report.\textsuperscript{119} The battle was particularly harsh on the voting system in the Council. Confronted with a deadlock, the President of the European Council, the Italian Bettino Craxi, boldly called for a vote on the convening of an IGC.\textsuperscript{120} The proposal was adopted by 7 votes to 3.\textsuperscript{121}

\section*{2.3 The First Intergovernmental Conference}

Notwithstanding the divergences on the institutional reforms, the Conference began with a broad consensus on the need to extend the Community competences and demolish trade barriers by 1992.\textsuperscript{122} Despite being completely opposed to a revision of the Parliament’s powers, Great Britain in particular was most committed to the internal market cause and, in this per-

\footnotesize
\begin{itemize}
  \item \textsuperscript{112} See Presidency Conclusions of the Fontainebleau European Council meeting on 25 and 26 June 1984 (http://www.ena.lu), paragraph 7.
  \item \textsuperscript{113} Report of 29 and 30 March 1985 from the Ad Hoc Committee on Institutional Affairs to the European Council (Office for the Official Publications 1985).
  \item \textsuperscript{114} Ibid., part III, section C.
  \item \textsuperscript{115} Ibid., part III, section C, paragraph a.
  \item \textsuperscript{116} Ibid., part III, section A, paragraph a.
  \item \textsuperscript{117} On co-decision the Danish representative Mr Møller entered a reservation in Annex A of the Report while Mr Rifkind and Mr Papantoniou, representatives of the United Kingdom and Greece, respectively, entered similar reservations in part III, section C, footnotes 35 and 36 of the same Report. On qualified majority, instead see part III, section A, footnote 30 of the Report.
  \item \textsuperscript{118} Ibid., part IV.
  \item \textsuperscript{119} See Corbett, R., p. 204.
  \item \textsuperscript{120} The Italian Presidency’s move was unprecedented. In the past, every institutional issue had been solved through consensus, as in the case of the ‘Luxembourg compromise’. Mrs Thatcher, in particular, remained horrified: See Budden, P., Observations on the Single European Act and ‘Relaunch of Europe’: A Less ‘Intergovernmental’ Reading of the 1985 Intergovernmental Conference (2002) 9 \textit{JEPP}, p. 89; and Corbett, R., p. 216. Moreover, there was no Treaty obligation to call for a vote on the convening of an IGC: According to Article 236 EEC (1958) an IGC \textit{could} be initiated at the request of a simple majority in the European Council.
  \item \textsuperscript{121} See Corbett, R., p. 204.
  \item \textsuperscript{122} Ibid., p. 227.
\end{itemize}
spective, ready to accept QMV in the Council, where it could speed up the process of free trade.\textsuperscript{123} QMV, however, created accountability concerns since a national government, with a specific mandate from its parliament, could be outvoted. It was thus clear that the British Government could not eat its cake, and have it too.

In response to the accountability shortcomings that QMV could cause, the Commission proposed a ‘cooperation procedure’\textsuperscript{124} and the extension of the 1975 conciliation procedure, but on this last point, countries like Denmark felt that inter-institutional agreements could do better.\textsuperscript{125}

When already eight foreign ministers had welcomed cooperation, insofar as the procedure left the Council with the final word,\textsuperscript{126} Italy announced that it would accept the reform only on condition that the Parliament would agree to it. The Italians were bound by their national chambers to fight for the Parliament’s full co-decision. The other participants took the threat seriously and modified the agreed proposal in such a way that, if the Parliament rejected the common position, the Council could overturn it only through unanimity.\textsuperscript{127}

This apparently minimal concession gave the Parliament considerable bargaining power as the Council could rarely reach unanimity, and Italy, for instance, proved on many occasions to strongly sympathize with the Parliament.\textsuperscript{128}

### 2.4 Finally: The European Parliament

#### 2.4.1 The Single European Act and the Cooperation Procedure

The SEA, ratified in February 1986,\textsuperscript{129} significantly handed the title of ‘European Parliament’ over to the Assembly.\textsuperscript{130} The cooperation procedure, however, merely allowed for the Parliament to be consulted twice before a legislative measure was adopted.\textsuperscript{131} The procedure ap-

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\textsuperscript{123} Rittberger, B., p. 158-161. Budden believes that also the imminent accession of Spain and Portugal played a role. The economies of these countries were relatively undeveloped and thus they were likely to set a protectionist policy in motion. Hence, in order to prevent a series of vetoes to liberalizing measures, the ‘minimalist’ countries (i.e. those which sought to minimize the reforms of the Treaties) eventually accepted proposals for qualified majority voting; see Budden, P., Observations on the Single European Act and ‘Relaunch of Europe’: A Less ‘Intergovernmental’ Reading of the 1985 Intergovernmental Conference, p. 88.

\textsuperscript{124} After a first reading by both the Council and the Parliament, a draft law would have returned to the Parliament in the form of a Council’s ‘Common position’. At this point, the Parliament could table amendments which the Council could adopt by a qualified majority, or, where the Commission had approved those changes, reject/amend them unanimously: see Rittberger, B., p. 170.

\textsuperscript{125} See Corbett, R., p. 244. Apropos inter-institutional agreements, it seems opportune to mention that the legal status of those agreements is so far uncertain.

\textsuperscript{126} See Budden, P., The United Kingdom and the European Community, 1979-1986. The making of the Single European Act (Oxford University Press 1994), p.361 and 362. The cooperation procedure did not only represent an acceptable solution for the accountability concerns of some of the participating governments, but also the result of the Parliament’s aggressive strategy. According to Budden, the Parliament wielded pressure on the Member States through three threats: The rejection of the 1986 draft budget; the sacking of the Delors Commission [ex Article 144 EEC (1958)]; and the withholding of its opinion on the IGC [an admissible trick after the Isoglucose rulings. The Parliament was indeed invited to give its opinion on the convening of an IGC according to Article 236(2) EEC (1958)].

\textsuperscript{127} See Judge, D., and Earnshaw, D., p. 47; and Rittberger, B., p. 171.

\textsuperscript{128} See Rittberger, B., p. 171.

\textsuperscript{129} Single European Act of 28 February 1986 (OJ 1987 L 169/1).

\textsuperscript{130} See e.g. Articles 6 and 7 SEA.

\textsuperscript{131} See Article 7 SEA amending Article 149 EEC (1958).
plied to most of the legislation needed to achieve the aim of the internal market. With the Amsterdam Treaty its scope was considerably reduced, and today it exclusively applies to the fields of Economic and Monetary Union.

The whole mechanism looks rather complicated: the Commission initiates the procedure by forwarding to the Council and the European Parliament a draft law. In the context of a first reading, the Parliament issues an opinion on the Commission’s proposal. The Council acting according to a qualified majority subsequently draws up a common position, which is sent back to the Parliament. The latter examines the text at a second reading, and within three months may adopt, amend or reject the common position. If the Parliament either approves the common position or fails to act, the Council will directly adopt it. If, on the other hand, the Parliament rejects or amends a common position, the Commission will re-examine it. The Commission may include or exclude amendments proposed by the Parliament, and in the event of a rejection the Commission may even withdraw its proposal. The Council may adopt the re-examined proposal within three months and by a qualified majority. However, if there is unanimity it may instead amend the proposal, adopt amendments not taken into consideration by the Commission, or overturn the Parliament’s rejection.

In the chart below a diagram of the functioning of the co-operation procedure as it stands under Article 252 EC (2003) [ex Article 149 EEC (1958)] is provided. The abbreviations ESC and COR stand for the European Economic and Social Committee and the Committee of the Regions, respectively.

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132 See Article 149 EEC (1958).
In practice, after the entry into force of the SEA, the Commission felt compelled to incorporate in its proposals a high percentage of the Parliament’s amendments, apparently due to the political weight they acquired after the Parliament’s direct elections. As a consequence, the Council could only do the same, unless it had the numbers to amend the drafts unani-
However, on a few occasions both the Commission and the Council surrendered to the Parliament’s threat of rejection in the second reading.\footnote{See Kreppel, A., p. 79 and 80.}

The Parliament also sought more constructive forms of dialogue. Since the cooperation procedure, stipulated no deadline regarding the adoption of a common position by the Council, and thus a delaying tactic was available to the latter, the Parliament’s Rules of Procedure envisaged the possibility of requesting informal dialogues in order to fasten the procedure.\footnote{See European Parliament, {	extit{Forging ahead: European Parliament 1952-1988, 36 years}} (Office for Official Publications 1989), p. 138.}

These early contacts continued successfully and developed under the co-decision procedure.\footnote{See Corbett, R., p. 346.}

### 2.4.1.1 Fortification: The Battle over the Choice of Legal Basis

In the context of the Parliament’s exploitation of its new powers, the battle over the choice of legal basis used by the institutions for the adoption of legislation represented its most productive commitment. After the SEA entered into force, the choice of the correct legal basis for the implementation of a Community policy became crucial since that decision determined whether the matter would fall under the cooperation procedure or not.\footnote{See Bieber, R., Pantalis J., and Schoo, J., Implication of The Single Act for the European Parliament, p. 779 and 780.}

Where that choice seemed straightforward, the Parliament was able to prevent the other institutions from eroding its powers by threatening to address the Court of Justice. On the other hand, where the proposal left room for interpretation, the Parliament had the chance to extend its area of competence.\footnote{See Corbett, R., p. 267.}

The latter was the case in the \textit{Titanium Dioxide} decision.\footnote{Case C-300/89, \textit{Commission of the European Communities v Council of the European Communities}, [1991] ECR I-2867 (Judgment of 11 June 1991).}

Here the Court of Justice determined that the principle for the choice of the correct legal basis had to be founded: ‘on objective factors … amenable to judicial review’ such as the aim and the content of the measure to be adopted.\footnote{Ibid., paragraph 10, but see also Case 45/86 \textit{Commission of the European Communities v Council of the European Communities} [1987] ECR 1493 (Judgement of 26 March 1987), paragraph 11.}

The application of these criteria proved the Directive at stake, on waste from the titanium dioxide industry, to be inextricably linked with both the protection of the environment dealt with by Article 130s EC (1958) - and the promotion of the internal market, which according to the Court, was best served by Article 100a EC (1958) on the approximation of laws.\footnote{Ibid., paragraph 13.}

Both legal bases had been introduced in the previous Treaty reform; while Article 100a provided for cooperation, Article 130s included a simple consultation of the Parliament. According to the Court, the application of both legal bases would have impaired ‘the essential element’ and ‘the very purpose’ of the cooperation procedure, namely to increase the involvement of the European Parliament in the legislative process of the Community. The Court specifically recalled the \textit{Isoglucose} cases, where the Parliament’s participation was said
to reflect a fundamental democratic principle. Additionally, the combination of Article 130r(3) EEC (1958), imposing the respect of environmental protection requirements in the implementation of other community policies, with Article 100a(2) EEC (1958), requiring the Commission to ensure a high level of environmental protection as a basis in its proposals for harmonization, convinced the Court that the mere fact that the directive pursued the objective of environmental protection was not sufficient to bring it within the scope Article 130s.

From this decision it could therefore be concluded that, where a directive pursued in equal measure both an internal market and an environmental objective, the correct legal basis would have been Article 100a.

Some authors argue that the Court was in its decision influenced by the desire to extend the Parliament’s power, as previously in the Isoglucose episodes. Nevertheless, in later disputes of analogous content the Court both disfavoured and re-favoured the Parliament, thus suggesting that the Court is involved in a genuine examination of ‘the aim and content’ of a given measure.

### 2.5 The Treaty on European Union

#### 2.5.1 General Background

The Parliament had managed the cooperation procedure efficiently, but this was only one of the factors which procured it co-decision. As regards the other factors, we need to mention the German reunification – which symbolically begun with the demolishing of the Berlin Wall in November 1989 - and the unrelenting shattering of the Soviet block, urging further European political integration; the 1992 deadline for the achievement of the single market, requiring a monetary homogeneity within the Community which had to take account of political integration, institutional strengthen and stabilisation; and the SEA itself, providing for a review of its provisions on political cooperation five years after its entry into force.

The Member Governments unhesitantly agreed – with the unfailing British exception - on the progressive development of the European Monetary Union (EMU) in June 1988. However,
only two years later they struggled in their decision to set aside suspicions over a possible conference on the European Political Union (EPU). Even the meaning of a ‘political union’ appeared to be blurry to the European partners until Jacques Delors, President of the Commission, filled the gap with a long list of issues including institutional reforms. Germany flanked the Commission in its federalist ambitions. Unlike the other Member States, Germany had very little to gain from abandoning its strong and admirable currency, the German Mark, but much to enjoy from deeper political integration. Following the reunification of the country, Chancellor Kohl worked against a ‘German Europe’ and in favour of a ‘European Germany’, which could not threaten the so longed for political thrust. After mid-1989 the Chancellor warned that the Bundestag would reject a monetary agreement that did not include progress on foreign policy and the powers of the European Parliament. Mitterrand joined Kohl’s line after some hesitation despite his reservations on the powers of the Parliament. In April 1990 they co-wrote a letter to the Presidency of the European Council forwarding the decisive application for the IGC on the Political Union. In a later document addressed to Mr. Andreotti they specifically requested that the role of the Parliament be taken into consideration, as did many other proposals filed at that time. We will now see in detail how, during the pre-negotiations, the main political actors viewed the future of the Parliament.

2.5.2 Pre-negotiations

2.5.2.1 The European Parliament: Creating a Network

The Parliament had been pressing for further institutional reform adopting a series of reports highlighting the insufficiencies of some community policies. All parliamentarian initiatives drew inspiration from the Spinelli Draft and referred to it specifically, as did the Toussaint Report on the ‘democratic deficit’. The report blames the lack of democracy in the Com-

151 See Presidency Conclusions of the European Council meeting on 25 and 26 June 1990 (Dublin), at http://www.europarl.eu.int/summits.


154 See Dinan, D., Dinan, D., Ever Closer Union: An Introduction to European Integration (Palgrave 1999), p. 137.


community on the weak powers of the European Parliament. It sees the growing demands on political integration as pressing for more democratic control at the European level. It values the support of the European Council, once asking for the Ministers and the Commission ‘to allow the EP in practice a right of legislative initiative and the right to be a party in the decisions’. It recalls the contributions of the Commission’s Vedel Report, the Isoglucose cases and the Hauer case whereby the Court of Justice bound the Community to the constitutional principles of the Member States. At the end it launched appeals to the national parliaments emphasizing their common interest, a tactic which it employed all along the road to Maastricht.

The Toussaint Report’s reflections agreed with the Herman Report which bore the idea of a new Constitution for the European Union, to be based on the DTEU and submitted to the citizens’ verdict. The ad hoc Working Group called for the cooperation of the national parliaments in this new enterprise and, eventually, formulated a threat to their governments: The Parliament would exploit its right to hamper the accession of new members if the accession were not preceded by the institutional reforms necessary for a more effective and democratic Community.

Specifically in view of the upcoming IGC on the Political Union, the Parliament issued a series of reports (the Martin Reports). The second report it adopted was the most thorough in terms of proposals for Treaty reforms, including the skeleton of a desirable co-decision procedure. The proposal was submitted to the inter-institutional preparatory conferences.

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162 The Report defines the democratic deficit as ‘the combination of two phenomena: (a) the transfer of powers from the Member States to the European Communities; (b) the exercise of these powers at Community level by institutions other than the European Parliament, even though, before the transfer, the national parliaments held power to pass laws in the areas concerned’ (Section B, sub-section III).


164 Quote from the Presidency Conclusions meeting on 7 and 8 April 1978 (Copenhagen) in the Touissant Report, Annex II. Italics added.


168 Ibid., part B, section III, paragraph s 6 and 7.


170 Ibid., part A, paragraph 2.

171 Ibid., part A, paragraph R.

172 The European Parliament shall give its assent to the accession to the Community by a European State according to Article 237 EC (1958) as amended by Article 8 SEA.


(CIP), where a few Member States took a relevant stance. For instance, positive comments and, eventually, commitments came from the German and Dutch governments, the former fully supporting the Martin co-decision plan, the latter making the increase of the power of the Parliament a condition for extending the Community’s responsibilities. 175

Consistent with their claims of a ‘shared interest’, members of the European Parliament sat together with their national colleagues in the Rome Assizes. The Conference endorsed most of the Martin Report’s proposals and stated that ‘co-decision arrangements between the European Parliament and the Council must be devised’. 176 The text was adopted by a very broad majority (150 in favour, 13 against with 26 abstentions).

2.5.2.2 The Commission: Simplifying and Extending Cooperation

On the basis of Article 236 EEC (1958) the Commission issued its opinion on the holding of a parallel IGC on the Political Union. 177 Given the need of a European political dimension stemming from the developments in Eastern Europe, the Commission defined such a conference as a ‘golden opportunity to (a) broaden the Community’s powers and (b) improve decision-making’. 178 The latter required a new agreement on democratic legitimacy including more powers for the European Parliament. The Commission wished to put more emphasis on the Parliament’s role in the cooperation procedure and its extension to all the areas covered by QMV. 179 The cautious attitude of the Commission on this occasion might be explained by the Commission’s fear of compromising its privileged role in the legislative process. Suggestions detrimental to its exclusive right of legislative initiative had already been ventilated by the European Council in Asolo where a general consensus on the matter was eventually reached. 180

2.5.2.3 The Member States: All (but Britain) for more European Parliament

The IGC on political cooperation did not benefit from the solid preparation behind the monetary agreement. Nothing even remotely resembling the Dooge Committee had been set up; hence a myriad of documents flooded the negotiation rooms only when the IGC had officially started. However, some countries, mainly smaller countries, promptly responded to the Parliament’s call for co-decision and handed in elaborate proposals.

The Belgian government, for instance, as early as in March 1990, published a memorandum stating that it was willing to give the Parliament co-decision powers in the shape of a further

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178 Ibid., p. 9.

179 Ibid., p. 17 and 18 (chapter III, section I). The new cooperation procedure would have entailed the possibility of a Commission draft incorporating the Parliament’s second reading amendments deemed adopted unless the Council rejected them by a simple majority.

chance to reject a Council common position. The new arrangement was meant to heal the Community’s ‘democratic shortfall’, accentuated by the ongoing completion of the internal market, and economic and monetary union. While appreciating the Belgian gesture, the Parliament criticized the proposal awarding a simple power of veto which could actually cast a negative light on the institution, ‘holding up the progress of the Community and causing inter-institutional conflict’. The Netherlands also produced a document calling for a broader use of the cooperation procedure, together with a strengthening of the Parliament’s position through a conciliation process; a combination eventually leading to real co-decision. In the traditional Dutch perspective, transferral of more powers to the Community was ‘impossible’ without simultaneously according greater trust in the European Parliament. The Italian Government held a similar view and was bound by a referendum to accept reforms in compliance with the Parliament’s preferences. Barricaded in its trenches, Britain consistently pursued its minimalist policy, and as it fought the single currency and a common policy so it resisted institutional improvement. Denmark followed suit, albeit tolerating a controlled extension of the cooperation procedure.

France assumed a fairly ambiguous attitude. While firmly advocating more political cooperation as a means to monitor the economical and political potential of the unified Germany, Mitterrand did not wish to award the European Parliament more powers. This position can be interpreted in various ways. It has been argued that Mitterrand soon figured that the Germans would have represented the largest contingent in the European Parliament. Moreover, there was a will to transpose the French institutional structure, with a strong executive and a weaker assembly, at the European level. Accordingly, France proposed to strengthen the role of the European Council and the Council of Ministers. Kohl and Mitterrand formalized this suggestion in their letter addressed to the Italian Prime Minister Andreotti. However, they proposed a strengthening of the legislative procedures ‘in the direction of co-decision-making for the European Parliament for acts that are truly legislative in nature’ in the same document. Hence, the letter enshrined the draft of a compromise: Kohl bartered his views on a broader role for the European Council in exchange for Mitterrand’s opening on co-decision. The Kohl-Mitterrand deal also contained a hint of an arrangement as regards a hierarchy of norms, as only the ‘truly legislative’ ones should have been subject to co-decision. This suggestion left its mark on the Final Declaration of the European Council in Rome which opened the

182 Ibid., p.121 (Preamble, point a).
184 See Policy Document of 26 October 1990 on European Political Union Presented to the Parliament, in Corbett, R., p. 179 (point 2.2).
185 Ibid., p. 174 (point 1.5).
186 See Corbett, R., p. 279.
190 Ibid., p. 121-122.
191 Quote from Kohl-Mitterrand Letter of 6 December 1990 to Mr. Andreotti. Italics added.
Conferences. At the top of ‘wish list’ was a better role for the European Parliament through the ‘extension and improvement of the cooperation procedure’, and a development of a co-decision procedure ‘for acts of a legislative nature, within the framework of the hierarchy of Community acts’.  

2.5.3 The Intergovernmental Conference on Political Union

The consensus which had underpinned the 1992 programme and the Single Act did not extend to EMU and Political Union. Agreement was now possible only through a series of fudges and low-level compromises, accompanied by a rash of exceptions, opt-outs and waivers.

The Intergovernmental Conference on the Political Union officially opened in Rome on 14 and 15 December 1990, and was held in concomitance with the monetary conference. A majority of the Member States agreed on the concept of co-decision (Belgium, Netherlands, Germany, Italy, Greece and Spain and to a very limited extent France), but almost all of them had quite a different opinion on its functioning and its scope. Britain and Denmark strongly opposed the introduction of a new procedure instead.

A rather original proposal for a new institutional scheme came from France and Germany in February 1991. Inspired, once again, by the French domestic apparatus organized on two levels of political decision and one legislative chamber, the Franco-German paper outlined a Congress built on two arms, the European Parliament and a Senate. The latter would be composed of both members of the national parliaments and the European Parliament. The two chambers would share the legislative power, but the Parliament would subordinate its will to the Senate dictating the legislative guidelines for each year. The proposal was not welcomed and silently disappeared from subsequent documents of the Conference.

A more realistic proposal came in the shape of a joint statement by Italy and Germany on 10 April, just before the presentation of the first Non-Paper (unofficial document) of the Luxembourg Presidency. The Foreign Ministers Genscher and De Michelis spelled out that the process of political integration and the building of a Union could no longer ignore the Community’s democratic shortcomings. The Parliament, directly elected by the people, should have drawn up on equal terms with the Council the acts ‘of a legislative nature’, through aconciliation procedure where necessary. Since the technical arrangements bore a secondary role, they declared that the final consent of both institutions was ‘essential’ to the new procedure. Germany went further, threatening a rejection of the EMU deal if the Parliament issue was not addressed.

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192 Quote from the Presidency Conclusions of the European Council meeting on 14-15 December 1990 (Rome), at http://www.europarl.eu.int/summits, Political Union section, paragraph 1.
194 See Corbett, R., p. 319.
196 Ibid.
As concerns the Commission, pursuant to the Rome summit’s avocation, it moved from cooperation to a form of co-decision which could apply only to those acts satisfying the conditions of a ‘law’ in the hierarchy of norms designed with the view to simplify, clarify, democratize and speed up Community decision-making.\(^{199}\) Laws were defined by reference to their content limited to the basic principles of each policy area and to rules having an ‘intrinsic legal value’, e.g. laws creating obligations and liabilities for individuals.\(^{200}\) They should have been implemented either by the Member States or by the Commission,\(^{201}\) whose instruments of implementation would have vested the form of regulations or decisions.\(^{202}\) Both laws and regulations though, would have been generally and directly applicable in the Member States\(^{203}\) and entirely binding.\(^{204}\)

This approach appealed to the Luxembourg Presidency which in its first Non-Paper put forth a general application of co-decision to all cases where the Council can decide by a qualified majority and in the case of laws of general application.\(^{205}\) The idea of a conciliatory committee was also preserved as the indispensable approval of the European Parliament for the adoption of a draft.\(^{206}\) The text did not win unanimous support: Britain, Denmark and France were against it, while the Commission strongly criticized it since in some respects it weakened its right to take legislative initiative.\(^{207}\) The Parliament manifested its support so far as the differentiation of acts could not limit the range of action of joint decision-making.\(^{208}\)

In general, the draft disappointed the integrationist parties since it built up the (in)famous ‘temple’ structure which we have inherited. Thanks to that first proposal which was meant to reconcile the federalist and anti-federalist factions,\(^{209}\) the Union currently rests on three pillars: (1) the provisions on the European Community (EC), (2) the provisions on foreign and security policy (CFSP), and (3) those on cooperation on home affairs and judicial matters (JHA). The last two pillars are kept on an intergovernmental basis, and thus not subject to the influence of the Parliament.

In the face of the criticism of its original formula,\(^{210}\) the Luxembourg Presidency presented a revised version of the draft at a ministerial meeting on 18 June. The second Non-Paper weakened the Parliament’s legislative role in two areas: Co-decision was only linked to a few items of legislation (environment, research, development cooperation and economic and social cohesion), and upon the failure of the conciliation committee, it allowed the Council to adopt its own text unless it was rejected within two months by an absolute majority of the members of

\(^{199}\) See *Bulletin EC* Supplement 2-1991, chapter IV, section III, and point 3.1 of the explanatory memorandum.

\(^{200}\) Ibid., point 3.2.2.

\(^{201}\) Ibid., points 3.2.3 and 3.2.4.

\(^{202}\) Ibid., Article 189 of the Commission’s Draft Text.

\(^{203}\) Laws calling for implementation by the Member States, similar to directives, were excluded from direct applicability. See Article 189 of the Commission’s Draft Text.

\(^{204}\) Ibid.

\(^{205}\) See *Bulletin EC* 4-1991, point 1.1.3.


\(^{207}\) Ibid., p. 16.

\(^{208}\) See *Bulletin EC* 4-1991, point 1.1.4.


\(^{210}\) See *Bulletin EC* 6-1991, point 1.1.5.
the Parliament.\textsuperscript{211} This last provision amounted precisely to that negative power so intolerable to the Parliament.

Although the European Council had welcomed the text as a basis for future negotiations, the Dutch Presidency, which had taken over, presented a brand new draft Treaty on 24 September. On ‘Black Monday’, all the European partners except Belgium and the Commission rejected the text.\textsuperscript{212} The Dutch Presidency had sketched a ‘tree’ structure, a truly federalist structure, assuming erroneously that at least eight countries would bless it. In this unfortunate formula, the cooperation procedure enriched by a final power of veto for the Parliament was extended to all areas of legislation (except agriculture and commercial policy), yet deprived of the conciliation stage.\textsuperscript{213}

When the conference met again in a restricted session in Nordwijk in November, Mr Lubbers, the Dutch Prime Minister, had already picked up the Luxembourg text adding a few modifications, i.e. the deletion of the hierarchy of norms and the extension of co-decision to a selection of policy areas, such as the free movement of workers, establishment, internal market, trans-European networks and consumer policy.\textsuperscript{214} At that time, a consensus over co-decision had in principle been reached; France had surrendered as a necessary counterpart to the German compliance on monetary matters,\textsuperscript{215} while Britain felt that to allow the Parliament a little more power was acceptable when weighed against the greater advantage of keeping the CFSP and the JHA outside the EC framework, and the Parliament’s leverage, altogether.\textsuperscript{216} In addition, John Major, the British Prime Minister, demanded that the term ‘co-decision’ was excluded from the Treaty, as a way of camouflaging its concessions, and he got his way.\textsuperscript{217} Yet, even after the Noordwijk meeting a number of issues remained unresolved including the scope of powers of co-decision.\textsuperscript{218}

Meanwhile, the Parliament had been monitoring the progress in the negotiations and in the end considered that the solution that had been adopted was inadequate. In a resolution from 21 November 1991, it anticipated the rejection of the Treaty unless it was substantially changed.\textsuperscript{219} A rejection could have brought serious consequences, as Belgium and Italy had

\textsuperscript{211} See Draft Treaty of 18 June 1991 on the Union from the Luxembourg Presidency, in Laursen, F., and Vanhoonacker, S. (Eds.), p. 391 and 392 (draft Article 189a).


\textsuperscript{214} Ibid., p. 19.


\textsuperscript{218} Twenty-fifth General Report on the Activities of the European Communities 1991 (Office for Official Publications 1992), point 34.

already stated that they would not ratify the Treaty without the Parliament’s approval,\textsuperscript{220} and in Germany a majority of the political parties favoured this line.\textsuperscript{221}

On the final battlefield in Maastricht, it was decided to drop the reference to the federal vocation of the new Treaty, as a concession to the British and in exchange of an application of co-decision in a greater number of cases.\textsuperscript{222}

However, the Parliament obtained minimal concessions as compared with its earlier expectations. The Foreign Minister Genscher suggested that a clause be added to allow future changes.\textsuperscript{223} Accordingly, the final draft left open the possibility of widening the co-decision procedure at the following IGC scheduled for the year 1996\textsuperscript{224} and of establishing a hierarchy of acts.\textsuperscript{225}

\subsection*{2.5.4 Outcome: The First Co-decision Procedure}

The Treaty signed on 2 February 1992, finally introduced co-decision which appeared as the natural evolution of cooperation.\textsuperscript{226} Co-decision differed on two main points: (1) the Commission would send its proposals simultaneously to both the Parliament and the Council, and not solely to the Council; (2) in the case of a disagreement at the second reading a conciliation committee could be convened and, thus, the Council could no longer unilaterally impose its common position. In particular, a composition committee could step in not only when the Council did not approve all the Parliament’s amendments but also when the latter declared its ‘intention to reject’ the Council’s common position. Where the Parliament, after an attempt of conciliation, reiterated its rejection by an absolute majority, the act would be deemed not to be adopted. Where instead the Parliament proposed amendments either at the second reading or during the conciliation stage, these would be forwarded to the Council and the Commission, which would deliver an opinion on them. The Council could then adopt the act, but only unanimously in case it included amendments disapproved of by the Commission. If, on the other hand, a disagreement persisted, the Presidents of the two ‘chambers’ could call for conciliation. In this phase, the Commission figured as the impartial mediator. If the committee failed, the proposal would fall unless the Council, acting by a qualified majority, confirmed its common position. At this stage, the latter could impede the adoption of the act only by collecting the absolute majority necessary to file away the proposal.

The procedure bore its merits. First of all, the Parliament acquired an absolute power of veto it had never enjoyed before. Secondly, it acquired an extended ‘right to conciliation’ stemming from the 1975 conciliation procedure, that was also intended as a right to negotiate face-to-face with members of the Council.\textsuperscript{227} Personal contacts came into use even before the con-

\begin{itemize}
\item \textsuperscript{220} See Dinan, D., p. 161; and Vanhooijdonck, S., Role and Position of the Community Actors: The European Parliament, p. 220.
\item \textsuperscript{221} See Burgess, M., p.206; and Moravsick, A., p. 448.
\item \textsuperscript{222} See Wester, R., The Intergovernmental Conference: National Positions. The Netherlands, p. 175.
\item \textsuperscript{223} See Moravsick, A., p. 457.
\item \textsuperscript{224} See the Treaty on Political Union: Final draft of 10 December 1991 by the Dutch Presidency as modified by the Maastricht Summit, in Laursen, F., and Vanhooijdonck, S. (Eds.), p. 462 (draft Article 189b) and p. 480 (draft Article W).
\item \textsuperscript{226} See Article 189b EC (1993).
\item \textsuperscript{227} See Warleigh, A., \textit{Understanding European Union Institutions} (Routledge 2002), p. 67.
\end{itemize}
conciliation stage pursuant to an inter-institutional agreement subscribed in 1993,228 and heir of the practice initiated under the cooperation procedure. According to the agreement, the Council Presidency, the Commission and the chair or rapporteur of the relevant parliamentary committee should continue to develop the practice of oral correspondence in the phases preceding conciliation. Additionally, the Parliament and the Commission chose to intensify their inter-institutional dialogue by signing a Code of Conduct in March 1995. The area covered by the undertaking included the amendments adopted by the Parliament at the second reading under the co-operation and the co-decision procedure, of which the Commission should have taken ‘the utmost account’.229 The agreement also cast its net over the choice of legal basis, whereupon the two institutions would meet to discuss the matter and the Commission, in particular, would remind the Council to re-consult the European Parliament whenever it was planning to amend a legal basis.230 Bearing in mind the elected character of the European Parliament and the necessity to conduct the institutional work harmoniously, the Commission also undertook to withdraw a legislative proposal rejected by the Parliament ‘where appropriate’.231 The Code does not clarify whether this obligation concerned all the stages of the co-decision procedure. If this was the case, the Commission would have been bound to withdraw its proposal even before the Council could resurrect its common position.232 In exchange for these concessions, the Parliament pledged not to withhold its opinion in order to hamper the legislative progress.233

One of the most visible faults of the procedure was, however, the Council’s prerogative of confirming its joint position at the final stage: this represented a distortion of the institutional balance and harmed the Parliament. But the latter soon counteracted. Already in September

228 See Arrangements of 17 November 1993 for the proceedings of the conciliation committee under Article 189b (OJ 1993 C 329/141). These informal contacts are known as ‘triallogues’. The first one officially took place during the negotiations on ‘Socrates’ and ‘Youth of Europe’. However, according to Neuhold they became ordinary during the Spanish Presidency by mid 1995.

229 Any refusal to include those amendments should have been discussed. See Code of Conduct of 15 March 1995 (OJ 1995 C 89/69), point 2.


232 In the post-Maastricht period, the Commission’s right of withdrawal at any time during the co-decision procedure was part of the inter-institutional debate, where the Council alone argued against it. For more details see Boyron, S., Maastricht and the Co-decision Procedure: A Success Story (1996) 45 ICLQ, p. 298-301.

233 See Code of Conduct of 15 March 1995, point 9. In 1995 the Court of Justice also asked the Parliament to contain its delaying tactics within the limits of sincere cooperation with the other institutions. See Case C-65/93. The Council strongly disapproved of the Code of Conduct as long as it put the constitutional independence of the Commission at risk. See the Report of the Council of 31 March 1995 on the Functioning of the Treaty on European Union, (Office for Official publication 1995), paragraph 32. The inter-dependence of the Parliament and the Commission had also been enhanced by a formal provision. The new Article 158 EC (1993) stated that the governments of the Member States shall have appointed the President of the Commission after consulting the European Parliament. The latter should, then, hold a vote of approval of the whole Commission. Consequently, the Article prolonged the Commission’s term of office to match it with the Parliament’s term of five years. The combination of these norms with co-decision focused on the idea of a traditional legislative bicameral system, supervising an executive body, the Commission. See Noël, E., A New Institutional Balance?, in Dehousse, R. (Ed.), Europe after Maastricht: An Ever Closer Union? (Beck 1994), p. 21.
1993 the Parliament revised its Rules of Procedure watering down the ‘take-it-or-leave-it’ option it was offered after a failed conciliation. According to the new rules, Strasbourg would have automatically voted on a rejection motion a Council’s unilateral action on the third reading. This strategy would confirm that only conciliation and agreement could pave the way to efficient decision-making.\(^{234}\) The Parliament materialized its threats at the first opportunity. When the Council dared to re-enter its common position during the making of the open network provision (ONP) for voice telephony, the European Parliament rejected it by an overwhelming majority.\(^{235}\)

The very limited scope of the procedure represented a further lamentable point. The Parliament’s leverage (merely) covered the free movement of workers, the right of establishment, services, the internal market, education, health, consumer policy, trans-European networks, the environment, culture and research. The legal basis for culture and research still required a unanimous vote in the Council.\(^{236}\) This requirement notoriously narrows the Parliament’s room for manoeuvre\(^{237}\) and the Court of Justice had also warned that it was incompatible with an active parliamentary contribution.\(^{238}\) Where missing, as in consumer protection and environmental stances, Member States remained free (and sovereign) to apply more stringent standards.\(^{239}\) Along the same lines, Member States territorially affected by them could always veto guidelines on trans-European network measures.\(^{240}\) If this was not enough, the Treaty limited the application of co-decision to ‘incentive measures’, ‘guidelines’, or ‘programmes’ in most fields.\(^{241}\) It has also been suggested that Parliament would have barely been able to perform even in the internal market given that almost all legislation necessary to complete it had been adopted before Maastricht.\(^{242}\) On the other hand, the Inter-governmental Conference had, to all appearances, hastened to codify the Titanium Dioxide jurisprudence. Indeed, provisions on education,\(^{243}\) health,\(^{244}\) and consumer protection\(^{245}\) expressly established that Article 100a EC (1993) applied in the case of harmonization measures. As regards the environment, the revised Article 130r EC (1993) reinforced the concept of the environment as ‘a component of other policies’\(^{246}\) with the following sentence: ‘Environmental protection requirements must be integrated into the definition and implementation of other Community policies’\(^{247}\)

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\(^{234}\) See Corbett, R., p. 354.


\(^{236}\) See Articles 128 (5) and 130i EC (1993).


\(^{238}\) See Case C-300/89, paragraphs 19 and 20.

\(^{239}\) See Articles 129a (3) and 130t EC (1993).

\(^{240}\) See Article 129d EC (1993).

\(^{241}\) Article 189b EC (1993) instituting the co-decision procedure would have applied to ‘incentive measures’ in the fields of education, health and culture; to ‘guidelines’ in the field of trans-European networks; and to ‘general action’ programmes and ‘framework’ programmes in the field of the environment and research, respectively.


\(^{243}\) See Article 126(4) EC (1993).

\(^{244}\) See Article 129(4) EC (1993).

\(^{245}\) See Article 129a EC (1993).

\(^{246}\) See Article 130r (2) EEC (1958).

\(^{247}\) A similar expression may be found in the new Article 129 EC (1993) on public health. The Article reads ‘Health protection requirements shall form a constituent part of the Community's other policies’.
Among these other policies, harmonization measures fulfilling environmental requirements were, for the first time, specifically mentioned.  

### 3 Towards Simplification and Extension

### 3.1 The Treaty of Amsterdam

#### 3.1.1 Overview

The Maastricht Treaty envisaged the possibility of widening the scope of the co-decision procedure and of establishing an appropriate hierarchy of acts. According to Article N(2) EU (1993) both these issues were to be tackled in the framework of an IGC to be held in 1996.

Although Member States were not keen to re-open negotiations, the debate over the Community ‘method’ had become very topical after an exhausting ratification process. Unexpectedly, Germany, hitherto one of Europe’s champions, was the last Member State to ratify the TEU. In the so called ‘Maastricht decision’ the German Federal Constitutional Court approved the Treaty – challenged by several political parties – but underlined that the democratic legitimacy of the Union does not only come from the Bundestag's approval of the Maastricht Treaty, but also, and increasingly, from the European Parliament. Hence, the democracy, openness and transparency of the Community model became a top priority.

In the meantime, most Eastern and Southern parts of Europe submitted applications for membership. Countries like France urged for an institutional reform for a Europe of over twenty members. By 1993 the Brussels European Council had extended the workload of the Conference to achieve the reconciliation of effectiveness and democracy in the Union.

A later European Council on Corfu invited the institutions to produce reports on the operation of the Treaty on European Union as input for the Reflection Group set up to prepare the ground for the IGC. The Group was chaired by Mr Westendorp, Spanish State Secretary for European Affairs. It hosted, apart from the representatives of the Member States, one personal representative of the President of the Commission (Mr Oreja), and two representatives

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248 See Article 130r(2) EC (1993).
249 See Article 189b(8) EC (1993).
251 Article N(2) EU (1993) reads: ‘A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided’.
253 In June 1992 the Danes also voted against the ratification of the TEU: 50.7% of the electorate was against and 49.3% in favour. See Dinan, D., p.149 and 150 and p. 152-155.
256 See Presidency Conclusions of the European Council meeting on 29 October 1993 (Brussels), at http://www.europarl.eu.int/summits.
257 See Presidency Conclusions of the European Council meeting on 24 June 1994 (Corfu), at http://europa.eu.int, section IV.
of the European Parliament (Mrs Guigou, French Socialist, and Mr Brok, German Christian Democrat). The Parliament had long pressed for its involvement in the negotiations even going so far as to threaten to block enlargement. In the Reflection Group it managed to broaden and stimulate discussion, having bypassed unrealistic demands. The appreciation it received from the other political partners encouraged its requests for participation at the IGC, at least as an observer. On this issue, the Turin European Council laid down the conclusive arrangement confining the Parliament’s involvement to an exchange of views with the ministers and the presidency of the Council. The settlement was unprecedented and certainly fruitful, albeit not comparable to the observer status denied due to the fierce opposition of France and the United Kingdom. The same European Council, which formally opened the Conference, styled a promising programme. Once it had collected suggestions from the institutions and from the Westendorp Report, it assigned the Conference with the task of studying (1) the simplification of the legislative procedures, (2) the possibility of broadening the scope of co-decision in truly legislative matters, and (3) the role of the Parliament besides its legislative powers.

On this basis, the 1996 IGC, unlike its predecessor, had been very well prepared. For the sake of transparency, the positions of the parties were known in advance and throughout the negotiations. The Conference suffered, however, an initial stoppage due to the obstructionist policy of the British government, with Prime Minister John Major in a corner after the outbreak of the BSE crisis, and the subsequent European ban on the export of British beef.

At the end of the year the Irish Presidency presented a draft which represented a ‘good basis’ for negotiations, but did not dare to force common solutions for the most controversial issues. The bulk of the work was therefore left to the Dutch presidency, under the pressure of a deadline set for June 1997. If the representatives finally managed to get something done, it was principally due to a blessed new Labour government in Britain, headed by Mr Tony Blair.

The Treaty was signed in Amsterdam on 2 October 1997, went through a smooth ratification process, and entered into force on 1 May 1999. It simplified the co-decision procedure and extended it to 24 areas. Nentwich and Falkner believed that this Treaty concluded what the SEA had begun, namely making the European Parliament a co-legislator, equal to the Council. Their expectation was that co-decision would be perceived as the standard legislative pro-

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259 Ibid., p. 421.
261 See Deloche-Gaudez, F., France: A Member State Loosing Influence?, p. 149.
262 See Presidency Conclusions (Turin), paragraph 2.
264 See the Presidency Conclusions of the European Council meeting on 13 and 14 December 1996 (Dublin), at http://europa.eu.int, section I.
265 See Dinan, D., p. 176.
266 The deadline was confirmed by the Dublin European Council.
267 According to Best the rather distant deadline for the IGC was set on purpose in the hope that the British elections would ease the final deal. See Best, E., The United Kingdom: From Isolation Towards Influence?, in Laursen, F. (Ed.), p. 359.
While in the last section I will offer some statistical data to assess what progress has effectively been made, let me first try to illustrate proposals and events that led to such an applauded outcome.

3.1.2 The Commission: A New Approach?

The Commission probably made the most decisive contribution for the final deal on co-decision. It forwarded three documents on the topic of which the most important was the Report on the scope of the co-decision procedure submitted pursuant to Article 189b(8) EC (1993). Simplification was at the top of the Commission agenda and was addressed in two respects: simplification of the legislative system as a whole and simplification of the co-decision procedure in particular. The Commission counted more than twenty legislative procedures illogically scattered in the Treaties. In order to ensure proximity to the citizens, openness and transparency – principles that at the time were dear to all political actors still recovering from the shock of the Maastricht ratification process – and to put an end to time-consuming disputes over the choice of legal basis, the Commission proposed to circumscribe the procedures to assent, consultation and co-decision, doing away with the cooperation procedure.

Examining co-decision the Commission noted that the procedure had worked efficiently as a result of the cooperation between the institutions, including the Agreement on the Conciliation Committee. Its further extension, however, was possibly advisable only after few important deletions and adjustments including the attachment of deadlines to first readings, the deletion of the intention to reject and of the third reading as a whole. Once revised, co-decision spread in such a way as to respond to growing demands for full democratic con-

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270 Article 189b(8) EC (1993) reads: ‘The scope of the procedure under this Article may be widened, in accordance with the procedure provided for in Article N(2) of the Treaty on European Union, on the basis of a report to be submitted to the Council by the Commission by 1996 at the latest’. The other two documents handed in by the Commission were the Report of 10 May 1995 on the operation of the Treaty on European Union (SEC (1995) 731 final), and the Commission Opinion of 28 February 1996 ‘Reinforcing Political Union and Preparing for Enlargement’, in Bulletin EU 1/2-1996, point 2.2.1. The report on the operation of the Treaty has been generally recognized as the most influential of all institutional reports submitted to the Reflection Group. See Gray, M., The European Commission: Seeking the Highest Possible Realistic Line, in Laursen, F., p. 386.
272 Ibid., Preface. See also the Commission Opinion, paragraph 19.
274 Ibid., Preface. See also the Commission Opinion, paragraph 22.
276 See Commission Opinion, paragraph 22.
In this connection, the Commission brought up the sore point of the ‘Maastricht decision’. 278

But how should co-decision have been extended? The Commission sketched four models: 279 the ‘case-by-case’ model, employed by the TEU in order to satisfy the exceptions requested by each Member State; the ‘hierarchical’ model, already proposed during the Maastricht negotiations, where the norms are ranked depending on their normative or implementing character; and two other models applying co-decision to all instruments enacted by the cooperation procedure, or to all instruments adopted in the Council by qualified majority.

Whether the Conference aimed at a more simple Treaty to be praised by the general public, the first approach did not represent a satisfactory alternative. 280 The second never tempted most Member States, unfamiliar with such abstractions and afraid of legal uncertainty. 281 The final two ‘would go both too far and not far enough’, in other words they might provide for co-decision in purely technical areas and, at the same time, leave some important legislative provisions out of reach. 282 Therefore, the Commission took an unexplored path. It proposed, not a hierarchy of acts, but ‘common’ criteria to identify a genuinely legislative instrument. 283 The criteria would bear no legal effect and would not need formalization; they would instead serve as guidelines to determine which of the areas of cooperation should come under co-decision and which should not. The Commission reasoned that in order to fall within the scope of the legislation an act should match this description, it should: (1) be directly based on the Treaty; (2) be binding; (3) determine essential elements of Community action in a given area; and (4) be general in scope. 284 Point (1) and (3) seem to consolidate the jurisprudence of the Court of Justice reserving measures directly based on the Treaty 285 and ‘essential’ to the subject matter of Community action to the ‘legislative authority’. 286

However, the criteria are ambiguous and open to interpretation. They could mystify a ‘case-by-case’ model or leave for implementation important measures. Evidence of this came timely from the European Parliament’s comments on the section of the report listing areas amenable for co-decision pursuant to the four criteria. 287 The Parliament vehemently disagreed: it considered both the list and the criteria too scarce. 288 Furthermore, the Commission’s scheme entailed a priori exceptions – unacceptable to the Parliament – including agriculture, trade rules and the economic and monetary provisions. According to the Commission,
acts adopted in these areas could not in principle fulfil the criteria due to their special character, unless they concerned policy formulation.\textsuperscript{289}

On the whole, the proposal was ambitious as regards the extension of parliamentary powers, but it still steered a middle course. This could explain why commentators disagreed on the impact of this proposal on the Conference. Some argued that the Commission’s approach underpinned the final draft;\textsuperscript{290} others implied that it utterly failed against the dominance of the old case-by-case approach.\textsuperscript{291}

3.1.3 The European Parliament Retreating

The European Parliament was praised for its moderate approach to the Amsterdam negotiations. To hold this generally true, you need to ignore the Constitution that the Parliament submitted to the institutions and each Member State in 1994 with a view to the upcoming IGC.\textsuperscript{292} For the tenth Anniversary of the Spinelli Draft, Mr Herman and the Committee for Institutional Affairs drew up what, at that time, was considered a far-reaching text.\textsuperscript{293} In Article 31 of the relevant resolution, as in the past for the DTEU, the Parliament drew up its own ‘hierarchy of legal acts’. It specified three categories of ‘laws’ to be adopted jointly by the European Parliament and the Council: constitutional laws, organic laws and ordinary laws. The implementation of regulations and individual decisions, would instead be adopted by the ‘institutions’, namely the Commission and the Council.\textsuperscript{294} Laws could also take the form of framework laws, the equivalent of the current Directives. While constitutional laws represented a new category comprising laws which amend or are incorporated into the Constitution, all the other instruments had already been part of the DTEU. No specific structure was provided for the legislative procedure.

While the draft Constitution was perhaps an expression of its true will, the Parliament patiently lowered its demands. With few exceptions, it followed the Commission’s line on simplification.\textsuperscript{295} In particular, it found that an act should be adopted as soon as the parties have reached an agreement; to this end, a simplified conciliation procedure could intervene already at the first stage. On the grounds of equality, however, it requested the harmonization of the majorities needed for rejecting the final text.\textsuperscript{296}

\textsuperscript{289} See Commission Report of 3 April 1996, chapter II, section B, paragraph 3, sub-paragraphs a, b and c.
\textsuperscript{293} See Jacobs, F., The European Parliament, p. 58. We must not forget that the Parliament had been given a lot of scope for a constitutional overhaul by the Italians with the referendum held in 1989.
\textsuperscript{294} The Council could adopt implementing regulations only in ‘specific’ areas to be determined by law (Article 34). The implementing power primarily rested, however, with the Member States.
\textsuperscript{296} Ibid., paragraphs 30-32. See also the European Parliament Resolution of 13 March 1996 on (i) The Parliament’s Opinion on the Convening of the Intergovernmental Conference; and (ii) evaluation of the work of the Reflection Group and definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference, in Bulletin EU 3-1996, point 2.2.1.
Approaching the extension of co-decision, Parliament supported the introduction of a new category of implementing acts as long as it did not jeopardize its legislative functions.\(^{297}\) This fear is frequently manifested by the Parliament and is perhaps due to the growing use of delegation. In face of the Commission, an accentuated need for democratic control was found in the agricultural sector, where ‘the Union largely evades the scrutiny of the national parliaments’.\(^{298}\)

### 3.1.4 The Member States: Much Ado about Nothing

Although the Council preceded the other institutions by adopting its report on 10 April 1995,\(^{299}\) its contribution was the poorest.\(^{300}\) Since the Maastricht Treaty was only two years old, the Council felt that not enough experience had been acquired and that it was therefore inappropriate to go beyond a mere statement of the facts.\(^{301}\) Interestingly though, in the section dedicated to the institutional system, the Council dwelled on shortcomings that were universally perceived, hence confirming them as top priorities for the IGC programme.

Dealing with efficiency, the Council praised the ‘continued’ extension of the majority voting system, yet regretted that its beneficial effects were obscured by a large number of procedures.\(^{302}\) To this regard, it recalled that ‘some quarters’ believed that a ‘hierarchy of acts’ would have broken the impasse.\(^{303}\) No specific link was created between the need for more QMV and democracy. The Council only underlined that the Parliament was essential but not sufficient to legitimate the Union’s institutional system as a whole.\(^{304}\) Pushing this line further, it stressed that the ministerial college was instead becoming an increasingly estimable source of democratic legitimacy insofar as national parliaments had shown an increased interest in the working of the Union, not least thanks to \textit{ad hoc} national constitutional reforms.\(^{305}\)

The Council further diminished the role of the Parliament when it assessed co-decision. Although the procedure, according to the report, had come about during reasonable times, it was still unfortunately complex and weakened by the Parliament’s obstructionist behaviour. The conflict over comitology was illustrative in this respect.\(^{306}\) Moreover, the constant misuse by the Parliament of the budgetary procedure to influence the formulation of agricultural policies generated persistent institutional conflicts.\(^{307}\) The Council made no proposals for defusing the

\(^{297}\) See the European Parliament Resolution 17 May 1995, paragraph 32.
\(^{298}\) Ibid., paragraph 10.
\(^{300}\) See also the overview offered in General Report on the activities of the European Union 1995 (Office for Official Publications 1996), point 1025.
\(^{302}\) Ibid., paragraph 16.
\(^{303}\) Ibid., paragraph 16.
\(^{304}\) Ibid., paragraph 16.
\(^{305}\) Ibid., paragraph 18. Germany, for example, had reformed its Basic Law to favour closer control by the \textit{Länder}. See Beuter, R., Germany: Safeguarding the EMU and the Interests of the \textit{Länder}, in Laursen, F., p. 101.
\(^{307}\) Ibid., paragraph 35.
situation either by merging the budgetary and the legislative authority or by subsuming agriculture under co-decision.

In this rather stagnant framework, the attitude of each Member State towards decision-making reforms had not visibly changed since Maastricht. Germany, at least for the bulk of the negotiations, led the pro-integration faction, asking for a broad extension of both co-decision and majority voting in the Council. In September 1994, the CDU/CSU group in the Bundestag issued a Manifesto calling for a definitive reshaping of the institutional system turning the Parliament and the Council into full-time legislators and the Commission into a federal government. A conceptually similar proposal came from the Länder a few months later. The Italians then joined the Germans committing their political actions to full co-decision for the Parliament in all ‘legislative’ matters.

At the other end of the spectrum, the United Kingdom opposed any departure from the status quo. Unsatisfied with the Parliament’s ‘sluggish’ conduct, it advised the institution to exercise its present powers responsibly and stop struggling for a role that belonged to national parliaments. On QMV, Britain sought to protect its national interests supporting the ever-green ‘Luxembourg compromise’.

France, as usual, tried to camouflage the huge gaps in the Paris-Berlin axis as regards institutional matters. French declarations concerning the reinforcement of the Council’s powers and an increased role for the national parliaments could hardly be reconciled with those of the German representatives. However, the two countries managed to co-write the unfailing letter wishing democratic consolidation through increased responsibility for the European Par-

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309 The CDU (Christian Democratic Union) is the largest conservative political party in Germany. In Bavaria, where it does not exist, its role is played by the CSU (Christian Social Union). The two parties cooperate at the federal level.


311 In brief, the Länder held a positive view as regards the regular use of QMV in the Council, if reinforced in the form of a double majority representing the majority of the Member States in the Council as well as the majority of the people of those Member States. The voting system, in turn, was linked with co-decision. See Basic Position of the German Länder in European Parliament, Intergovernmental Task Force (1996).

312 See the Joint Declaration of 15 July 1995 by the German and the Italian Foreign Ministers regarding the 1996 Intergovernmental Conference in European Parliament, Intergovernmental Task Force (1996). The Parliament’s association with ‘legislative’ instruments rooted in Italy during the TEU preparations, together with the related quest for a hierarchy of legal acts. During the Luxembourg Presidency, Italy proposed a new typology of Community acts, in an attempt to clarify the role of the institutions in the decision-making process. For details see Martial, E., Italy and European Political Union, in Laursen, F., and Vanhoonacker, S., p. 146-148. See also Susanna Agnelli, Ministro degli Esteri Italiano, Discorso alla Camera dei Deputati of 23 May 1995 in European Parliament, Intergovernmental Task Force (1996).


liament as well as a ‘closer involvement’ of the national parliaments. France, however, soon revealed plans for a brand new body, called the ‘High Parliamentary Council’, consisting of representatives from national parliaments and consultable on the correct application of the principle of subsidiarity. It is clear that by excluding the Union competence, national parliaments could indirectly restrain the Parliament’s exercise of power. Finally, the French government paraded its inconsistencies by upholding both the increase in the number of decisions adopted by QMV and the postponement of the vote along the lines of the ‘Luxembourg compromise’.

The afore-mentioned positions were easily recognisable in the final report of the Reflection Group, which, notwithstanding the participation of Parliament and Commission, kept to a fairly intergovernmental tone. The parties seemed to converge on three issues: (1) the improvement of democracy by enhancing the role of the European Parliament as well as the national parliaments (however, without creating a new body French in style); (2) the reduction of the variety of procedures in force under the Treaty; and (3) the simplification of the co-decision procedure, while preserving the balance within the Council and the European Parliament.

On the related question of the establishment of a hierarchy of legal acts there was still a significant split. ‘Those’ opposing a new system mainly refuted this logic, based on the separation of powers within a State. That logic would have transformed the Council into a second legislative chamber and the Commission into the executive of the Union. However, they recommended an enhancement of the quality of each act and, in this context, a re-exploration of the original purpose of the use of the Directive. They briefly concluded that the introduction of co-decision had in any event reduced the relevance of the debate on the hierarchy of acts. It is unclear whether they meant that all acts subject to co-decision were to be classified as legislative in nature or not.

What is particularly interesting in the line of reasoning of those who instead were in favour of a hierarchy of acts, is the point that a classification would, apart from clarifying the functions of each institution, simplify the application of subsidiarity. Hence, the opposing parties

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316 See Memorandum on France Guidelines for the 1996 IGC, published in the daily newspaper ‘Le Figaro’ (20 February 1996) in the European Parliament, Intergovernmental Task Force (1996). See also the declaration of the French Foreign Minister Alain Juppé to the National Assembly on 3 November 1994 under the heading ‘France’, in the European Parliament, Intergovernmental Task Force (1996). Deloche-Gaudez explains France’s contradictory attitude to efficiency as having to do with France’s dual aspiration: On the one hand, France wished to ‘take custody of’ Europe’s decision-making processes, and thus pressed for institutional reforms. On the other hand, it was hostile towards strong supra-national institutions that were unavoidable if the Union was going to function smoothly after the enlargement. See Deloche-Gaudez, F., France: A Member State Loosing Influence?, p. 141 and 142.
318 These three points have been taken from the Report from the Chairman of the Reflection Group of 5 December 1995, part 1, section II and paragraph 84.
319 Ibid., paragraph 126.
320 Ibid., paragraph 126. The Commission had first suggested that a hierarchy of acts would grant the correct application of the principle of subsidiarity during the negotiations on the TEU, see part 3.6.
shared at least one common interest, i.e. more room for the action of States, either by establishing a hierarchy of legal acts, or by a better (and perhaps enhanced) use of directives.

### 3.1.5 The Irish Draft Treaty: A Step towards True Equality

The method applied in the draft was based on ‘successive approximations of Member States’ positions on the less contentious issues’. However, unlike the Westendorp Report, the draft blocked out certain proposals for convergence. Preliminarily, the Irish Presidency endorsed the idea of a general reduction of the legislative procedures to only three: assent, co-decision and consultation. However, it acknowledged that cooperation could not be removed from the provisions on the EMU as the Conference had agreed not to reopen the debate on the subject. The fear was that a renegotiation could put the entire project at risk. Turning to co-decision, the Presidency opted for the repeal of the third reading, in order to finally put the Parliament on an equal footing with the Council. Since this was a highly controversial topic, it further stressed that in any event the Parliament would ‘under the existing procedure, reject any common position so confirmed’ probably having the ONP case and the Parliament’s internal rules in mind. Other reforms were meant to speed up the procedure, like the abolition of the intention to reject or stricter time limits for the adoption of an act. As regards the extension of the procedure, the Commission’s proposal was preferred to the traditional case-by-case approach. However, discussions on the definition of the criteria were ongoing. On the parallel issue of QMV in the Council, the Presidency proposed ‘not’ to resort to a case-by-case approach, and maybe to phase out its extension over specified time periods.

Unlike the proposal on the voting system, the Irish draft article on a re-structured co-decision procedure was almost entirely transposed in the final Draft Treaty of Amsterdam.

### 3.1.6 Outcome: The Second Co-decision Procedure

The decisive deal was only struck under the Dutch presidency when both France and the United Kingdom experienced a change in their executive, representing a major turning point in the negotiations. The new socialist governments (led by Tony Blair and Lionel Jospin), were much more favourably disposed towards the European Parliament than their predecessors. Tony Blair’s Labour Party wielded a primary role in the European assembly where it formed the largest national unit. Elizabeth Guigou, the new French Minister of Justice, had

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321 See Dinan, D., p. 177.
323 See Dinan, D., p. 172.
324 See The European Union Today and Tomorrow, section IV, Chapter 14.
325 Ibid., at section IV, Chapter 14.
326 Ibid., at section IV, Chapter 14.
327 Ibid., at section IV, Chapter 15.
acted on behalf of the Parliament throughout the IGC negotiations.\(^{330}\) Suddenly, President Jacques Chirac had been reported speaking in favour of the extension of co-decision and of an equal status between the Parliament and the Council.\(^{331}\) The Dutch Presidency, just as integrationist as its predecessors, took a chance on the winds of change, and fostered a positive outcome.\(^{332}\)

As predicted, the Amsterdam Treaty cut the legislative procedures down to mainly three. Cooperation still applied to economic and monetary provisions for the above-mentioned concerns. Co-decision was brought to its latest form. In short, an act may already be adopted at the first or second reading if the Council and the Parliament agree at these stages; the Parliament may immediately reject a common position, without notifying its intention to do so; various time limits are set with the view to assuring that the period between the Parliament’s second reading and the outcome of the whole procedure does not take longer than nine and a half months;\(^{333}\) and, last but definitely not least, the Council can no longer resume its common position.

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\(^{331}\) Seemingly, the President had appreciated the Conference’s efforts to enhance the role of the national parliaments included in the Protocol annexed to the Treaty of Amsterdam of 2 October 1997 on the role of national parliaments in the European Union (OJ 1997 C 340/113). After all, he was ready to categorize the Parliament’s question as secondary: see Deloche-Gaudez, F., France: A Member State Loosing Influence?, p. 71, 149 and 151. See also Moravesik, A., and Nicolaïdis, K., p. 68.

\(^{332}\) Ibid., p. 71.

\(^{333}\) See Declaration No 34 annexed to the Treaty of Amsterdam of 2 October 1997 on respect for time limits under the co-decision procedure (OJ 1997 C 340/137).
Figure 2: The Functioning of the Co-decision Procedure (Art. 251 EC-Treaty)

Source: http://europa.eu.int/eur-lex.
Most of these reforms simply codified already existing practices. Compromise-based agreements, for instance, can be traced back to the dawn of the cooperation procedure. They were subsequently augmented on account of a Joint Declaration binding the institutions to undertake ‘appropriate contacts’ (in heathen language, trialogues) to quickly reach a compromise.

Co-decision stretched to 24 areas (including visa provisions, which would have passed to co-decision five years after the Amsterdam Treaty entered into force). Nine areas were entirely new, i.e. incentive measures in the field of employment, customs cooperation, equal opportunities, minimum requirements for the quality and safety of organs, veterinary/phytosanitary health policy, access to EU documents, fraud, statistics, and the creation of a data protection unit. All but four legal bases previously subject to cooperation were transferred to co-decision, including the provisions on transport, development policy, and the environment.

Against this generally positive outcome, a first important remark indicates that the new procedure did not set a perfect equilibrium between the Parliament and the Council. At the second reading, if the Parliament does not take a position within three months, the act is deemed to be adopted in the version of the Council’s common position. Consequently, the decision taken would not necessarily reflect a jointly agreed text. Moreover, an absolute majority – quite difficult to reach – is required if the Parliament is going to amend or reject the Council common position. Instead only a simple majority is required for an approval.

Secondly, to further jeopardize the Parliament’s effective power, four legal bases providing for co-decision were still coupled with unanimity in the Council. Beuter and Devuyst blamed this shortcoming on the unexpected German veto on the extension of majority voting in the Council at the end of the negotiations. Chancellor Kohl was under pressure particularly in immigration-related fields from the Länder bearing the financial costs in those fields.

Thirdly, co-decision continued to be excluded from key areas such as agriculture, tax harmonization (albeit so important for the achievement of the internal market) and commercial policy, and from the second and the third pillar. Some improvements could, though, be registered: Veterinary and phitosanitary measures moved from the agricultural to the public health sector where co-decision applied. This could have signalled a political will to gradually meet the Parliament’s expectations on agricultural policy. Analogous comments are feasible with

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340 See Beuter, R., Germany: Safeguarding the EMU and the Interests of the Länder, p. 118.
regard to the new provisions on customs cooperation and fraud potentially corrupting the intergovernmental character of the JHA area.

On the whole, the Parliament’s powers still looked fragmented and unevenly distributed, with all the inconveniences this caused as regards the choice of legal basis. Nevertheless, authors like Petit have tried to put the overall result into perspective, asserting that the extension of co-decision essentially followed the line of the Commission report ‘to the effect that any instrument of a legislative nature should be adopted by the co-decision procedure’. Through this avenue, the Community system would come closer to a ‘hierarchy of acts, albeit by an empirical process’, something close to what we have observed in the statistical assessment on the implementation of the Maastricht Treaty and, eventually, to what was envisaged in the Vedel Report.

3.2 The Treaty of Nice

3.2.1 The Negotiations in Brief

Notwithstanding its limited ambitions, the Treaty concluded in Nice on 11 December 2000 yielded the last enforceable amendments to the Union framework. The path towards further institutional reform was initiated as early as in June 1999 in Cologne, where the European Council called for another Intergovernmental Conference to tackle the so-called ‘Amsterdam leftovers’, of which there were three: (1) the size and composition of the Commission; (2) the weighting of votes in the Council; (3) the possible extension of QMV in the Council. However, it was possible that the agenda could reach out to other amendments concerning the European institutions in connection with issues listed above and the implementation of the Amsterdam Treaty. The proposal for the extension of the co-decision procedure fell into this open category.

As in the past, different actors suggested different approaches to the issue, roughly corresponding to those outlined by the Commission during the Amsterdam negotiations. Both the Parliament and the Commission envisaged the automatic attachment of co-decision to all legislative instruments adopted by majority voting in the Council. The first, in particular, regretted that in four areas of paramount importance to European citizenship (citizens’ rights, social security for migrant workers, provisions for the self-employed, and cultural policy) unanimity in the Council still applied, dangerously reducing the democratic character of the procedure and creating bottlenecks. The Parliament claimed a general right to legislate so that the Union could reflect its double legitimacy as a union of States and a union of peoples. To this aim, the establishment of a hierarchy of legal acts was proposed once again by referring to the Commission’s package for the Amsterdam deal, and the Parliament’s resolution on it.

343 Quote from Petit, M., The Treaty of Amsterdam, chapter 4, section 1.
344 Ibid.
346 Ibid., paragraph 53.
347 Ibid., paragraph 53.
349 See the European Parliament Resolution of 18 November 1999 on the Preparation of the Reform of the Treaties and the Next Intergovernmental Conference (http://www.europarl.eu.int), paragraph 19; and the Euro-
The Commission was also short of new ideas. It engaged three ‘wise men’ in a report collecting the institutional implications of enlargement to ten European countries. The document, subsequently endorsed by the Commission, described the extension of co-decision to all legislative matters in the first pillar where QMV applies as the accomplishment of democratic principles and simple and transparent decision-making policy.

Even if the Parliament was (finally) admitted to the Conference as an observer, its representatives, Mr Broke and Mr Tsatsos were not particularly influential, due to the Parliament’s internal divisions and the subsequent delay in adopting a comprehensive report on the IGC. Thus, while many Member States endorsed the general principle of coupling co-decision and QMV, they refused the automatic application of it. Ministers argued that sometimes the Council voted on purely technical matters and, when asked to define ‘legislation’, they rallied against the legal uncertainty that inevitable approximations of the concept would entail and possible risks for the institutional balance. The Portuguese Presidency’s solution of leaving the matter to the discussion of each piece of legislation, instead of crystallizing a definition, did not give rise to much enthusiasm. We may here briefly note that the proposal resembled the characteristics of the informal approach recently adopted by the Commission. However, any initiative had to defeat the old case-by-case approach, the most appealing and the safest. Not least the High Contracting Parties were not keen to engage in long and laborious negotiations with integrationist aspirations. As the Cologne European Council pointed out, the institutional issues still remaining after Amsterdam had to be settled before enlargement at the end of 2000. With the prospect of such a narrow deadline, a minimalist agenda was agreed upon.

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353 See the Note from the Presidency of 19 May 2000 to the Fourth Ministerial Session of the Intergovernmental Conference, IGC 2000: Other Amendments To Be Made to the Treaties with Regard to the Institutions – The European Parliament – The European Court of Justice and Court of First Instance (CONFERENCE 4743/00), section B; and the Presidency Note of 20 September 2000, IGC 2000 – The European Parliament (CONFERENCE 4771/00), section II; and the European Parliament Notice to Members of 7 June 2000, Summary of the Proceedings of the Intergovernmental Conference between 14 February and 6 June 2000 on the eve of the Feira European Council to be held on 19 and 20 June (PE 286.924).
354 See the Note from the Presidency of 19 May 2000, section B.
355 See the Presidency Report of 14 June 2000 to the Feira European Council (http://www.ena.lu), part I, section 4, paragraph C.
356 Ibid., part I, section 4, paragraph C.
358 See Presidency Conclusions (Cologne), paragraph 52.
3.2.2 The Meagre Outcome

Out of 76 EC and 15 EU provisions for unanimity only 45 had been debated during the IGC, after excluding as ‘no go areas’ all provisions dealing with ‘constitutional’ issues such as Treaty revision, accession procedures and the budgetary system of own resources. At the end of the day, only 38 of the negotiable areas fell under the majority rule, 31 directly with the entering into force of the Treaty of Nice and seven after further unanimous decisions by the Council. The meagre outcome on voting rules also affected the Parliament’s new legislative attributions stalled at ‘plus seven’: incentives to combat discrimination, judicial cooperation in civil matters, specific industrial support measures, economic and social cohesion actions, the statute for European political parties and a few measures relating to visas, asylum and immigration. Once again, none of the costly matters – agriculture, trade and taxation – were included. The cooperation procedure was preserved against the wish of the Portuguese Presidency to replace it (with the consultation procedure).

In the lively debates of the Parliament, these results were perceived as highly disappointing, especially considering that the qualified majority system had been changed for the worse. Whilst the qualified majority threshold had hitherto been fixed at 71% of the votes, Nice raised the threshold to 72% and combined it with the requirement of an absolute majority of Member States and, in the case of a specific request from a Member State, a qualified majority (62%) of the EU population. This complex scheme was a result of France’s insistence on maintaining the same number of votes as Germany, although the population of the latter was much higher after reunification.

Some authors have critically observed that since this triple threshold might prove to be very difficult to reach, the Parliament could be left with little more than a ‘take-it-or-leave-it’ clause in conciliation procedures. This risk was soon adverted by experienced MEPs like Corbett, who, while evaluating the Treaty acknowledged its drawbacks; nonetheless he urged the Parliament to approve it and get ready ‘to come back for more’.

4 The Treaty Establishing a Constitution for Europe

4.1 Expanding the Agenda

The Constitutional Treaty signed in Rome on 29 October 2004 will not enter into force - at least not in the near future - due to the negative outcomes of the referenda held in France and

360 See Wessels, W., Nice Results: The Millenium IGC in the EU’s Evolution (2001) 39 JCMS, p. 204.
361 Ibid., p. 204.
362 See e.g. the Presidency Note of 20 September 2000, paragraph 10.
365 Ibid.
The Netherlands. However, the document might undeniably enshrine the ‘natural development’ of the discipline of the European Parliament in general, and of the co-decision procedure in particular and as such it deserves our, albeit brief, consideration.

According to a consolidating habit, everything started from the end. The Treaty of Nice contained a ‘Declaration on the Future of the Union’ flashing out what we could call the ‘Nice left-over’, namely (1) the application of the principle of subsidiarity, (2) the status of the Charter of Fundamental Rights of the European Union proclaimed in Nice in 2001, (3) the simplification of the Treaties and (4) the role of national parliaments in the institutional framework. Addressing these issues, the Conference acknowledged ‘the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions’.

The Benelux delegation, rising against the tyranny of the bigger Member States in the IGCs’ obsolete context, obtained the promise of a ‘deeper and wider debate about the future of the European Union’. Previously and in a different context, the German Foreign Minister Jo-schka Fischer had also voiced discontent as regards the intergovernmental routine, speaking up for a federal European Union based on greater democracy and efficiency.

At the Belgian Summit of Laeken it was hence decided that the debate would take the form of a Convention, a method borrowed from the drafting of the Charter of Fundamental Rights. The Convention would involve not only the representatives of the actual Member States but also 30 members of national parliaments, 16 members of the European Parliament and two representatives from the Commission. The various parties were to discuss the key issues for the Union’s future and identify possible responses to assist the following Intergovernmental Conference.

Some early contributions broadened the debate. In July 2001, the Commission submitted a White Paper on European Governance, which as a continuation of the Westendorp Report, skilfully linked the correct application of the principle of subsidiarity with the division of...
powers between the legislature and the executive at the European level.\textsuperscript{379} The Commission argued that separating these two roles would guarantee an easier application of the principle of subsidiarity (and proportionality).\textsuperscript{380} For the sake of clarification the Council and the Parliament would gradually extend their joint exercise of legislative power, and the Commission would assume ‘full executive responsibility’.\textsuperscript{381}

In a subsequent communication, the Commission directly addressed the Laeken Summit, and suggested a broadening of the scope of the four Nice questions.\textsuperscript{382} In this case, it linked the institutional discussion to the one scheduled on national parliaments. It held that their role could not be dealt with separately from the issue of democratic legitimacy of the European institutions and the balance between them. In this respect, the Commission pressed, \textit{inter alia}, for a consolidation of the Parliament’s legislative competence, increasing decisions taken by majority voting in the Council and drawing a clear line between legislative and executive acts.\textsuperscript{383}

Unsurprisingly, the Parliament also sought to divert the upcoming debate on national parliaments. It soon stressed that the ‘necessary parliamentarisation’ of the Union must occur by reinforcing the powers of the European Parliament \textit{vis-à-vis} the other institutions of the Union, and the powers of the national parliaments \textit{vis-à-vis} their respective governments.\textsuperscript{384} As regard the former aim co-decision by the Parliament becomes indispensable in ‘all legislative areas’.\textsuperscript{385} However, as regards the latter national parliaments shall fully use their powers of scrutiny in all cases where co-decision does not apply.\textsuperscript{386}

Not only had the agenda of the Convention evolved quickly, but also its task and its nature. As concerns its task, while it originally consisted of trying to define possible solutions for the Union’s future challenges, soon after the inaugural meeting in March 2002 it became clear that the Convention aimed at drafting a solid constitutional text.\textsuperscript{387} This in turn affected the nature of the exercise. National governments promptly realized the importance of ‘being there’ and sent weighty representatives over to Brussels, weaving alliances and implicitly vetoing this and that proposal.\textsuperscript{388} Consequently, the bulk of the provisions laid down by the Convention smoothly passed the IGC’s test and were included in the final constitutional text.

\textsuperscript{380} Ibid., p. 34.
\textsuperscript{381} Ibid.
\textsuperscript{383} Ibid., p. 7.
\textsuperscript{384} See the European Parliament Resolution of 7 February 2002 on Relations between the European Parliament and the National Parliaments in European Integration (OJ 2002 C 284E/322), paragraph 3.
\textsuperscript{385} Ibid., paragraph 5. Italics added.
\textsuperscript{386} Ibid., paragraph 6.
4.2 The European Convention

The Convention began with a generally positive attitude towards European Parliament-related reforms. Already at the eighth session in September 2002 a sufficiently broad consensus over the generalization of co-decision, coupled with a system of QMV in the Council was registered.  

The Working Group of the Convention that was in charge of ‘simplification’ dealt extensively with the Union decision-making system. Its final report presented broadly supported recommendations within the Group. To start with, the main two legislative instruments - regulations and directives – were renamed ‘Laws’ and ‘Framework Laws’. They should have fallen into the category ‘legislative acts’ which the Group described as ‘acts adopted on the basis of the Treaty and containing essential elements in a given field’. The case-by-case determination of the scope of the concept was left to the legislative authority, an approach very close to that of the Commission at the time of the Amsterdam negotiations (and subsequently to that of the Portuguese Presidency at Nice). Co-decision was to become the general rule for the adoption of legislative acts as long as ‘the democratic legitimacy of the Union is founded on its States and peoples, and consequently an act of legislative nature must always come from the bodies that represent those States and those peoples, namely the Council and the Parliament’. Exceptions were admissible only in areas ‘where the special nature of the Union requires autonomous decision-making, or in areas of great political sensitivity for the Member States’.

The implementing acts were split into ‘delegated’ and ‘implementing’ acts to be adopted in the form of ‘regulations’ and ‘implementing regulations or implementing decisions’, respectively.

The delegated acts would have incorporated the details or amended certain elements of a legislative act. The legislator was to lay down the limits of the delegation and, where appropriate, provide a suitable control mechanism. Hence, the European Parliament together with the Council would have been in charge of the exercise of legislative delegation. Instead ‘implementing acts’ would have implemented legislative acts, ‘delegated acts’ or acts provided for in the Treaty itself. The legislator was to decide on their necessity and scope and, ‘where appropriate, the committee procedure mechanism’ for the adoption of such acts. Finally, the

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391 Ibid., p. 3.
392 Ibid., p. 10. The definition of legislative instruments is close to that given by the Court of Justice in Case C-240/90.
393 Ibid., p. 10.
394 Ibid., p. 2.
395 Ibid., p. 15.
396 Ibid., p. 10 and 11.
397 Ibid., p. 11.
398 Ibid., p. 9 and 12. The Group even tackled the structure of the co-decision procedure, stressing that the logic of the procedure requires the application of qualified majority voting in the Council in all cases As a second point, the Group suggested a revision of the composition of the Conciliation Committee, liable to grow too much after the enlargement (see Final Report, p.14).
recommendations and opinions were distinguished from all other acts due to their non-binding character.\textsuperscript{399}

The Convention’s members expressed some reservations about the (obscure) category of delegated acts and the full extension of co-decision to social affairs, agriculture and taxation.\textsuperscript{400} However, the Chairman of the Convention Giscard D’Estaing felt that there was a sufficient consensus on the concept of ‘legislative acts’, and their normal adoption by the co-decision procedure, although some exceptions would have survived ‘for various reasons’.\textsuperscript{401}

On these grounds, the Presidium of the Convention undertook to draft a text\textsuperscript{402} which eventually incorporated most of the results referred to by the Working Group on simplification: a reduction in the number of instruments available to the exercise of the Union’s competences; the application of those instruments to all Union policy areas; a simplification of the designation of the instruments (e.g. ‘laws’ and ‘framework laws’); a distinction between legislative and non-legislative acts (through their hierarchical distribution).\textsuperscript{403} With regard to the last point, it must be stressed that while the Presidium included ‘delegated acts’ in the category ‘non-legislative acts’, in its explanatory notes it contradictorily concludes: ‘As these are acts of a legislative nature, they will take the form of regulations, hence the specific name of delegated regulations’.\textsuperscript{404}

On its own initiative the Presidium called the co-decision procedure the ‘legislative procedure’, a designation which it considered ‘citizen-friendly’ and well-suited for the general rule for the adoption of legislation.\textsuperscript{405} It also undertook to take care of the exceptions to the legislative procedure when examining the legal bases for Union policies.\textsuperscript{406}

Moreover, coming to the category of implementing acts \textit{sensu stricto}, the Presidium proposed to introduce control mechanisms ‘consonant with principles and rules laid down in advance by the European Parliament and the Council in accordance with the legislative procedure’,\textsuperscript{407} in other words a closer parliamentary supervision over implementation, which might have eventually excluded the intervention of comitology committees.\textsuperscript{408} The draft was welcomed

\textsuperscript{399} Ibid., p. 4.
\textsuperscript{400} See the Summary Report of the European Convention Secretariat of 13 December 2002 on the Plenary Session of 5 and 6 December 2002 (CONV 449/02), p. 5.
\textsuperscript{401} Ibid., p. 9.
\textsuperscript{403} See Note from the Presidium of 26 February 2003 to the Convention on the Draft Articles 24 to 33 of the Constitutional Treaty (CONV 571/03).
\textsuperscript{404} Ibid., p. 4.
\textsuperscript{405} Ibid., p. 2.
\textsuperscript{406} Ibid.
\textsuperscript{407} Ibid., p. 4.
\textsuperscript{408} ‘A number of Convention members’ had forced the Presidium’s hand on this subject and dragged it far away from the Working Group’s proposal of amending or abolishing, if that be the case, the regulatory committees through secondary legislation: see the Final Report of Working Group IX of 29 November 2002 on Simplification, p. 12, footnote 1.
by a ‘broad consensus’, although a few opposed the amendment of Article 202 EC (2003) in the sense indicated by the Presidium.

On the eve of the presentation of the draft Articles on the institutions of the Union, France and Germany, in their usual attempt to create a show of a joint leadership, submitted a contribution to the Convention. The document stated that the Parliament exercises the legislative power in conjunction with the Council, and that the latter shall vote by qualified majority in all cases where the power of co-decision is conferred to the Parliament. Reinforcing the concept of the separation of powers, Germany managed to include in the document the election of the President of the Commission by the Parliament. As a trade-off, France could press for a President of the European Council and for national parliaments to monitor the correct application of the principle of subsidiarity. The British and the Spanish delegations held similar views, although they would have limited the extension of the co-decision procedure and QMV in the Council to ‘some new areas’. On the other hand, they seemed available to discuss the election of the President of the Commission on the condition that it would not threaten its independence from political interference.

Given the agreement expressed by the major Member States and, finally, by the whole Convention on institutional reforms, the new articles on the institutions tabled by the Presidium met with very little resistance where they attributed joint legislative power to the Council and the Parliament. However, due to persistent disagreements over the extension of co-decision and QMV in the Council, the Presidium introduced a so called ‘passerelle’ or ‘bridging clause’ at a later stage of the negotiations according to which the European Council could decide, having informed the national parliaments, to apply co-decision or QMV where other procedures and unanimity should have formally applied.

410 Ibid., p. 4.
411 See the Contribution of 16 January 2003 Submitted by Mr Dominique de Villepin and Mr Joschka Fischer, Members of the Convention (CONV 489/03).
412 Ibid., p.4.
413 Ibid., p. 4.
415 See Contribution of 28 February 2003 by Mrs Ana Palacio and Mr Peter Hain, Members of the Convention: ‘The Union Institutions’ (CONV 591/03), p.2.
416 Ibid., p.2. In practice, the actual boundary of Britain was set on matters of taxation where an extension of QMV was seen as unacceptable, fearing that tax harmonisation could lead to tax hikes in the United Kingdom, where taxes are generally lower than the continental average. See Keohane, D., The UK and the Convention (2002) EPIN Briefing Note.
419 The ‘passerelle’ appears for the first time in the Cover Note of the Presidium of 10 June 2003 to the Convention on the Revised Text of Part One (CONV 797/03), p. 19, Article I-24(4). This clause aimed also at expediting future amendments to the Treaty without the onerous requirement of unanimous ratification in all Member States, see the Cover Note of the Presidium of 26 May 2003 on the Draft Text of Part IV with Comments (CONV 728/03) p. 10.
4.3 Outcome: A ‘New’ Legislative Procedure (and Other Achievements)

The bulk of the provisions drawn up by the Convention were immediately included in the CT. There, the pillar structure disappeared and the typology of Union’s acts was limited to six instruments: European Law, Framework Law, Regulation, Decision, Recommendation, and Opinion as provided for by the Constitutional Treaty drafted by the Convention (DCT). As regards the new legal acts there was a distinction between legislative and non-legislative acts.

Legislative acts, namely laws and framework laws, in most cases shall be adopted on the basis of co-decision, entitled ‘the ordinary legislative procedure’. In specific cases provided for in the Constitution, European laws and framework laws shall instead be adopted by special legislative procedures which may heavily limit the participation of the Parliament. The legislative procedure shall also concern provisions necessary for the achievement of the objectives of the CAP and measures defining the framework for implementing the common commercial policy. In some cases, however, the Treaty constitutes a deterioration of the current situation: for instance, regulations or decisions of the sole Council would fix prices, levies, aid, quantitative limitations and the allocation of fishing quotas without the consultation of the European Parliament. The shift to the ordinary legislative procedure or to QMV through the ‘bridging clause’ was made more difficult as compared with the Draft’s relevant provisions. Apparently due to the fact that certain parties complained during the Italian Presidency about the non-transparent and undemocratic character of mere information of the national parliaments, the Conference concluded that the opposition of only one national parliament (the ‘nihil obstat’ clause) would suffice to block the application of the ordinary legislative procedure or QMV. National parliaments would further restrain the Parliament’s lev-

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420 The final text of the Treaty drafted by the Convention was laid down by the European Convention Secretariat in the Cover Note to the Convention of 18 July 2003 on the Draft Treaty establishing a Constitution for Europe (CONV 850/03).


422 Cf. Articles I-34 and I-35 CT and Articles 33 and 34 DCT.

423 Cf. Article I-33 CT and Article 32 DCT.

424 Cf. Article I-34 CT and Article 33 DCT.

425 Cf. Articles I-34 and III-396 CT and Articles 33 and III-302 DCT.

426 Cf. Article I-34(2) CT and Article 33(2) DCT.

427 Cf. Article III-315 CT and Article III-217 DTC.

428 Cf. Article III-231 CT and Article III-127 DCT. The latter may also lose influence over other policy areas, in the past exercised through the backdoor of the budget. Indeed, although the Conference agreed to abandon the artificial separation between compulsory and non-compulsory expenditure and to subject the procedure to a type of simplified co-decision procedure, it has in the end deprived the European Parliament of that final say which, in the draft Constitutional Treaty (and for the non-compulsory expenditure, in the TEU) enabled it to impose its will on the Council. Cf. Articles III-404 CT and Articles III-310 DCT.

429 See the Note from the Presidency of 11 November 2003 to Delegations, The IGC-2003: Treaty Revision (CIG 46/03), p.3.

430 Cf. Article IV-44 CT and Article 24 DCT. The CT extends QMV in the Council to approximately twenty provisions currently requiring unanimity and almost as many new legal bases. A complete list of the legal bases providing for the first time for QMV is available at http://europa.eu.int. However, in certain sensitive areas, like tax policy, unanimity remains the rule (Cf. Article III-171 CT and Article III-62 DCT). QMV is also redefined as a ‘double majority’ combining the majority of the Member States with the majority of the population of the Union. This issue was at the heart of the IGC, which in principle approved the proposal of the Convention, adding certain amendments to facilitate the transition to the new system, cf. Article I-25 CT and Article 24 DCT.
erage *a posteriori*. According to the relevant protocol they would, indeed, be able to bring legal action before the Court of Justice on the grounds of infringement of the principle of subsidiarity by a European legislative act.\footnote{See the Protocol annexed to the Treaty Establishing a Constitution for Europe on the application of the principles of subsidiarity and proportionality (OJ 2004 C 310/207). The national parliaments’ right to refer to the Court of Justice was granted also by the relevant protocol attached to the DCT (CONV 850/03).}

Turning to non-legislative acts, they comprise not only non-binding recommendations and opinions, but also binding delegated European regulations\footnote{Cf. Article I-36 CT and Article 35 DCT.} and implementing acts as such.\footnote{Cf. Article I-37 CT and Article 36 DCT.} It is specified that delegated acts may affect only non-essential elements of a piece of European legislation. While the control over delegated acts will belong to the Council and the European Parliament, control over implementing acts will still be reserved for the Member States (read ‘committees’) according to mechanisms laid down by European laws.\footnote{Cf. Article I-36 CT and Article 35 DCT, and Article I-37 CT and Article 36 DCT. I would like to mention that the Presidium had opted for a more favourable formula for the European Parliament, where the control over implementing acts would not necessarily be reserved for the Member States.} In specific cases (e.g. the CFSP)\footnote{Cf. Article I-40 CT and Article 39 DCT.} implementing powers, normally belonging to the Member States and the Commission, may be conferred on the Council.\footnote{Cf. Article I-37 CT and Article 36 DCT.}

Finally, the CT remits the election of the President of the Commission to the European Parliament greatly enhancing its political weight.\footnote{Cf. Article I-20 CT and Article 19 DCT.} Moreover, since the preliminary proposal of a candidate by the European Council must take into account the results of the European elections, the responsibility of the Commission President *vis-à-vis* the European Parliament is highlighted as well as the value of the European elections.\footnote{See the fact sheets on the work of the Convention compiled by the European Commission, in particular the section dedicated to the Institutions of the Union, available at [http://europa.eu.int](http://europa.eu.int).}